

SJR

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ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

May 21, 1981

MEMORANDUM

TO: Representative Ben Grussendorf

FROM: Leslie Longenbaugh *W*
Research Staff

RE: Retention Election of Judges
Research Request Number 81-141

You asked that we provide information on options for changing the system of retention by election for district and superior court judges in this state. You would like to find a way of reconciling the differences between the population most likely to be served by the judge and the population which is given the opportunity to vote on the judge's retention.

The "modified Tennessee plan," where judges are appointed and then subject to approval or rejection by the voters, is incorporated in the Alaska Constitution; however, that Constitution does vest the Legislature with the power to establish the manner in which judges are approved or rejected (see Article IV, Section 6, of the Alaska Constitution, which is Attachment C to this memorandum).

PRESENT SITUATION

One question raised by this inquiry is whether the group which is served by a judge includes few, many, or most of those who may vote for his or her retention. For the most part, the disparity between these two groups is significant. For example, a judge whose court is in Sitka will seldom hear cases from Juneau, Ketchikan, and Wrangell, and yet will be subject to approval or rejection by voters in those communities. Some proponents of change argue that a judge who is unpopular among the population he or she serves is nonetheless likely to be retained by a voting population that includes a majority who are uninformed about the judge's performance.

This difference between those served and those who may vote on a judge's retention is also perceived as a problem by some staff within the court system. The Honorable Duane Craske, Superior Court Judge in Sitka, for example, told us that he would welcome a reform in this area, seeing it

as a way of furthering communication between a judge and those he or she serves. Nick Maroules, Attorney for the Judicial Council,¹ also has said that he thinks some change in this direction is a good idea, particularly for Southeast.

For the purposes of court administration, Alaska is divided into four judicial districts (see Attachment A). The First Judicial District encompasses all of Southeast Alaska, the Second includes the far northwestern region of the state, the Third comprises Southcentral Alaska and the Aleutian Islands, and the Fourth cuts a diagonal swathe across the center of the state including Fairbanks and Bethel. In the First Judicial District, superior and/or district court judges sit in four municipalities: Juneau, Ketchikan, Sitka and Wrangell. In the Second, judges sit in Kotzebue and Nome; the Third Judicial District contains five communities where judges sit: Anchorage, Homer, Kenai, Kodiak and Valdez. The Fourth has judges in Bethel and Fairbanks. The size of the four districts is thought by some to reduce the chances that a voter will be well-informed about the performance and popularity of a judge from another part of the judicial district.

Once appointed by the Governor, an Alaskan district or superior court judge is likely to spend most of his or her tenure in the municipality where he or she was originally assigned. This position contradicts the popular view that judges quite frequently move from one town to another. There are three occasions when a district or superior court judge will be temporarily replaced by a judge from another part of his or her judicial district: 1) illness; 2) vacation; and 3) preemption, or disqualification.

The third case mentioned above, that of disqualification, is the most common reason for temporary reassignment. Alaska law allows participants in civil cases and defendants in criminal prosecutions to request that their cases be tried before a judge other than the one assigned. The petitioner need not provide any reason for the request for disqualification. In addition, it sometimes happens that a judge feels himself or herself to be unable to participate fairly in a proceeding; in these cases, the judge files a disqualification from the case.

Once a change of judge has been granted, the Presiding Judge of the judicial district must choose a judge of the same authority as the disqualified judge, i.e., district or superior, to go to the other court to hear the case. This reassignment is sometimes a problem, particularly in judicial districts with only a few courts. For example,

¹Nick Maroules, Attorney/Legal Analyst, Alaska Judicial Council, 420 "L" Street, Suite 502, Anchorage, 99501; telephone: 279-2526.

because none of the four towns in the First Judicial District which have courts presently contains more than one superior court judge, judges who are reassigned within this district must nearly always travel some distance. During 1980, 2% of the cases heard in the First Judicial District were reassigned because of the disqualification of the original judge.²

In terms of the number of judges and the size of the population served, the Third Judicial District is the largest in the State. Anchorage, which is located within the Third District, has ten Superior Court judges and seven District Court judges. When a judge is disqualified from a case in the Anchorage area, another judge usually can be found in Anchorage to replace him or her on the case. Judges in Valdez, Kenai, Homer, and Kodiak, however, are also likely to be replaced by Anchorage judges. For this reason, it would seem that voters in the Third Judicial District would be more likely than voters in the First to know the judges from throughout their district.

The two remaining judicial districts, the Second and the Fourth, present situations similar to that in the First, although on a different scale. Each of these districts contains two municipalities with courts, and in each the two municipalities are separated by hundreds of miles.

OPTIONS

In your request to this Agency, you mentioned two alternatives for resolving the perceived disparity between those eligible to vote for a judge's retention and those who are served by that judge. These options are: 1) to have the voters within each election district vote on the retention of the judges in their election district; and 2) to have the voters in each community vote on the retention of judges serving in their community. For reasons discussed below, we offer a third option for your consideration: to break the present judicial districts down into smaller election units which would correspond more closely to the areas actually served by the judges within them.

²We computed this figure ourselves by counting the number of disqualifications in Judge Stewart's 1980 files, and using the figure for the total number of cases other than traffic violations given to us by Merle Martin, the Manager of Technical Operations for the Court System (telephone: 264-0544). This figure is not presently available for the other three judicial districts, but presumably could be computed in the same fashion.

Representative Grussendorf
May 21, 1981
Page 4

The first option, to have judges retained only by the voters in their election districts, would present difficulties because of the impracticability of matching election district boundaries with the present areas served by judges (compare Attachments A and B). In order to institute this change, the area served by each judge would have to be redefined to conform to the election district.

The second option you suggested, to have only those voters in the community where a judge sits vote on his or her retention, also would be difficult to institute. If only the community where the judge sits is included in this plan, the surrounding smaller communities whose inhabitants are routinely subject to the judge's orders will be disenfranchised. For example, the judge in Sitka who hears cases from Angoon would not be voted upon by the inhabitants of Angoon, or of any of the small communities whose cases he or she hears.

We have worked out a third option, which is a combination of the two you suggested and the present practice: having the Division of Elections break up the present judicial districts, precinct by precinct, into smaller election units. This would be similar to the Division's present practice, which is to divide the election districts every ten years, precinct by precinct, in order to match the ballots to the judicial districts involved.

According to Patty Ann Polley, Director of the Division of Elections,³ her office hopes to divide up the reapportioned election districts in time for the 1982 retention elections. Ms. Polley reports that making divisions smaller than the four judicial districts would not present any real difficulty.

The primary problem associated with this approach seems to lie in the timing. Ms. Polley has estimated that the Division of Elections must have the figures from the reapportioned election districts by February 1982 in order to use the new districts in the 1982 elections. Thus, February 1982 is the latest date, assuming that there are no major delays in the progress of the reapportionment plan, that the Division of Elections will be starting work on the decennial division of election districts into judicial districts. If new election units of some kind are to be included in the Division's efforts, the Legislature will have had to pass the appropriate legislation, and the Judicial Council (or some other group which is qualified to make such judgments about the judiciary) will have had to decide on the boundaries of the new "judicial election districts" before February 1982.

³Patty Ann Polley, Director, Division of Elections, 3rd Street Community Building, Juneau, 99811; telephone: 586-6181.

Representative Grussendorf
May 21, 1981
Page 5

Of course, at the request of the Legislature, the Division of Elections could redivide the judicial districts at almost any time; the time limits mentioned above refer to the earliest possible election, i.e., 1982, and to the most efficient use of staff time at the Division of Elections, since they must redivide the districts in 1982 as they do every ten years.

Mr. Maroules, the Attorney for the Judicial Council, has told us that as far as he knows, the idea of redistricting for judicial elections has never come before the Judicial Council. Mr. Maroules has placed the idea on the agenda for the next general meeting of the Council, scheduled for the first week in June, and has said that he will call us with the results of that meeting. We will keep you informed of the Judicial Council's response to the suggestion.

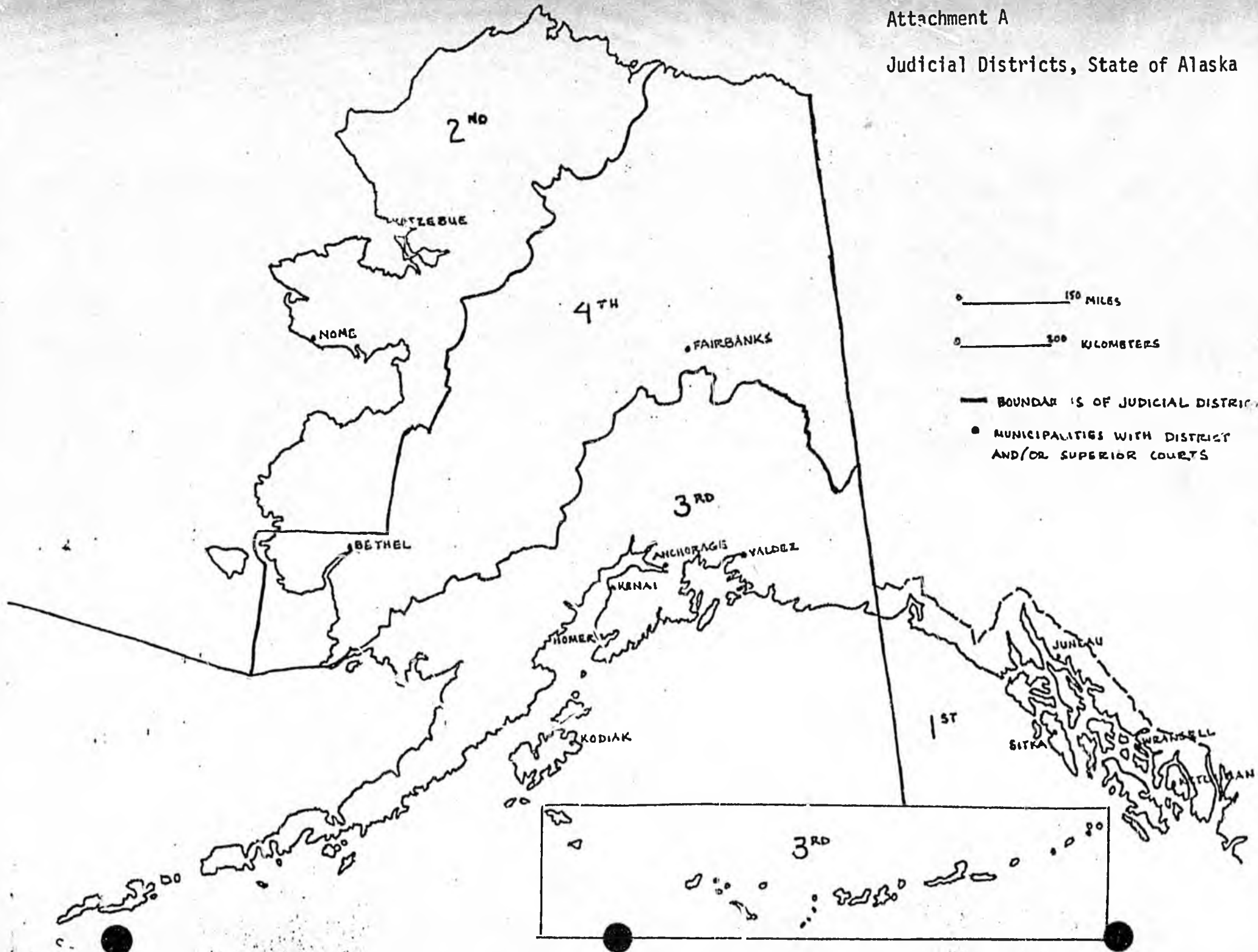
If you would like us to research further any of the alternatives listed above, please do not hesitate to call on us.

LL/bf

Encls.

Attachment A

Judicial Districts, State of Alaska



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tion 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.

Supreme Court

SECTION 2. (a) The supreme court shall be the highest court of the State, with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court.

(b) The chief justice shall be selected from among the justices of the supreme court by a majority vote of the justices. His term of office as chief justice is three years. A justice may serve more than one term as chief justice but he may not serve consecutive terms in that office.

(The amendment to this section was approved by the voters of the state August 25, 1970 and became effective October 10, 1970. Subsection (b) was added.)

Superior Court

SECTION 3. The superior court shall be the trial court of general jurisdiction and shall consist of five judges. The number of judges may be changed by law.

Qualifications of Justices and Judges

SECTION 4. Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law. Judges of other courts shall be selected in a manner, for terms, and with qualifications prescribed by law.

Nomination and Appointment

SECTION 5. The governor shall fill any vacancy in an office of supreme court justice or superior court judge by appointing one of two or more persons nominated by the judicial council.

Approval or Rejection

SECTION 6. Each supreme court justice and superior court judge shall, in the manner provided by law, be subject to approval or rejection on a nonpartisan ballot at the first general election held

more than three years after his appointment. Thereafter, each supreme court justice shall be subject to approval or rejection in a like manner every tenth year, and each superior court judge, every sixth year.

Vacancy

SECTION 7. The office of any supreme court justice or superior court judge becomes vacant ninety days after the election at which he is rejected by a majority of those voting on the question, or for which he fails to file his declaration of candidacy to succeed himself.

Judicial Council

SECTION 8. The judicial council shall consist of seven members. Three attorney members shall be appointed for six-year terms by the governing body of the organized state bar. Three non-attorney members shall be appointed for six-year terms by the governor subject to confirmation by a majority of the members of the legislature in joint session. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration to area representation and without regard to political affiliation. The chief justice of the supreme court shall be ex officio the seventh member and chairman of the judicial council. No member of the judicial council, except the chief justice, may hold any other office or position of profit under the United States or the State. The judicial council shall act by concurrence of four or more members and according to rules which it adopts.

Retirement

Additional Duties

SECTION 9. The judicial council shall conduct studies for improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature at intervals of not more than two years. The judicial council shall perform other duties assigned by law.

Impeachment

Commission on Judicial Qualifications

SECTION 10. The commission on judicial qualifications shall consist of nine members, as follows: one justice of the supreme court, elected by the

Compensation



Alaska State Legislature

Senate

Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

April 23, 1981

Mr. Frank Scheibl
Box 2546
Palmer, Alaska 99645

Dear Mr. Scheibl:

Thank you for your comments on the election of judges. I share your view on this matter.

The Judiciary Committee has been assigned SJR 5, "Proposing amendments to the Constitution of the State of Alaska providing for the election of supreme court justices and superior court judges." I have enclosed a copy of SJR 5 for your information and review.

I will include a copy of your comments in each Committee member's file for his information when this proposed legislation is heard before the Committee.

Sincerely,

A handwritten signature in cursive script that reads "Pat".

Senator Patrick M. Rodey
Chairman

PMR/ods
Enclosure

SJR 5 - Que
~~SJR 5~~

STAND REPLY
IN THE FILE
THANKS, ETC.

RECEIVED

APR 01 1981

13

MSG 81-00010357 PRY 1 03/31/81 11:45:49 ORIG: LM00 IN= 0006 OUT= 0022
FROM: MARTIE/ MAT SU TO: JUNEAU INFORMATION
TARGET: LJH2 SUBJ: P.O.M. PAGE 0001

TO: SEN. RODEY, SEN. BENNETT, SEN. HOHMAN, SEN. FARR, SEN. RAY,
REP. BROWN, REP. CLOCKSIN, REP. CHUCKWUK, REP. MILLER, REP. ANDERSON, REP.
O' CONNELL, REP. PHILLIPS
FROM: FRANK SCHEIBL, BOX 2546, PALMER 99645
THE UNFOUNDED REMARKS IN THE TESTIMONY OF A JUNEAU JUDGE WITH REGARD TO THE
ELECTION OF ATTORNEYS GENERAL SEEM TO LEND STRONG SUPPORT TO THE ELECTION OF
ALL JUDGES. SCARE TACTICS TO MAKE PEOPLE FEEL INSECURE WITH SELF-GOVERNMENT
SHOULD BE SOUNDLY DISCOURAGED. WE WANT TO ELECT ALL JUDGES.

Moore Business Forms, Inc.



Official Business

Alaska State Legislature

Senate

Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811

April 23, 1981

Mr. Leonard Moffitt
Box 745
Palmer, Alaska 99645

Dear Mr. Moffitt:

Thank you for your comments on the election of judges, and support that concept.

The Judiciary Committee has been assigned SJR 5, "Proposing amendments to the Constitution of the State of Alaska providing for the election of supreme court justices and superior court judges." I have enclosed a copy of SJR 5 for your information and review.

I will include a copy of your comments in each Committee member's file for his information when this proposed legislation is heard before the Committee.

Sincerely,

A handwritten signature in cursive script that reads "Pat".

Senator Patrick M. Rodey
Chairman

PMR/ods
Enclosure

APR 08 1981

20 RECEIVED

MSG 81-00011309 PRTY 1 04/06/81 18:53:40 ORIG: LM00 IN= 0013 OUT= 00
FROM: MARY MATSU TO: JUNEAU INFORMATION PAGE 00
TARGET: LJH2 SUBJ: P.O.M.

TO: CHAIRMEN OF ALL STANDING COMMITTEES
REP. GRUSSENDORF, REP. COTTEN, REP. CLOCKSIN, REP. BROWN, REP. HURLBER
REP. ZHAROFF, REP. SMITH, REP. MILLER, REP. CATO
SENATOR GILMAN, SENATOR BENNETT, SENATOR DANKWORTH, SENATOR PARR,
SENATOR RODEY, SENATOR MULCAHY, SENATOR FAURENKAMP, SENATOR KELLY,
SENATOR FISCHER, SENATOR RAY
FR: LEONARD MOFFITT, BOX 745, PALMER 99645
THE JUDICIAL SYSTEM SEEMS RELUCTANT TO INFORM THE PEOPLE OF PROCEDURES,
POLICIES AND RIGHTS, ETC. THIS ACCENTUATES THE QUESTION, "DOES THE JUDICIAL
SYSTEM FUNCTION SUBCONSCIOUSLY AS A PRIVATE BUSINESS FOR THE BENEFIT OF ITS
OPERATORS AT THE EXPENSE OF JUSTICE AND OF THE PEOPLE?" ELECTION OF JUDGE
WILL ANSWER THAT QUESTION.



Alaska State Legislature

Senate

Judiciary Committee

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

April 5, 1981

Mr. Leonard Moffitt
Box 748
Palmer, Alaska 99645

Dear Mr. Moffitt:

Thank you for your comments concerning ~~SJR 5~~ and SJR 6. I will include a copy of your correspondence in each committee member's file for his consideration of this proposed legislation.

I am unfamiliar with your citation of the U.S. Constitution relating to election of judicial officers. On the chance that it was mistranslated in communication, I would appreciate receiving the section section and article to what you referred in your earlier message.

Again, I appreciate the views you have expressed.

Sincerely,

A handwritten signature in cursive that reads "Pat".

Patrick M. Rodey
Chairman

PMR/ods

*I share your
support for elected
judges.*

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13

MSG 81-00010489 PRTY 1 03/31/81 17:33:54 ORIG: LMOO IN= 0012 OUT= 0072
FROM: MARY/MATSU TO: JUNEAU INFORMATION
TARGET: LJH2 SUBJ: P.O.M. PAGE 0004

TO: SENATE JUDICIARY COMMITTEE
SENATOR RODEY, SENATOR BENNETT, SENATOR HOHMAN, SENATOR FISCHER,
SENATOR PARR
HOUSE JUDICIARY COMMITTEE
REP. BROWN, REP. CLOCKSIN, REP. CHUCKWIK, REP. MILLER, REP. ANDERSON,
REP. O'CONNELL, REP. PHILLIPS

FR: LEONARD MOFFITT, BOX 748, PALMER 99645
PEOPLE WHO WOULD SHOOT DOWN OUR RIGHT TO ELECT PUBLIC OFFICIALS SUCH AS
JUDGES ARE SHOOTING AT OUR FREEDOM JUST AS SURELY AS ONE WHO WOULD SHOOT
AT OUR PRESIDENT. SECTION 2, ARTICLE 14 OF THE U.S. CONSTITUTION ADDRESSES
ELECTION OF REPRESENTATIVE, EXECUTIVE AND JUDICIAL OFFICERS.

RECEIVED

APR 01 1981

THANK YOU FOR YOUR COMMENTS
I WILL INCLUDE YOUR MESSAGE IN THE FILES
FOR REFERENCE ON SIR 5 AND 6. COMMITTEE

IM SORRY, BUT I DONT RECOGNIZE YOUR CITATION
OF THE U.S. CONSTITUTION RELATING TO ELECTION
OF JUDICIAL OFFICERS. IF IT WAS MIS TRANSLATED,
COULD YOU SEND IT AGAIN?

AGAIN, THANKS FOR EXPRESSING YOUR VIEWS
FRUIT

Senator Casey Chesser
Judiciary

Great Lander
3110 Spenard Rd.
Anchorage, Alaska 99503

FEB. 23 1981

RECEIVED

Walt Bumala Phone #745-3905

Star Rt. B Box 7539

Palmer, Alaska 99645

Dear Editor,

Our new Justice Compton is concerned with the public perception that appellate courts often determine their verdicts first, then "reason backward" in an attempt to justify those verdicts. Justice Compton conceded that the above happens all the time.

Senator Ray indicated that 50% of the cases that reach the Alaska Supreme Court are reversed. It would seem to follow that 50% of all Alaska decisions would be reversed if appealed to the Supreme Court.

The "reason backwards" process is probably highly contributive to the 50% reversal at supreme court levels.

Another failure in our system of justice is the predisposition to Jury tampering. Jury tampering is treated as a serious offence if, committed by one of the masses.

If a case does not have a jury, then the Judge becomes the judge and the jury. If the judge is also the jury, he should be selected by the attorneys the same way a normal jury is selected. He should then be shown the same respect.

Now the Judge, or Judge/Jury, Plaintiffs representative, Defendant's representative are all attorneys --- a "common bond" that probably contributes immeasurably to the practice of first determining the verdict and "reasoning backwards" to justify the verdict. The "common bond" could well contribute to controlled evidence presentations to assist in justifying a "reason backwards" verdict.

The "Common bond" and "reasoning backwards" are ~~the~~ possible heavy factors in the charges of discrimination that have been pointed at the judiciary.

Handing the plaintiffs and defendants each a tape of the days court proceedings immediately upon conclusion of a case for the day, could reflect reduction in the "reasoning backwards" verdicts.

We cannot expect the judiciary to assist the masses in promoting real change in the judicial system. Any real change would probably be looked upon by the judiciary as a reduction in their power to discriminate, and therefore, meet with strong resistance in many forms from ~~the~~ them.

Real change must be pushed by the people if it is to happen. Election of Judges from the masses with recall provisions would be a great step forward in separating the "common bond", eliminating "reasoning backwards", promoting judicial creditability and public respect of the judiciary as well as fostering government of the people, by the people, and for the people.

Walt Bumala

Walt Bumala



Alaska Judicial Council

420 L Street, Suite 502
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(907) 279-2526

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CHIEF JUSTICE
SUPREME COURT

February 24, 1981

Mr. Kevin Bruce
c/o Senator Pat Rodey
Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Kevin:

It was good to see you in your new role. It seems to suit you well. Enclosed are the materials we discussed: the Minutes of the Constitutional Convention, and some ABA materials. The letter from Stephen Goldspiel tells the status of each document from the ABA. Once you've taken a look at these, you may have ideas about other materials that would be of value to you. Let me know.

I plan to be in Juneau sometime around the 10th of March, so will stop and see you then. Thanks again.

Sincerely,

Teresa J. White
Executive Director

enclosures



AMERICAN BAR ASSOCIATION

STANDING
COMMITTEE ON
JUDICIAL
SELECTION,
TENURE AND
COMPENSATION

1155 EAST 60TH ST., CHICAGO, ILLINOIS 60637 TELEPHONE (312) 947-4000

*rec'd. J.C.
2-17-81*

February 10, 1981

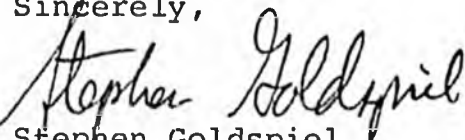
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312/947-3981

Teresa White, Esquire
Executive Director
Alaska Judicial Council
420 "L" Street, Suite 502
Anchorage, Alaska 99501

Dear Ms. White:

In response to your inquiry, I have enclosed two obsolescent booklets by the ABA Standing Committee on Judicial Selection, Tenure and Compensation which are designed to assist a state or local bar association in the judicial selection process, draft guidelines NOT APPROVED BY THE ABA HOUSE OF DELEGATES, AND THEREFORE NOT OFFICIAL which may replace portions of the enclosed booklet, a book describing the work of the ABA Standing Committee on the Federal Judiciary regarding federal judicial appointments, Standard 1.21 relating to court organization, and an article entitled "Judicial Selection and Retention in the United States".

We would be glad to supply additional copies of the ABA publications at no cost.

Sincerely,

Stephen Goldspiel,
Staff Director

SG/lr

Enclosures

P.S. The Standard represents official ABA Policy.

1.21 Selection of Judges. Persons should be selected as judges on the basis of their personal and professional qualifications for judicial office. Their concept of judicial office and views as to the role of the judiciary may be pertinent to their qualification as judges, but selection should not be made on the basis of partisan affiliation.

(a) **Personal and professional qualifications.** All persons selected as judges should be of good moral character, emotionally stable and mature, in good physical health, patient, courteous, and capable of deliberation and decisiveness when required to act on their own reasoned judgment. They should have a broad general and legal education and should have been admitted to the bar. They should have had substantial experience in the practice, administration, or teaching of law for a term of years commensurate with the judicial office to which they are appointed. In addition to these qualifications:

(i) **Trial judges.** Persons selected as trial judges should have had substantial experience in the adversary system, preferably as judges or judicial officers in other trial courts, or as trial advocates, and in any event should have had experience in the preparation, presentation, or decision of legal argument and matters of proof according to rules of procedure and evidence.

(ii) **Appellate judges.** The selection of appellate judges should be guided by the aim of having an appellate bench composed of individuals having a variety of practical and scholarly viewpoints, including some with substantial experience as a trial judge. Persons selected as appellate judges preferably should have high intellectual gifts and experience in developing and expressing legal ideas and facility in exchanging views and adjusting differences of opinion.

(b) **Procedure for selecting judges.** Judges should be

selected through a procedure in which for each judicial vacancy as it occurs (including the creation of a new judicial office) a judicial nominating commission nominates at least three qualified candidates, of whom the chief executive appoints one to office.*

(i) The judicial nominating commission should be constituted of eight members as follows: The chief justice of the highest court, or a justice of that court nominated by him, should be a member *ex officio*, and should be the commission's presiding officer, but should not have a vote. Four public members, who are neither judges nor lawyers, should be appointed to the commission by the chief executive, for staggered terms of at least three years. Three members of the legal profession should be appointed to the commission for staggered terms of at least three years. The lawyer members should be selected by an official bar association that includes all active members of the bar in its membership, or by the chief justice where there is no such bar association. In states with large or geographically separated populations, separate nominating commissions should be established on a statewide basis for appellate judges, and on a regional basis for judges of the courts of original proceedings. The judicial member of a district nominating commission should be a supreme court justice or intermediate appellate court judge designated by the chief justice and chosen on the basis of his spe-

*The Commission recommended a "judicial confirmation" procedure as an acceptable alternative, but this recommendation was rejected by the House of Delegates. Under judicial confirmation, the appointing authority presents nominees, whom the confirmation commission either approves or disapproves. The proposed procedure is patterned on that employed by the ABA in the selection of federal judges below the Supreme Court, wherein the Standing Committee on Federal Judiciary serves essentially as a judicial confirmation commission.

cial familiarity with the bench and bar of the district involved.

(ii) The commission should be provided with staff assistance. It should maintain an inventory of qualified nominees by actively and continually soliciting names of persons suggested as potential nominees or persons who have expressed their interest in being nominated. The appointment procedure should be as follows: Within 30 days after the occurrence of a vacancy in a judicial office with respect to which it has nominating authority, the commission should submit to the chief executive, and simultaneously make public, the names of at least three persons qualified for appointment to the office. Fewer than three names may be submitted if the commission certifies that there are not three persons with the requisite qualifications. The chief executive should appoint one of those nominated; if he fails to do so within 30 days after the list of nominations has been submitted to him, the chief justice should select an appointee from the list of nominees.

(iii) The person so selected should hold office either (a) during good behavior until reaching the age of compulsory retirement, or (b) for a preliminary term of two years and until the next general election thereafter, when his name should be submitted, without opposing candidates, for confirmation or rejection by the electorate in the areas served by the court to which he has been appointed. Where the latter procedure for tenure of office is adopted, a judge who is confirmed should hold office for a term of six (eight/ten) years, when his name should again be submitted, without opposing candidates, for confirmation or rejection by the electorate. He may hold office for successive terms thereafter, subject to like periodic confirmation, until reaching the age of compulsory retirement.

Commentary

Judicial qualifications.

Selecting competent judges is the most important aspect of establishing and maintaining an excellent court system. The judges perform the central functions in the administration of justice and provide standards of proficiency and conscientiousness that guide members of the bar, court auxiliary staff, and the general public in their relationships to the courts.

Judges should be selected on the basis of their personal and professional qualifications. Their political views and loyalty or service to party should be disregarded. While it is appropriate to consider their concept of judicial office itself, candidates for the judiciary should be evaluated in this respect according to whether they can apply the law with a disinterested concern for justice for all.

Judges should have superior self-discipline, moral courage, and sound judgment. They should be able to listen readily to others and to be detached, even-handed, and decisive. They should have a breadth of education sufficient to understand the variety of problems that come before the courts. They should be professionally qualified as lawyers so that they can interpret and apply the law competently. They should have had experience in making practical and critical judgments concerning human relations.

A judge should be mentally fit and alert and be physically capable of performing the duties of the office for which he is being considered. Consideration should be given to his age, both as it relates to his professional maturity and to the years he can devote to judicial service before reaching the age of retirement. It should become a regular part of the process of selecting a judge that an up-to-date medical report on his health be available to the nominating commission.

A person selected as a trial judge should have had previous experience in that capacity or as a trial advocate before courts or administrative tribunals. Experience as an advocate trains him in the rules of procedure and evidence, makes him aware of the problems and responsibilities of the trial lawyer, and exposes him to models of judges. Experience as an advocate, however, is neither indispensable nor always sufficient preparation for being a judge. It is especially appropriate to promote to higher judicial office judges, court commissioners, and other judicial officers who have shown outstanding competence.

An appellate judge should be familiar with the trial process which, as an appellate judge, he is called on to review. He should have the ability to develop and present legal ideas, to give genuine consideration to views with which he does not initially agree, and to write clearly and incisively, for this is the process of decision-making in an appellate court. At the same time, an appellate court should reflect a broad spectrum of professional, intellectual, and civic experience to facilitate its function in developing the law.

Judges serving in specialized departments of courts of original proceedings should include in their number individuals who have technical proficiency in the applicable field of specialization.

The standards in this Section may be augmented by further requirements as to extensiveness of experience and superior professional competence where such requirements appear feasible and appropriate.

References:

JONES, *THE TRIAL JUDGE: ROLE ANALYSIS AND PROFILE, IN THE COURTS, THE PUBLIC AND THE LAW EXPLOSION* (Jones, ed., 1966).

Schaefer, *Good Judges, Better Judges, Best Judges*, 44 J. AM. JUD. SOC'Y 22 (1960).

Rosenberg, *The Qualities of Justices—Are They Strainable*, 44 TEXAS L. REV. 1063 (1960).

Medina, *Some Reflections on the Judicial Function at the Appellate Level*, 1961 WASH. U. L.Q. 148 (1961).

Kilmuir, *Judicial Qualities*, 36 N.A. L. R. 112 (1960).

WATSON & DOWNING, *THE POLITICS OF THE BENCH AND THE BAR*, ch. 8 (1969).

Selection procedure.

The selection of judges should be non-political. Election of judges ordinarily involves either political contests or, in non-partisan elections, contests based on little more than name familiarity. An appointive system is therefore preferable. The power of judicial appointment properly lies with the chief executive officer. He derives his mandate from the broadest political base and is least vulnerable to the influence of any particular group. He is also subject to the widest scrutiny by news media and the public at large. The chief state executive nevertheless may have a conflict of purpose between appointing good people as judges and filling judge-ships in furtherance of his political objectives and the pacification of his diverse constituencies. For this reason, it is essential to bring into the selection process persons who do not have this conflict.

Judicial nominating commission.

The recommended method of merit selection of judges is appointment by the chief executive from a list of nominees submitted by a judicial-nominating commission. This method of selection, often called the "Missouri Plan," has long been advocated by the ABA and such court-reform organizations as the American Judicature Society. In this procedure, a judicial nominating commission, composed of the chief justice, or his designee, laymen, and lawyers, compiles names of prospective candidates for judicial office. When a vacancy

occurs, the commission submits a list of three qualified candidates to the chief executive, who makes a selection from this list.

In compiling its list of nominees, the commission should enable itself to draw on the widest possible sources of information. For this reason, it should systematically seek out names of potential nominees. In tendering its list of nominees, the commission should submit at least three names for each vacancy to be filled. The commission should accompany the list with a written statement of each candidate's qualifications, but should not rank its nominees. When more than one vacancy occurs at one time, the commission may submit separate slates for each position or submit one larger combined slate. The commission may submit less than three names for a vacancy where it is prepared to certify that there are not three persons with the requisite qualifications. All nominations by the commission should be made public so that anyone having information or opinion pertinent to a nominee's fitness to be a judge can make it known to the governor. The chief executive must fill the vacancy within 30 days after he receives the list of nominees, but may fill a vacancy from any list submitted for the court in question within the 30-day period. If the governor fails to fill the vacancy within the prescribed period, the power to appoint should revert to the chief justice, who should make his selection from the list of nominees. This provision protects the integrity of the procedure and assures speedy appointments.

In states with large or very dispersed populations, a single nominating commission could not adequately reflect general sentiment and, at the same time, make informed nominations for all courts in the states. States of this kind should have several commissions: a central one for nominating appellate judges, and regional ones for nominating judges of the courts of original jurisdiction. Where the state has an intermediate appellate court organized on a regional basis, or where the

justices of its highest court are selected by districts, the regional nominating commissions can be organized within those boundaries. Otherwise, the regional boundaries might correspond with groups of trial-court districts or similar organizational divisions of the court system. The judicial member of a regional nominating commission should be specially associated with the region, both as a matter of representation and because he is likely to be better informed about the persons who might be considered as nominees. The public and lawyer members of a regional nominating commission should also be drawn from the region, but in other respects—diversity of residence, term of office—should correspond to the commission that nominates appellate judges.

Whether there is one nominating commission or several, the judicial members should be designated by the chief justice and the public members by the chief executive. All members of the commission should be appointed with special regard for their knowledge of the various responsibilities of the court system and their knowledge about potential candidates for judicial office. The lawyer members should be chosen by the official legal organization of the legal profession in states where such organizations exist. Their selection may be by election by the membership or, if the bar is so large that the membership is not widely acquainted with each other, then by appointment by the bar organization's governing board. Where there is no official organization of the legal profession in a state, the lawyer members of the commission should be appointed by the chief justice.

The commission should have a staff to coordinate the investigations of potential nominees, make reports and preliminary evaluations, and perform necessary administrative functions. The investigation of the candidates might begin with preliminary screening, based on the candidate's answers to a commission questionnaire designed to eliminate those persons not interested as well as those obviously not

qualified. An adaptation of the questionnaire devised by the American Bar Association Standing Committee on the Federal Judiciary could be used. The investigation should include interviews with the candidate and respected members of the profession who know his abilities and personality. The commission should then prepare a report on the candidate's qualifications.

The general public should come to recognize that a judge's retention in office should not depend on popular election. Such elections, even when conducted on the basis of a judge's running on his record or of non-partisan candidacies, depend mostly on name familiarity. Rarely is the public, especially in densely populated urban and suburban areas, actually informed as to a judge's competence and fitness for office. A judge running for reelection is often vulnerable to opposition by special interests or on the basis of a single decision which he had no legal authority to avoid rendering. Hence, if politically practicable, procedures for selection and tenure of judges should be adopted that do not employ elections or referendums. It is accordingly recommended that judges, upon appointment, hold office during good behavior. They should be subject to inquiry concerning their fitness at any time while in office as recommended in Section 1.22.

Where maintenance of public confidence in judicial-selection procedures requires that there be an electoral process, judges should run on their records. A judge's retention in office should be determined by the electorate of the area served by the court to which he is appointed. His name, unopposed, should be submitted to the electorate for confirmation or rejection in a general election after a preliminary two-year term, and thereafter on a periodic basis. This procedure is not without deficiencies, because voters are usually no more qualified to decide whether a judge should be retained in office than to decide whether he should be elected as a candidate. In addition, the lack of opposition may

leave the voters uninformed on the real issues. On the other hand, the retention election provides a measure of popular review in judicial selection. It is also superior to reappointment by the governor, the confirmation commission, or a specially constituted retention commission because it avoids placing a judge in a position of dependency on other officials or agencies of government.

A judge selected under this procedure would be eligible to remain in office, upon periodic reconfirmation, subject to the requirements of compulsory retirement at a specified age. The provisions concerning compulsory retirement are in Section 1.24.

Election of judges.

All methods of judicial selection involving initial choice by popular election are disapproved. Experience with judicial elections conducted on a politically partisan basis has shown such a procedure to have profoundly adverse effects on the courts. Partisan elections inject political issues into judicial selection, require judges to maintain relationships with political parties and political leaders, obligate judges in raising and spending money for election campaigns, and can result in ouster of able judges from office for reasons having no relationship to their performance in office.

Non-partisan election procedures are also unacceptable. They require judicial electioneering and campaign fund raising, and they subject judges to political pressure concerning their decisions. In localities with large concentrated populations and a large number of judges, non-partisan elections confront the electorate with long lists of candidates who are personally known by very few voters. Experience with non-partisan election indicates that it is successful only where most judicial vacancies are, in fact, filled in the first instance by interim gubernatorial appointments rather than by popular election.

Whatever method of judicial selection is used, the legal

profession should undertake an advisory and educational role in the selection process. Acting through professional associations at the local and state levels, the bar should ascertain professional opinion concerning the qualifications of those who may be considered for judicial office and should seek to make its judgment known and influential.

Where elections for judicial office are held, preferential polls among the members of the bar may be appropriate where their opinion is informed by regular involvement in court proceedings. Where members of the bar are not thus informed, their expressions of preference may be little better based than public opinion at large. In any event, the judiciary and the legal profession should take necessary measures to see that campaigns for judicial elections are conducted with proper decorum. Canon 7 of the Code of Judicial Conduct recommended by the American Bar Association prescribes standards in this respect, and should be adhered to and enforced.

References:

WINTERS, ED., *SELECTED READINGS ON JUDICIAL SELECTION AND TENURE* (1967).

Nelson, *Variations on a Theme—Selection and Tenure of Judges*, 36 S. CAL. L. REV. 4 (1962).

AMERICAN BAR ASSOCIATION COMMITTEE ON JUDICIAL SELECTION, TENURE & COMPENSATION. *MODEL BY-LAWS FOR STATE & LOCAL BAR ASSOCIATIONS RESPECTING APPOINTMENT & ELECTION OF JUDGES* (1971).

GROSSMAN, *LAWYERS & JUDGES* (1965).

WATSON & DOWNING, *THE POLITICS OF THE BENCH AND BAR* (1969).

COSTIKYAN, *BEHIND CLOSED DOORS* (1966).

1.22 Discipline and Removal of Judges. All judges should comply with the Code of Judicial Conduct and with such

AMERICAN BAR ASSOCIATION
JUDICIAL ADMINISTRATION DIVISION
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

BE IT RESOLVED, That the American Bar Association encourages the use of the attached Guidelines for Judicial Selection by state and local bar association committees on evaluation of candidates for judicial office.

REPORT

These proposed Guidelines for Judicial Selection were prepared by the Division's Lawyers Conference, and are based on a set of guidelines used by the Chicago Bar Association's Committee on Evaluation of Candidates.

A need exists, we believe, for a set of criteria to be used in screening candidates for judicial appointments and for judges seeking retention.

The standards we recommend are: integrity, legal knowledge and ability, judicial temperament, punctuality and diligence, health, age, professional experience, past professional conduct, and other aspects of character and ability.

These "Guidelines" are not intended to be the only criteria to be used in screening judicial candidates, but are suggestive of basic areas that should be examined.

The Judicial Administration Division Council approved the "Guidelines" at its meeting on August 3, 1980. Attached as an exhibit is the actual report upon which action was taken by the Division Council.

Respectfully submitted,

Lawrence S. Margolis
Chairman

GUIDELINES FOR JUDICIAL SELECTION

Introduction

Any Committee on Evaluation of Candidates* should consider the following Guidelines for the evaluation of candidates for judicial positions and sitting judges seeking retention.

The criteria to be considered should be: integrity, legal knowledge, legal ability, judicial temperament, punctuality, diligence, health, age, professional experience, and such other elements of character and ability which the Committee shall define.

These Guidelines will be applied to the two groups which will appear for evaluation, namely (1) new candidates for judgeships on the trial and appellate courts of the state; and (2) sitting judges seeking reappointment for retention or as candidates for other judgeships.

The Guidelines for candidates should embrace (1) personal characteristics; (2) professional preparation for judicial positions; and (3) in cases of sitting judges, judicial performance. The judicial responsibilities involved in each court should be considered fully to provide a framework against which to measure the applicant's performance or prospective performance.

Scholars of judicial selection have stated that there have not been developed reliable objective yardsticks for the measurement of desirable judicial attributes or desirable judicial behavior. Most of those attributes are personal, subjective and human.

1. Integrity

Webster defines integrity as a rigid adherence to a code of behavior and equates it with honest. Obviously this bare definition will not suffice for our purposes without supplying the code of behavior referred to in the definition. A definition sometimes referred to is integrity is a rigid adherence to the facts and the law.

Expanding on the definition referred to would require that the candidate have the capacity to be fair and unbiased. Moreover, instinct toward self-preservation, self-aggrandizement, prejudice, bias and selfishness should be completely eliminated or suppressed as far as is humanly possible in decisions to be made by a judge.

*As used herein shall be deemed to mean and include any entity or person having responsibility for the recommendation of or the appointment of judicial candidates.

Analysis of the department, rulings, decisions and attitude of a sitting judge should bring to light the answers to these questions:

- (1) Does this judge allow bias or prejudice to dictate the decision?
- (2) Is the judge honest in his formulation of the decision?
- (3) Does the judge base the decision on the evidence of the facts and the law without regard to who the parties or the lawyers are that are involved?
- (4) Is the judge able to disregard partisan political interests and act independently?

Generally, when evaluating a lawyer with no previous history as a judge, the reputation of the individual in the legal community and in activities not related to the practice of law have to be analyzed. Taking into consideration the traditional role of a lawyer as an advocate presenting his or her client's view in the best possible light, certain questions can be asked:

- (1) Does he or she misrepresent facts or evidence?
- (2) Does he or she deliberately misapply or misquote the law?
- (3) Can the representations made by counsel to other members of the bar be representations that can be relied upon?
- (4) Is the candidate's emotion controlled, so that reason prevails?
- (5) Does he or she seek to attain the client's objective within the justice system and the Code of Professional Responsibility?

An individual with the integrity necessary to qualify must be one who is most able to put aside self-interest, prejudice and bias; who can ignore personalities and parties to the greatest degree; who can base the decision on the facts and the law applicable to the facts.

2. Legal Knowledge and Ability

It is difficult to separate the concepts of legal knowledge and legal ability. Legal knowledge, in its simplest form, may be defined as familiarity with established legal concepts and proce-

dural rules. Legal ability may similarly be defined as the intellectual capacity to interpret and apply established legal concepts to the facts and circumstances presented. Legal ability also involves skills in communicating, orally and in writing, the thought processes leading to a legal conclusion.

Legal knowledge and ability is not a static quality, but is acquired by the experience of a person and be the continual learning process involved in keeping abreast of changing concepts through education and study.

Commentators in their discussions of criteria for the selection of judges note that "knowledge of legal procedure, (staying) abreast of legal developments, level of skill of communications, (and) level of skill in written communications" are important elements of a judge's qualifications. The Key to Judicial Merit Selection: The Nominating Process 64 (1974). There is no doubt that what they are referring to, generally, is called legal ability.

A candidate for judicial office should possess a higher level of legal knowledge and ability than the average lawyer practicing in the community.

3. Judicial Temperament

Judicial temperament appears to be universally regarded as a valid and important criterion in evaluating prospective and sitting judges. However, this quality is perhaps more easily recognized than defined. Nevertheless, there are several indications of judicial temperament which, while ultimately premised upon subjective judgement, are sufficiently understood by practitioners and laymen alike as to afford workable guidelines which can be applied by impartial evaluators seeking to measure the temperament of a judicial candidate.

Among the qualities which judicial temperament comprises are patience, open-mindedness, courtesy, tact, courage, firmness, understanding, compassion and humility. Because the judicial function is essentially one of facilitating conflict resolution among competing interests, judicial temperament implies the ability to deal with counsel, jurors, witnesses and parties calmly and courteously, and the willingness to hear and consider what is said on all sides of a debatable proposition. It requires the ability to be even-tempered, yet firm; open-minded, yet willing and able to reach decisions; confident, yet not egocentric.

Because of the range of topics and issues with which a judge may be required to deal, judicial temperament presumes the willingness and ability to assimilate data outside the judge's own experience, without bias. It presumes, moreover, an even

disposition, buttressed by a keen sense of justice, which enables an intellectual serenity in the approach to complex decisions, and forbearance under provocation. Judicial temperament also implies a mature sense of proportion: reverence for the law, but appreciation that the rule of law is not static and unchanging; understanding of the judge's important role in the judicial process, yet recognition that the administration of justice and the rights of the parties transcend the judge's self-importance. Judicial temperament is typified by recognition that "there but for the grace of God go I," as the judge deals with the matters spread before him. It requires "an uncommon touch, commonly applied."

It is perhaps wise to note that in contrast to these elements of judicial temperament, the factors which indicate a lack of such temperament are also identifiable and understandable. Judicial temperament thus implies an absence of arrogance, impatience, pomposity, loquacity, irascibility, arbitrariness or tyranny.

Judicial temperament is a quality which is not easily quantifiable but does not wholly evade discovery; its absence can probably be fairly ascertained. Wide-ranging interviews which touch upon not only the law, but also upon social, moral, ethical and other concerns, should provide insight into the temperament of judicial candidates. Evaluation of a sitting judge, of course, is facilitated by the fact that his bearing, demeanor and temperament are discernible to the practitioners who appear before him, his fellow judges, and those coming into contact with him on a regular basis.

Notwithstanding the inherently subjective elements of any estimate of judicial temperament, such an inquiry is an extremely important criterion of judicial fitness.

4. Punctuality and Diligence

Webster's Dictionary describes a punctual person as one who acts or habitually acts at an appointed time or at a regularly scheduled time. Punctuality is also considered to mean being prompt. A Judge should be prompt in the performance of his judicial duties. He should recognize that the time of litigants, jurors and attorneys is of value and that habitual lack of punctuality or diligence creates dissatisfaction with the administration of the court.

Diligence is a relative term incapable of an exact definition. For example, diligence, in its ordinary sense, may be said to be that displayed in the management of one's own affairs by the average business or professional persons met with in daily life--persons who have the usual amount of practical common sense and who are endowed with ordinary prudence and foresight.

As applied to a judge, diligence may be defined as a steady application to the judicial business at hand; a constant effort to accomplish the undertaking. While not necessarily the same as industriousness, it does imply the elements of constancy, attentiveness, persistence, perseverance, painstakingness, assiduousness and untiring effort.

The lawyer should have a reputation which indicates that he or she does not procrastinate in his or her law practice; that he or she meets procedural deadlines in his or her trial work; that he or she keeps his or her commitments; and that he or she respects the time of the other lawyer and his or her client as well as of the court.

Under Canon 3 of the Association's Code of Judicial Conduct, a judge should perform the duties of his or her office impartially and diligently. The proscription for such canon involves diligence in a wide spectrum. It entails adjudicative responsibilities, order and decorum in proceedings, patience and courtesy to the persons with whom the judge deals, an efficient and business-like attitude while being patient and deliberate, the prompt dispatch of business, the devotion of adequate time to duties, punctuality in attendance and expeditiousness in determinations. Necessarily, it also involves alertness to the character and fitness of persons and their conduct within the community of lawyers and judges, the fulfillment of all administrative responsibilities with dispatch, appointments based on need, and attention to the rules of disqualification.

Canon 3(A)(5) of the Code of Judicial Conduct states that "a judge should dispose promptly of the business of the court." This has been referred to also as element to be considered in the criteria for diligence. The earlier Canons of Judicial Ethics referred to a personal attribute that the judge should be prompt and punctual. Canon 7 and Canon 34. Measuring the punctuality of a sitting judge is much easier than applying it to the lawyer who seeks a judicial position. The criterion of punctuality applies with equal force to the lawyer and to the judges.

5. Health

Webster defines health as embracing a condition of being sound in body, mind or soul and with some freedom from physical disease or pain. This is one criterion which may be capable of objective consideration.

Any history either of a past condition or a current condition should require further inquiry as to the degree of impairment. Not all physical disabilities should be a cause for rejection of a candidate, but any serious conditions must be considered carefully as to the possible effect these could have on a person's ability to perform the duties of a judge.

It is the desire of the Judiciary Committee (and to some extent that had confirmation of the Board of Governors of the Alaska Bar Association) that we keep the selections down to a minimum, because of the limited number of lawyers that we have in the Territory we wanted to restrict the selection of the governor. In fact, the fear has been expressed already that initially the governor might have too much determination in selecting the judges. For that reason it was kept down to two, but with the increase in size of the state it is well recognized that then the judicial council should have latitude in submitting more than two nominations for the one vacancy.

SUNDBORG: May I be permitted to address a question to Mr. McLaughlin?

PRESIDENT EGAN: You may, if there is no objection.

SUNDBORG: Mr. McLaughlin, several days ago when we were discussing this article for the first time, as I heard you, you answered a question, asked by someone, on whether if the governor did not like the names suggested to him he could call for more names, and my recollection was that you answered that in that case more names would be supplied. Was that a considered answer?

MCLAUGHLIN: That was not a considered answer. I believe that I corrected myself. Under this article, under Section 9, the governor has no right of refusal, he cannot refuse. The obvious answer to it, that's the way the section was intended, if there was any other intent it would mean, particularly with the present status of the Alaska Bar, that if the governor refused, he would very promptly exhaust all nominees and he would pick the man that he wanted.

SUNDBORG: Thank you, I just wanted to clear the record. May I address another question to Mr. McLaughlin?

PRESIDENT EGAN: If there is no objection.

SUNDBORG: Also with respect to Section 9, it does not mention there is an office of chief justice. Is there an office of chief justice created by this article? The reason I ask is that when a man, for instance, is appointed by the governor to the position of chief justice, does he hold that position subject to the elections every ten years, and the retirement provision is in here for life, or does each governor who is elected have the right to name a chief justice from among the panel that then makes up the supreme court?

MCLAUGHLIN: There is an office of the chief justice and once appointed by the governor, he remains the chief justice for life or until removed by the voters or until retired for other cause or resignation.

PRESIDENT EGAN: Mr. White?

WHITE: My question was somewhat along the same line, Mr. President. I am not sure that that answered it or not. Did I understand the intent of this section Mr. McLaughlin, to be that when the office of chief justice of the supreme court becomes vacant it, the new appointee is automatically the chief justice?

MCLAUGHLIN: Those who are designated by the judicial council, the nominees, the governor selects one of the two or maybe three nominees. The governor selects one of those and that man becomes the chief justice.

WHITE: Not only the first time but each subsequent time the office becomes vacant?

MCLAUGHLIN: That is correct.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: Following through on the same line, if the governor desired to elevate one of the justices of the supreme court to be the chief justice, it would have to go through the regular procedure of approval by the judicial council that his name might be one of two submitted to the governor, and then it would be up to him to choose?

MCLAUGHLIN: That does not preclude a member of the supreme court from becoming chief justice. Actually, under this act he could resign. The judicial council could select him, he and someone else submitted to the governor and if the governor selected him, then he would become chief justice.

V. FISCHER: Would he have to resign?

MCLAUGHLIN: There is a possibility he would have to resign.

PRESIDENT EGAN: Are there any other questions or amendments relative to Section 9? If not, we will proceed with Section 10. Are there amendments to Section 10? Mr. Sundborg?

SUNDBORG: Mr. President, may I be permitted to address a question to Mr. McLaughlin? With respect to Section 10 I am in the dark as to what you mean by this phrase, "on the basis of appropriate area representation".

MCLAUGHLIN: The phrase, "on the basis of appropriate area representation" was put in there as a guide in order to assure that the judicial council would not consist entirely of three lawyers, let us say from an area like Anchorage. It was intended to have the representation from all areas of the Territory. We were indicating an intent to have a geographical

representation.

SUNDBORG: That then refers to and modifies the word, "appoint". They "appoint on the basis of appropriate area representation"?

MCLAUGHLIN: That is right.

V. RIVERS: Are members of the bar, all members of the bar, members of the "organized state bar", or is that just the American Bar Association?

MCLAUGHLIN: The "organized state bar" was a generic term the Committee took as best representing what would be a state-wide organization of attorneys. Originally the Committee did have the expression "The Alaska Bar Association or its successor". The difficulty was that the legislature could terminate the organized bar, that is terminate the integrated bar, and we use the "organized bar" as best representing that association which would represent all the attorneys of the Territory.

V. RIVERS: "Organized state bar" would not necessarily imply that all members admitted to the bar then were members of that organized bar, is that right?

MCLAUGHLIN: That would imply this, that all could belong to it.

PRESIDENT EGAN: Mr. Hurley.

HURLEY: Mr. President, I would like to address a question to Mr. McLaughlin. My question really has reference to Section 11 but affects Section 10. In Section 11 you mention that "the chief justice shall thereafter be ex officio a seventh member and the chairman of the judicial council" and then mention that it requires an affirmative vote of four of its members. Does the term, "ex officio member", restrict his voting rights in that group?

MCLAUGHLIN: It does not restrict his voting rights at all.

HURLEY: In the matter of a tie he would have a vote?

MCLAUGHLIN: He does anyway.

PRESIDENT EGAN: Mr. Smith.

SMITH: I would like to address a question to Mr. McLaughlin. I am just a little curious as to the Committee reasons for providing that the organized state bar shall appoint the three attorney members and that the governor shall appoint the three nonattorney members.

MCLAUGHLIN: The reason, Mr. President, for that is that is the very essence of the so-called Missouri Plan. The three who are appointed by the bar represent a craft in substance, the theory being, and it has worked out in Missouri, that they best know their brothers, and they are there, based solely on their professional qualifications but selected because they would represent in theory the best thinking of the bar, and they are there solely because they represent their craft. In essence there is nothing undemocratic about it because of the fact that we know by its very nature that the judges of the supreme and superior court will be attorneys. The three lay members are in substance those who represent the public. Under the Missouri Plan there is a specific provision that the members appointed by the bar of Missouri shall be elected. They specifically use the word "elected". We didn't use it, we did not deem it necessary. Under the Missouri Plan the three laymen are appointed by the governor. There is a difference in this Section 9 in the sense that the laymen under our Section 9 are required to be approved by the senate. That is, they are subject to confirmation by the senate. The reason that varies from the Missouri Plan is that what happened was in Committee there was quite some discussion about the popular representation.

DAVIS: Mr. President, before he goes ahead, he is talking about Section 9, I am sure he meant Section 10. I would like it to be clear.

MCLAUGHLIN: Do you desire me to proceed, Mr. President, or wait until that arises.

PRESIDENT EGAN: It might be inasmuch as the question has arisen that if there is no objection, Mr. McLaughlin could proceed. Mr. Fischer?

V. FISCHER: I would like to give cause to the question to arise by introducing an amendment on this subject.

PRESIDENT EGAN: Mr. Fischer, you may introduce your amendment at this time. The Chief Clerk will read the proposed amendment.

CHIEF CLERK: "Section 10, page 3, line 22, strike the comma after the word 'article', substitute a period and strike the remainder of the sentence."

V. FISCHER: Mr. President, I move and ask unanimous consent for the adoption of this motion.

MCCUTCHEON: I object.

COGHILL: I second the motion.

PRESIDENT EGAN: Objection is heard. Mr. Coghill seconds the motion. The question is open for discussion. Mr. Fischer?

V. FISCHER: I would just like to briefly say that I believe the confirmation requirement is not necessary and is in a way

discriminatory against the lay members. I can see why it was put in originally, to give the legislature some say in the selection of judges. We have now amended Section 7 to provide that the qualifications, in effect, would be established by the legislature, and I believe that therefore we should not require confirmation of lay appointees to the council by the legislature.

PRESIDENT EGAN: Is there further discussion of the motion by Mr. Fischer? Mr. Taylor?

TAYLOR: Perhaps Mr. Fischer did not give full consideration to this particular section of the proposal. Under our present act, the Bar Association, the integrated bar, is an official body of the Territory. It is, you might say, chartered, by the legislature, and compulsory membership is required under the act. Nobody can practice law unless they have been admitted to the bar and belong to the integrated bar. Now the bar is screening their applicants, their men for the board, on this judicial board. They must have certain geographical representation in the integrated bar. We have three from the First Division, three from the Third Division and three from the combined Second and Fourth Divisions. So the selection of the three attorney members of the Commission are a selection by an official Alaska organization, the integrated bar. The other three would be selected and approved by the senate, appointed by the governor and approved by the senate. The attorney members have already been approved by the Alaska Bar Association, so why then put them through a further screening when they have already been screened by the members. The lay members have not been screened at all, only by the senate. We feel that the bar members are screened by the bar, then the lay members are screened by the senate. It makes it even.

PRESIDENT EGAN: Mr. Cooper.

COOPER: Mr. President, there is in Section 10, it is pertinent to this motion, the way that I interpret it, line 16, "the appropriate area", in line 20, "different major areas". I would like to ask Mr. McLaughlin if the intent was that the three attorney members of the judicial council would come from three appropriate areas and the three lay members would come from different major areas than that of the three appropriate areas?

MCLAUGHLIN: There is no difference. In fact, if the Committee on Style and Drafting desires in the future to change it, we would be delighted. The one reason why we have left in the words "major areas" on the laymen representation is the possibility (forgive me, Mr. Walsh) that Nome itself might have the feeling that it would be left out in its representation. If we struck "major areas" then there would be

an implication that we did not have to worry about certain areas of the Territory. Frankly, it is my belief that both could be made to conform and the same wording could be used.

COOPER: In other words then, the idea is not to cause the three laymen to come from different areas than the areas from which the three lawyers came?

MCLAUGHLIN: No, there was no such intent.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: I would like to ask the question of the Judicial Committee, if using the word major, does not that denote there is also a minor?

MCLAUGHLIN: In answer to that, Mr. Londborg, if the representatives from the alleged minor areas so desire, we can strike the whole expression, "major area or appropriate area" and then you're not assured of any representation at all. It is the desire of the Committee to have a general geographical representation on the judicial council and that includes all areas.

COGHILL: Point of order. I believe we are diverting from the subject before the Convention. We have a motion on confirmation by the senate for the nonattorney members. We are talking about representation from the major areas. I think we ought to dispose of the subject at hand.

PRESIDENT EGAN: You are correct, Mr. Coghill. That was allowed because the question was asked. The question is, "Shall Mr. Fischer's amendment, inserting a period and striking the words, 'subject to confirmation by the Senate', on line 22 of page 3, be adopted?" Mr. Davis?

DAVIS: Mr. President, was Mr. Fischer's motion seconded?

PRESIDENT EGAN: Yes, by Mr. Coghill. Mrs. Nordale?

NORDALE: I would like to call attention to the fact that one speaker said that the organized bar was an arm of the Territorial government and the senate was an arm of the Territorial government, and I would like to point out that the governor is certainly an arm of the Territorial government and elected by direct vote of the people.

HELLENTHAL: Mr. President, on Mrs. Nordale's suggestion I heartily agree. The people through their agency, the integrated bar, are going to screen the three attorney members. The people through their agent, the governor, will screen the nonattorney members. I don't know why we should get the senate in on the act in addition.

PRESIDENT EGAN: Does anyone else wish to speak on the subject?

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: If not, the question is, "Shall Mr. Fischer's amendment be adopted?"

METCALF: Roll call.

PRESIDENT EGAN: Mr. Metcalf asks that the roll be called. The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 26 - Armstrong, Boswell, Coghill, Collins, Cooper, Cross, Davis, V. Fischer, Hellenthal, Hilscher, Hurley, Kilcher, Knight, Lee, Marston, Nordale, Peratrovich, Poulsen, Reader, Riley, R. Rivers, Rosswog, Sundborg, Sweeney, VanderLeest, White.

Nays: 27 - Aves, Barr, Buckalew, Emberg, Gray, Harris, Hermann, Hinckel, Johnson, King, Laws, Londborg, McCutcheon, McLaughlin, McNealy, McNees, Metcalf, Nerland, Nolan, V. Rivers, Robertson, Smith, Stewart, Taylor, Walsh, Wlen, Mr. President.

Absent: 2 - Doogan, H. Fischer.)

CHIEF CLERK: 26 yeas, 27 nays and 2 absent.

PRESIDENT EGAN: So the amendment has failed of adoption. Mr. Sundborg?

SUNDBORG: Mr. President, I have an amendment to offer.

PRESIDENT EGAN: Mr. Sundborg has an amendment to offer to Section 10. The Chief Clerk will please read the amendment.

CHIEF CLERK: "Section 10, line 22, strike the words 'the Senate' and insert in lieu thereof the following: 'a majority of the members of the Legislature in joint session assembled'."

SUNDBORG: Mr. President, I move and ask unanimous consent for the adoption of the amendment.

JOHNSON: I object.

MCNEES: I second the motion.

PRESIDENT EGAN: The question is open for discussion. Mr. Sundborg?

SUNDBORG: Mr. President, this is a fairly basic matter also which I am sure is going to come before us in some other connection before we are through here. The practice in the Territorial legislature in the past has been that confirmation of appointments is by both houses in joint session assembled. I believe it has been a good practice. I don't believe that only the senate should have the right to express the people's will with respect to appointments by the executive, as it would be in this case, but that it should be by majority of all the members of the legislature and not just by majority of the members of the upper house.

PRESIDENT EGAN: Mr. Hilscher.

HILSCHER: Mr. President, I wish to speak in favor of the amendment. The situation can arise, as it has in the past, where in the makeup of our senate alone, there might be a majority of attorneys as members of the senate or there may be a sufficient number of attorneys that if they wish to exert certain influence, they could act as somewhat of a damper on confirmation of the lay members of that board. I believe that Mr. Sundborg's amendment is worthy of support.

BARR: I am not going to discuss it very widely, but I would say that I don't know what may happen in the future. The only thing I can do is judge by what has happened in the past. I have never been in the senate when there was a majority of attorneys. But I remember distinctly when there was a time when there were 14 attorneys in the house out of 24.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: I am a little concerned. I think the confirmation of the lay members of the judicial council should be the same as the confirmation procedure which will be uniform throughout our governmental structure. Now I don't know what the body has in mind or whether the constitution could contain a blanket clause to the effect that when the language "subject to confirmation" is used that means subject to confirmation by the members of both houses sitting in joint session. It seems to me that Mr. Sundborg made a good point, but I don't know whether we are doing the right thing by saying "subject to confirmation by both houses sitting in joint session" and later on come up with a different motive for the general operation of the state. I would like to hear from somebody.

MCNEES: May I ask Mr. Rivers if this might not be a general policy of the Convention to require the meeting of both houses

in joint session on issues of this magnitude or nature.

R. RIVERS: That would be fine if that were to turn out to be the fact.

HERMANN: I think the adoption of any such provision should wait upon the report of the Apportionment Committee and find out how big the house and senate are going to be. You might very well have the tail wagging the dog in this case.

PRESIDENT EGAN: The question is, "Shall Mr. Sundborg's proposed amendment be adopted?" All those in favor of the adoption of Mr. Sundborg's amendment will signify by saying "aye", all opposed "no".

MCCUTCHEON: Call the roll.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 28 - Armstrong, Buckalew, Collins, Cooper, Davis, Emberg, V. Fischer, Hellenthal, Hilscher, Hinckel, Hurley, Kilcher, Lee, McCutcheon, McNealy, McNees, Marston, Nordale, Peratrovich, Poulsen, Reader, Riley, Smith, Stewart, Sundborg, VanderBeest, White, Mr. President.

Nays: 25 - Aves, Barr, Boswell, Coghill, Cross, Gray, Harris, Hermann, Johnson, King, Knight, Laws, Lomborg, McLaughlin, Metcalf, Nerland, Nolan, R. Rivers, V. Rivers, Robertson, Rosswog, Sweeney, Taylor, Walsh, Wien.

Absent: 2 - Doogan, H. Fischer.)

CHIEF CLERK: 28 yeas, 25 nays and 2 absent.

PRESIDENT EGAN: The "yeas" have it and so the proposed amendment has been adopted. Are there other amendments to Section 10? If there are no further amendments, we will proceed --

STEWART: Mr. President, may we have that read as it was amended?

CHIEF CLERK: "Line 22, page 3, strike the words 'The Senate' and insert in lieu thereof the following: 'a majority of the members of the Legislature in joint session assembled'."

PRESIDENT EGAN: Are there other amendments? We will proceed with Section 11. Mr. Coghill?

COGHILL: Mr. President, Section 10, I have an amendment that

I am contemplating on proposing. However, first I would like to hear discussion by the Convention as far as the subject of confirmation by the legislature in joint session assembled, as far as the attorney members of these boards are concerned. I feel that we are going to be setting up a precedent here that all professional boards will be chosen by their given profession and a minority will be picked by the nonprofessional group and confirmed by the elected members of the electorate for Alaska, but in turn the professions of the doctors, lawyers, and dentists and all the rest of them are going to have the chance to load the committee with professional people.

PRESIDENT EGAN: Mr. Coghill, the Chair has been lenient in allowing discussion even through there was no motion on the floor, owing to the fact that questions have been asked. The Chair will have to ask that these discussions be confined to matters before the Convention.

COGHILL: Well-I'll submit a proposal then, Mr. Chairman.

CHIEF CLERK: "Line 18, page 3, after the word 'bar' insert a comma and add the following: 'subject to confirmation by the Legislature in joint session assembled'."

COGHILL: Mr. President, I move and ask unanimous consent for the adoption of this amendment.

BUCKALEW: Objection.

COGHILL: I so move.

KILCHER: I second the motion.

PRESIDENT EGAN: Mr. Kilcher seconded Mr. Coghill's motion. Will the Chief Clerk please read the proposed amendment again.

CHIEF CLERK: "In Section 10, line 18, after the word 'bar' insert 'subject to confirmation by the Legislature in joint session assembled'."

PRESIDENT EGAN: Add a comma.

SUNDBORG: I wonder if I might ask Mr. Coghill if he would consent to a proposed change in his amendment which would not change the sense but I believe would be a little smoother. If on line 22, after the word "article" we change the comma to a period and then insert "both the attorney and nonattorney members shall be". It would then read, the new sentence, would say "both the attorney and nonattorney members shall be subject to confirmation by majority."

COGHILL: Mr. President, I consent to that with consent of my second because it does not change the intent of my amendment.

PRESIDENT EGAN: Mr. Coghill, it might be more in order if you ask that your original amendment be withdrawn and then submit it. There will be no confusion in the minds of the delegates when we vote on it, if that is what you are attempting to accomplish.

COGHILL: Yes, that's right. I will so move and ask unanimous consent that my proposed amendment be withdrawn.

PRESIDENT EGAN: Mr. Coghill asks unanimous consent that his original proposed amendment be withdrawn. Is there objection? Mr. Riley?

RILEY: I object for purposes of comment. It would appear to me to be far more expeditious to act on it as first offered. Otherwise we are going to introduce the complication of, do we rescind our former action to put the show on the road. This could all be reconciled in Style and Drafting later if Mr. Coghill's motion is adopted.

SUNDBORG: I agree with that, Mr. President, and withdraw my suggestion.

PRESIDENT EGAN: Mr. Sundborg then asks unanimous consent that his motion be withdrawn. If there is no objection it is so ordered and we have Mr. Coghill's original motion before us. Mr. McLaughlin.

MCLAUGHLIN: I presume Mr. Coghill submitted this motion merely for the purpose of getting this on the floor. Coldly and calculatantly, if this motion is passed you might as well tear up the whole proposal and provide for the election of juries, because then it would be more efficacious and more democratic. The whole theory of the Missouri Plan is that in substance, a select and professional group, licensed by the state, can best determine the qualifications of their brothers. The intent of the Missouri Plan was in substance to give a predominance of the vote to professional men who knew the foibles, the defects and the qualifications of their brothers. It is unquestionably true that in every trade and every profession the men who know their brother careerists the best are the men engaged in the same type of occupation. That was the theory of the Missouri Plan. The theory was that the bar association would attempt to select the best men possible for the bench because they had to work under them. If you require a confirmation of your attorney members you can promptly see what will happen. The selection is not then made by the organized bar on the basis of a man's professional qualifications alone. The determination of the selection of those people who are on the judicial council will be qualified by the condition, are they acceptable to a house and a senate or a senate alone, which is essentially Democratic or essentially Republican. No longer is the question based solely on the qualifications

of the candidate for the bench. The question is, will those people whom we set up here on the judicial council, that we send from the bar, will they be acceptable in terms of political correctness? If political correctness enters into the determination of the selection of those professional members who are to be placed upon the judicial council, the whole system goes out the window. All you have is one other political method of selection of your judges. The theory, and it is the only way it can possibly work, is that the lawyers are put on there to get the best man and not to take a man on the basis of his politics. But if we require confirmation, then the material consideration to be made by the Alaska Bar Association is, are we sending our best representative -- no. But are we sending a good Democrat acceptable to both members to both houses or are we sending a good Republican acceptable to both houses. If we permit that determination to enter into our consideration, then in substance we should provide for an initial election or initial appointment by the governor or some other body. Qualifications go out the window as soon as you have confirmation. The theory on the lay members on the confirmation, they represent the public and they represent the predominant political thought. The theory on the lawyer members of the council, they represent the profession, they represent the best interests of the profession. They represent a desire to have the best judges on the benches. I beg of you, please don't vote for the amendment.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: I want to heartily second the remarks of Mr. McLaughlin but also want to point out that the purpose of the draft as now written is to have a nonpartisan selection of these lawyer members, and the minute you adopt something like this, you are making a partisanship proposition out of it. We want that to carry through to a nonpartisan selection of judges, so I think our thinking is quite clear.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: In bringing this up, I quite agree with both the Chairman of the Judiciary Committee and also the member. I believe that all of us here are working on committees real hard and we are trying to bring out good and concise thoughts. We are not trying to go to the extreme in our committee proposals, so that we will get a compromise on the floor. I don't think that is the intent. The purpose for this amendment is that I foresee that the nonattorney members of this board are going to be subject to all the ills of political skulduggery on the floor of the senate or the joint house assembled, and I see that if we are going to pick the judges on nonpartisan basis, that it should be left up to your representative of the government, the highest official in the executive branch which is your governor. That is the reason

why I voted for the amendment to strike that, the acceptance or confirmation by the senate. I think if we are going to accept some of them by the senate confirmation, we should accept them all. It is the precedent you are setting up here for boards on the professional level.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: The question is, "Shall Mr. Coghill's proposed amendment be adopted by the Convention?"

ROBERTSON: Roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result

Yeas: 4 - Coghill, Kilcher, Londborg, Mr. President.

Nays: 49 - Armstrong, Aves, Barr, Boswell, Buckalew, Collins, Cooper, Cross, Davis, Emberg, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Hurley, Johnson, King, Knight, Laws, Lee, McCutcheon, McLaughlin, McNealy, McNees, Marston, Metcalf, Nerland, Nolan, Nordale, Peratrovich, Poulsen, Reader, Riley, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Stewart, Sundborg, Sweeney, Taylor, VanderLeest, Walsh, White, Wien.

Absent: 2 - Doogan, H. Fischer.)

CHIEF CLERK: 4 yeas, 49 nays and 2 absent.

PRESIDENT EGAN: So the proposed amendment has failed. Are there other amendments to the section?

TAYLOR: I have one.

PRESIDENT EGAN: Mr. Taylor has a proposed amendment.

TAYLOR: Mr. President, I am proposing this amendment to Section 7.

PRESIDENT EGAN: Mr. Taylor offers a proposed amendment to Section 7. The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Line 2, page 3, after the word 'State' strike the balance of the section and insert 'for at least three years and have been residents of the State for at least three years next preceding their respective nominations; provided, that additional qualifications may be prescribed by law.'"

TAYLOR: I ask unanimous consent for the adoption of the amendment.

SUNDLORG: Objection.

TAYLOR: I so move.

METCALF: I second it.

PRESIDENT EGAN: Mr. Metcalf seconds the motion of Mr. Taylor. Mr. Taylor?

TAYLOR: I would like to mention one thing. The matter was brought up and we have argued this thing quite thoroughly. I felt that it might be of the period of time that would elapse. Now in the last three years we have admitted perhaps 50 attorneys to the practice of law in Alaska, and it seems like there are going to be quite a number of them admitted each year from now on. Now this past year we had 25 who took the examination, the year before 19, so those men who in the past couple of years have taken the bar and have been admitted to the bar, in all probability by the time we achieve statehood will have the required residence of three years, and they have been practicing law for three years, which will make them eligible for the bench. It seemed the opinion of some of the proponents to eliminate the five-year period. It was through the fact there might not be sufficient manpower, but I think that would be taken care of. Now, even putting the best light on it, we cannot anticipate we will have statehood for a year and a half or possibly more. I think I am being unduly optimistic when I say a year and a half. These men who are barred by time, that will be taken care of, as immaturity is always cured by the passage of time, and by three years we will have plenty of attorneys to pick for the judiciary. We feel there should be some restriction instead of dragging a man in from the outside and putting him on the bench, not knowing his qualifications or background, I think we should put at least three years because by that time there will be approximately 60 or 70 more lawyers in Alaska who will be judicial timber. I feel this amendment should be adopted.

PRESIDENT EGAN: Mr. McNeas.

MCNEES: I rise to speak against the amendment on the same basis that I rose to speak against the original article as it was originally turned out in the Judiciary Committee. Feeling that it is not a matter of constitutional law but one of legislative law, therefore I oppose the amendment.

PRESIDENT EGAN: Mr. Gray.

GRAY: Will you have the Chief Clerk read the amendment again?

PRESIDENT EGAN: The Chief Clerk will please read the amendment.

CHIEF CLERK: "Section 7, page 3, line 2, after the word 'State', strike the balance of the section and insert, 'for at least three years and have been residents of the State for at least three years next preceding their respective nominations; provided, that additional qualifications may be prescribed by law.'"

PRESIDENT EGAN: The question is, "Shall Mr. Taylor's proposed amendment be adopted by the Convention?" Mr. Marston?

MARSTON: Mr. Chairman, I want to talk on this. I wish we would quit going back. We settled this. We are never going to get through.

TAYLOR: Point of order. He is not speaking on the subject.

MARSTON: We have passed on this. We have given our reasons.

PRESIDENT EGAN: Mr. Marston, under the circumstances, Mr. Taylor's point of order, if you say we have passed on this, will have to be well taken because we did not pass on the question that is before us at the present time.

MARSTON: No new subject matter is brought up here.

PRESIDENT EGAN: Mr. Marston, the Chair will have to hold that Mr. Taylor's point of order is in order because there is new subject matter here.

MARSTON: May I say I am opposed to this amendment?

PRESIDENT EGAN: That is right. Mr. Barr.

BARR: May I say I am in favor of this amendment? In answer to another member who took the floor a minute ago, he said that this was properly a legislative matter. I believe that certain qualifications should be specified by the legislature, but I believe that the constitution should state the basic law and preserve the rights of the people, and the people should be entitled to a judge who is properly qualified. That does not just mean qualified in the law. It means also qualified by various other types of experience, including experience in Alaska.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: The question is, "Shall Mr. Taylor's proposed amendment be adopted by the Convention?" All in favor of the --

MCCUTCHEON: Call the roll.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 20 - Armstrong, Barr, Boswell, Coghill, Cross, Gray, Harris, Hellenthal, Johnson, King, Laws, McCutcheon, Metcalf, Nolan, R. Rivers, V. Rivers, Robertson, Sweeney, Taylor, Walsh.

Nays: 33 - Aves, Buckalew, Collins, Cooper, Davis, Emberg, V. Fischer, Hermann, Hilscher, Hinckel, Hurley, Kilcher, Knight, Lee, Londborg, McLaughlin, McNealy, McNees, Marston, Nerland, Nordale, Peratrovich, Poulsen, Reader, Riley, Rosswog, Smith, Stewart, Sundborg, VanderLeest, White, Wien, Mr. President.

Absent: 2 - Doogan, H. Fischer.)

CHIEF CLERK: 20 yeas, 33 nays and 2 absent.

PRESIDENT EGAN: And so the proposed amendment has failed to pass. Are there other amendments? Mr. Sundborg?

SUNDBORG: Mr. President, may I be permitted to address a question to Mr. McLaughlin?

PRESIDENT EGAN: If there is no objection, Mr. Sundborg.

SUNDBORG: Mr. McLaughlin, is it really necessary to provide at the end of Section 10 this language saying that the members of the judicial council "shall be compensated as provided by law"? It occurs to me that we have no such language, for instance, covering the compensation of the judges at all or of any other officials.

MCLAUGHLIN: There is provision specifically in the Act providing for compensation for the judges, and we did not want to make it mandatory, but we wanted to put it in there because we wanted to make it expressed that they could be paid for their services.

SUNDBORG: Is it your belief that if we did not have it in here that the legislature could not provide to compensate them?

MCLAUGHLIN: We are running close. Actually, I think the legislature, even if it were not in there, could provide for their compensation. I would prefer to leave it as it is, and if Style and Drafting so recommends, after discussion with members of the Committee, we might recommend --

SUNDBORG: As Chairman of Style and Drafting, I certainly would not, for myself, want to recommend such a thing as striking that out because I believe it is substantive.

MCLAUGHLIN: I would prefer on behalf of the Committee to leave it in.

PRESIDENT EGAN: Are there other amendments to Section 10? Are there amendments to Section 11? Mr. Hellenthal?

HELLENTHAL: Mr. President, I ask unanimous consent that the word "ex officio" be stricken in the fifth and sixth lines on page 4.

R. RIVERS: I object.

HELLENTHAL: I so move.

MCNEES: I second the motion.

R. RIVERS: The word "ex officio" means that that particular seventh member of the judicial council is the member of judicial council by virtue of the fact that he happens to be chief justice, and so that when the person who occupies the office of chief justice is changed the next chief justice, because he is chief justice, becomes a member of the judicial council, so I just think it is better to leave it in there.

PRESIDENT EGAN: Mr. Rivers, if I might ask a question, by specifically stating "ex officio" and not mentioning anything about his voting power, does that take away from him the right of voting except in the event of a tie?

R. RIVERS: No, he has full membership rights and the full vote at all times.

PRESIDENT EGAN: Where would that be definitely established?

R. RIVERS: I have seen it work through the Territorial government. Governor Gruening was a member of a half dozen boards and he was a voting member. I was an ex officio member of several boards. Now unless we say, "He shall not have the vote except in the event of a tie" the ex officio member has full voting rights, so I like it the way it is.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: That was not my understanding of an ex officio member. I doubt that an ex officio member, so designated, has voting rights. I would like to withdraw my objection and ask that the word "voting" be inserted after the word "seven" in line 6, which will clearly obviate my objection.

PRESIDENT EGAN: Do you ask unanimous consent that that be included in your motion, Mr. Hellenenthal?

HELLENTHAL: Yes.

PRESIDENT EGAN: Without objection, it is included in the original motion.

TAYLOR: Mr. President, I am going to object for the time being. I cannot see the use of putting in the word "voting", "the seventh voting member", because of the fact that if he is a member of the board, he has to vote. Being a presiding officer he would vote last. In case there were four votes cast in favor of him there would be no necessity -- only in case of a tie. Now ex officio in no way or intent can mean a man is not entitled to vote, if he has an office, sometimes he cannot vote, he's merely presiding but that's got to be proscribed. If it isn't proscribed, why he votes. Now the word "ex officio" does not mean to take away any rights conferred upon a member of a committee or a commission. Ex officio means by virtue of an office, the office, not the man, is actually a man. It happens to be whoever holds that office is a member--is a member of the board. That is all it means. I can't see the use of putting in the word "voting".

PRESIDENT EGAN: Is there objection to a one-or two-minute recess? If there's no objection the Convention is recessed for one or two minutes.

RECESS

PRESIDENT EGAN: The Convention will come to order. What is the status of Mr. Hellenenthal's amendment right now? Did you ask unanimous consent, Mr. Hellenenthal, that your original amendment be withdrawn?

HELLENTHAL: Correct.

MCNEES: I withdraw my second.

PRESIDENT EGAN: If there is no objection, it is so ordered.

HELLENTHAL: I ask unanimous consent that the word "voting" be included following the word "seventh" in line 6, page 4.

PRESIDENT EGAN: Mr. Hellenenthal asks unanimous consent that the word "voting" be included following the word "seventh" in line 6, page 4.

HELLENTHAL: Mr. President, I don't mean to be picaresque but apparently in the Senate of Alaska as it is now constituted, the president who is the ex officio member of boards is not entitled to a vote. Now Robert's says if the ex officio

member is not under the authority of the society he has all the privileges including the right to vote, so the question is whether or not the chief justice under this proposal would be under the authority of the society, and I would interpret the society to mean there the seven-man supreme court. There is still a very grave question in my mind. One group here tells me that he is under the authority of the society. Another group says that he is not. If there is question why don't we leave the word "voting" in?

PRESIDENT EGAN: Mr. Hellenthal, I wonder if you would be acceptable to the proposition that this matter be turned over to the Rules Committee in conjunction with the Judiciary Committee and that they come to some determination on it and report at some later time.

HELLENTHAL: I am very happy with that suggestion.

PRESIDENT EGAN: If there is no objection Mr. Hellenthal's request will be held in abeyance until such time as a complete report is made on that subject to the Convention. Are there other amendments to Section 11 or 12? If not, are there proposed amendments to Section 13? Are there proposed amendments to Section 14? Mr. McLaughlin?

MCLAUGHLIN: Mr. Chairman, may I read into the record so that the Convention will well know that under Section 13 we did not go into minute detail concerning the functions of the judicial council, but inquiry has been made whether or not the judicial council would make budgetary recommendations to the legislature. That is specifically inherent in these recommendations. Matters such as court structures would include budgets. Administration of the court would include budgetary recommendations to the legislature.

PRESIDENT EGAN: Mr. Victor Rivers.

V. REVERS: Mr. Chairman, I would like to ask a question of Mr. McLaughlin. I would also like to have the answer read into the record. Is it intended that the judicial council shall also make studies and recommendations of the lower courts and see if they can get from our present system some considerable more semblance of order or procedure?

MCLAUGHLIN: That would be specifically intended under such a phrase as including such matters as court structure.

PRESIDENT EGAN: Are there amendments to Section 13? Amendments to Section 14? Are there amendments to Section 15? Are there proposed amendments to Section 16? Mr. Gray.

GRAY: Mr. Chairman, I would like to ask the Chairman of the Judiciary, in Section 15, where the judges, "...at the age of

70, on such retirement pay as may be prescribed by law, and shall render no further service on the bench, except for special assignments as provided by court rule." What do you mean by that phrase?

MCLAUGHLIN: That was intended. The presumption is that at sometime the Committee decided that age 70 is about the time that men may become subject to the infirmities of age and it would be just as well to have that as the arbitrary time at which they retire. As for special assignments, it is fair to presume that at some time in Alaska we will have a Mr. Justice Oliver Wendell Holmes who was quite effective at the age of 92 or we might have a Cardozo, where their services and experience would be of great benefit to the state, then the exception could be made to utilize those men for special assignments.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, we often encounter occasions when the docket gets overly crowded and if you could recruit an experienced jurist who doesn't happen to be infirm, --it's pretty handy to have him available, if he is willing to serve. Often times leave is granted to judges for particular persons and one of these men could be made use of during such periods.

PRESIDENT EGAN: Mr. Cooper.

COOPER: Could I ask a question of Mr. McLaughlin?

PRESIDENT EGAN: If there is no objection, you can direct your question.

COOPER: Mr. McLaughlin, again do I understand that in line 25 on page 5 and the first two lines on page 6, "The basis and amount of retirement pay for justices and judges who retire or are retired at an earlier age shall be prescribed by law." Does that mean that they can retire themselves at the age of 60 if they decide they want to go into retirement and that they will be provided with a form of retirement pay if they are the ones that elect to retire?

MCLAUGHLIN: That means that the legislature can determine exactly what retirement provisions are, that is what retirement is and they can make an allocation of one dollar a year or 30,000 dollars a year, but they shall lay down the rules as to what retirement is, and what constitutes it.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: Mr. President, I would like to direct a question to Mr. McLaughlin.

PRESIDENT EGAN: Without objection, you may direct the question.

MCCUTCHEON: In other words, a mandatory retirement of 70 years does not obviate the possibility that the legislature may set a lower retirement age?

MCLAUGHLIN: That is true.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, we have fixed a compulsory retirement age at 70. Reading of this article shows that the judicial council may recommend earlier retirement for judges who are infirm and may not have the capacity to continue performing their services. In some instances a person will get fairly stubborn and he will not resign. We have a forced retirement on account of infirmities prior to age of 70 based on action of the judicial council, or recommendation of judicial council, or if it happens to be a member of the supreme court it would be on the recommendation of a board of three persons appointed by the governor to investigate the matter and with retirement by the governor, but I think that the legislature could not retire judges on a compulsory basis earlier than 70 if we spell 70 in here.

MCLAUGHLIN: Mr. Rivers, the state of Maine--I was answering Mr. McCutcheon, State of Maine has a provision that no provision for retirement as such, but it provides that if you are not off the bench when you are 70 you won't collect any pay. So in effect the legislature could provide if you are serving on the bench after the age of 65, their act concerning retirement benefits would be ineffective, that you would waive all rights to them and in that sense the legislature could so provide.

R. RIVERS: In that sense I will concur.

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: I would like to address a question to Mr. McLaughlin.

PRESIDENT EGAN: If there is no objection Mr. McNealy, you may ask your question.

MCNEALY: Mr. McLaughlin, have you and your Committee checked into the number of states that do provide for retirement pay for state judges?

MCLAUGHLIN: We did check on it, but we left the matter entirely to the legislature. There was some discussion whether or not we should provide a definite mechanical or arithmetical figure, and the Committee wholeheartedly decided that was a

matter that should be left to the legislature. In terms of constitutional provisions for retirement, New Jersey retires at 70 without a right of special assignment. Connecticut, New York, New Hampshire at 70, Missouri at 75 and Louisiana at 80. They set them forth, I believe, in their constitution. The statutory limit for retirement age is generally set at 70. Hawaii for instance, under their constitution, retires at 70 under Article 5, Section 3.

V. FISCHER: I would like to know whether the term "retire" or "are retired" includes defeat at an election. For instance, assume that a justice has served for 25 years and then at the age of 68, he is defeated at the polls when he comes up for reconfirmation. Would he be precluded by the term "retire"?

MCLAUGHLIN: Mr. Chairman, these are curbstone opinions, but the legislature could determine that a justice who had served so many years and then was defeated for reelection could be retired and use the expression under the constitution and so provide for it. These are outside limits that we are setting on the activities of judges.

PRESIDENT EGAN: Are there other amendments to -- Mr. Hellenthal?

HELLENTHAL: I worry somewhat about the words "except for special assignments as are provided by court rule." It seems to me I have heard of abuses in this regard. Perhaps the word "temporary" should be inserted before the word "special". Here we will have the rule-making body, which will have a tendency to recognize that their mental abilities will continue unimpaired after 70. They will all be convinced of it in fact. They are going to make the rule and they might keep themselves on indefinitely under the guise of special assignments. I ask Mr. McLaughlin if the word "temporary" might not preclude that possibility.

MCLAUGHLIN: Mr. Chairman, it is the belief of the Committee that that is mere legislation. The age of 70 was specifically set forth so there would be no embarrassment on retiring a person. If there is an abuse of the special assignment privilege, I might point out the legislature controls the purse strings and if it is abused, there will be no appropriation for the purpose. It is something that we should not necessarily anticipate or write into our constitution.

HELLENTHAL: I do not favor enacting legislation by cutting off appropriations and I therefore ask unanimous consent that the word "temporary" be inserted prior to the word "special" on line 24.

PRESIDENT EGAN: Line 24, on page 5?

HELLENTHAL: Yes.

PRESIDENT EGAN: You ask unanimous consent?

R. RIVERS: I object for a question.

PRESIDENT EGAN: Objection is heard. Mr. Ralph Rivers?

R. RIVERS: I would say it would be better to substitute the word "temporary" for the word "special" and not put them both in.

HELLENTHAL: I consent to that.

PRESIDENT EGAN: Then if there is no objection -- Mr. Davis?

DAVIS: I would object to that. I like it the way it is.

PRESIDENT EGAN: Your objection is heard. Do you so move, Mr. Helleenthal?

HELLENTHAL: I so move that the word "temporary" be inserted in lieu of the word "special" in line 24.

PRESIDENT EGAN: Mr. Helleenthal moves and asks unanimous consent that his proposed amendment be to insert the word "temporary" prior to the word "special" in line 24.

JOHNSON: I object to the unanimous consent.

R. RIVERS: Did you say instead of the word "special"?

PRESIDENT EGAN: The Chair understood that Mr. Helleenthal had changed his mind but the Chair was probably in error.

HELLENTHAL: No, that incorporates Mr. Rivers' suggestion which was, as I interpret it, that "temporary" be substituted for the word "special" and I did not ask unanimous consent but merely moved that the change be made.

POULSEN: I second it.

PRESIDENT EGAN: Mr. Poulsen seconds the motion. Mr. Gray?

GRAY: I would like somebody to explain to me the difference between these two proposals.

PRESIDENT EGAN: Mr. Helleenthal, would you explain the difference?

HELLENTHAL: Yes, the special assignment is limited to a temporary one now, whereas under the former wording a special assignment could go on for ten years and could be used as a guise for increasing the tenure of the judges by the exercise of their own rule-making power.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: I see what Mr. Hellenthal is driving at, but I am afraid the mere change of the word "special" to "temporary" would not accomplish his purpose because "temporary" is almost synonymous with "indefinite". It is an amount of time. If we are going to burden the constitution with such things, it is useless. Either we forget about the matter entirely or specify it further.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, I realize that the cases are special and possibly unusual, but there have been many, many cases of very exceptional judges who were well beyond 70 years. I think it is unwise in the constitution to make it impossible for such judges to serve their state. After all, they have all of the experience of their years of service on the bench. Now personally I am against the 70-year retirement age, but the Committee has gone over that back and forth, one way or the other, and I am not going to raise an objection that way, but I would certainly like to see it provided in the constitution so that in the event we have a person who is physically and mentally capable to be a judge, and in the event we have crowded dockets and we need to assign somebody to help clear up the docket, that we have the power to do so. And if we say "temporary" that means, I suppose, just what it says -- temporary. You could not assign a man to do a job that needed to be done if it was something more than temporary. For that reason I like the language as is, "for special assignments".

PRESIDENT EGAN: Is there further discussion?

NOLAN: Question.

PRESIDENT EGAN: If not, the question is, "Shall Mr. Hellenthal's proposed amendment be adopted by the Convention?" All in favor of the adoption of the proposed amendment say "aye", all opposed by saying "no". The "noes" have it and the amendment has failed. Are there other amendments to Section 15? Mr. Taylor?

TAYLOR: I have an amendment.

CHIEF CLERK: "Amend Section 15 by striking the following words: On line 22, page 5, 'at the age of 70'."

PRESIDENT EGAN: What is the pleasure?

TAYLOR: I move the adoption of the amendment.

PRESIDENT EGAN: Mr. Taylor moves the adoption of the proposed amendment. Is there a second to the motion? Hearing no second --

HELLENTHAL: I will second the motion.

PRESIDENT EGAN: Mr. Helleenthal seconds the motion. The question is, "On line 22, page 5, shall the words 'at the age of 70' be deleted from the section?"

BUCKALEW: Question.

EGAN: All those in favor of the adoption of Mr. Taylor's proposed amendment will signify by saying "aye", all opposed by saying "no". The "noes" have it and the amendment has failed. Are there other amendments? Mrs. Wien?

WIEN: Mr. President, I move and ask unanimous consent that this Convention recess until 1:30 this afternoon.

PRESIDENT EGAN: Mrs. Wien asks unanimous consent that the Convention stand at recess until 1:30 p.m. Mr. Sundborg?

SUNDBORG: As announced yesterday, the Style and Drafting will meet at 12:15, in the lunchroom.

PRESIDENT EGAN: The Chair would like to state there will be no meeting of committee chairmen as had been previously announced. Miss Aves?

AVES: The Bill of Rights Committee will meet at 12:45.

RILEY: Subject to Mr. McLaughlin's views, such members of Rules and Judiciary who are free to get together during the noon hour should perhaps do so to resolve that one question we have heard.

PRESIDENT EGAN: The Rules Committee and Judiciary will meet during the noon hour. Mr. Nerland?

NERLAND: Mr. President, I request the members of the Finance Committee meet for just a few minutes immediately following recess.

PRESIDENT EGAN: The members of the Finance Committee will meet immediately upon recess. Mr. McNealy?

MCNEALY: Mr. President, I request a meeting of the Ordinance Committee, No. 1V, at 12:15.

PRESIDENT EGAN: There will be a meeting of the Ordinance Committee at 12:15. Hearing no further committee announcements and no objection, then the Convention will stand at recess until 1:30 p.m. The Convention is at recess.

RECESS

legislature" in accordance with Mr. Johnson's motion of last Saturday.

PRESIDENT EGAN: Is there further debate? Mr. Cooper.

COOPER: Mr. President, this isn't debate. I merely want to ask if in Section 4 if "licensed to practice law" means the same as "admitted to the bar"?

PRESIDENT EGAN: Mr. McLaughlin.

McLAUGHLIN: That was a change made in Style and Drafting. It was generally agreed that it meant the same thing.

PRESIDENT EGAN: Does any other delegate desire to be heard on this proposal? Mr. Smith.

SMITH: Mr. President, I would like to ask Mr. Robertson a question.

PRESIDENT EGAN: You may, if there is no objection.

SMITH: I would like to know on what you base your fears. Has any such action been taken in the past?

ROBERTSON: Well, I answer that question, Mr. President, by stating that is my personal thought on the matter, but I can't believe that Congress is going to agree to a proposal that submits to a mass vote the question of jurisdiction of the courts. That is a matter of scientific investigation and you can't campaign on that kind of an issue before the people. That is something that a small group of people, of men and women like the legislature, should give very careful thought and consideration to and decide entirely on a nonpolitical basis.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, I am going to certainly vote for this. I think this article is a very fine coverage of the judiciary and represents the best in thinking and experience. Along these thoughts expressed by Mr. Robertson, I propose to advocate something under initiative and referendum whereby the jurisdiction of the courts shall not come under the initiative or referendum.

PRESIDENT EGAN: Mr. McNealy.

McNEALY: Mr. President, I could probably talk for two or three hours and there is ample material to talk against this bill for two or three hours or two or three days. I am going to be brief

and I hope that the proponents of the bill will find a way in their speaking so that they can be as brief as I intend to be. In fact, I could sum up all I have to say in two words, "no good". I do want to just hit a few of the high spots in this matter, though. It has been amusing to me to hear delegate after delegate come on the floor and talk about the rights of the people. They want to give the people this right; they want to give them the initiative and referendum; when it suits the purpose of the delegate speaking, then he is interested in the rights of the people. When it doesn't suit his purpose, then he doesn't believe the people should have the right. I think that is a foregone conclusion that in the Convention here, which has served its purpose not only in this, but in other matters that have been before the body. Now, if we are going to give the people any rights, we have gone along under this appointive judge system as far as Alaska is concerned since the beginning of the Territory; we want to give the people some rights; then give them the right to elect these judges because after all these judges are the people who are going to judge the people. This way the people, in no way you read it, or no matter how you state it, this article does not give the people any rights in regard to appointing these judges. The most ridiculous thing would be statements of the proponents of this bill that while these judges have to run against their records and the people have something to say. Well, it is an old maxim among lawyers that judges never die and seldom retire, and so you are not going to get rid of them that way, and when they run against themselves, the greatest way to get them elected would be a little bit of opposition by a group. Supposing the bar association, the attorneys, knew that a judge was bad and wanted to get rid of him. If I were a judge, just before I was ready to run for re-election or to run against myself I would get the bar association good and burned up at me and ask them to come out in the papers against me and then the general public would vote me back in by probably the biggest vote that was ever cast in that particular type of election. We get into a matter that they say is nonpolitical. It is nonsense to say it is nonpolitical. It is the most political situation and fraught with all sorts of elements which make for politics here. You start out with three laymen appointed by the governor. Now, regardless of the governor, what party politics he has, he is going to certainly name the three laymen that are friendly to him, and in addition they are obligated to the governor for his appointment or for their appointment. Then when it comes to nominating the various judges, don't think the governor is not going to have something to say with these three laymen. Then we get down to the four lawyers, etc. Now these four

ADVISORY COMMITTEE ON THE JUDICIAL BRANCH

lawyers are going to make it a nonpolitical situation -- maybe that is the idea -- three lawyers chosen by the bar association. I am a member of the Alaska Bar Association; I should say that all are hearts and flowers in the Bar Association; no politics are going to be involved there. I hesitate in belonging to this closed corporation of union of attorneys, I don't want to comment too much on the politics that does and can go on within that body. But if you think that politics isn't going to be played with the Bar Association -- I grant the fact that the Bar Association is not going to stand for picking out some ignorant and inexperienced attorney and putting him up as one of the representatives. They are going to undoubtedly pick out good men, men with knowledge of law, but lawyers have politics, too, you know. They are Democrats and Republicans, and while the law is a jealous mistress, politics is also a jealous mistress, and any attorney who is a Republican and there is a Republican that he can see is going to be nominated and put in as a judge, he is certainly going to work toward that end. We get into the situation where you are going to have four lawyers including the chief justice controlling this judicial council, and I say this to you laymen in all fairness, that in my opinion four lawyers should be able to control this judicial council; but let's remember the chief justice is going to owe his appointment to the governor. He is going to owe obligations to the governor. All the governor is going to have to do, if he can control the chief justice and the three laymen, he makes all the appointments; if the bar association can control the chief justice and the three lawyers on this judicial council, they are going to make all the appointments. I sincerely hope that this judicial plan, as we have here, is considered seriously. The elective plan of judges has worked successfully in the states, all reports not to the contrary. We have had an offer here of something new, something different from the Committee, and, I am sorry to say, the lawyers have been carried away with the plan. My main purpose in speaking against it now is not because I believe that anything that I say is going to influence one single vote upon this floor, but I do want the members of this Convention, when you see politics in future years to come, if this constitution goes into effect, I want it remembered at least that I made the statement here when you see politics mixed up in your judges and the possibility of a Pendergast machine being set up here in the Territory, this Missouri Plan we have certainly makes it very possible, and at that time I will want to always remember, and thank the delegates for this, that they made it possible to amend this constitution fairly easy, at least within ten years after it is adopted, we will have a chance to amend this Missouri Plan out from the body of an otherwise good constitution. I would hope against hope that this judicial article would be forced to crawl back into the burrow from whence it came.

PRESIDENT EGAN: Is there further debate? Does any other delegate wish to be heard on this subject of Committee Proposal No. 2?

McCUTCHEON: Question.

PRESIDENT EGAN: If not, the question is, "Shall Committee Proposal No. 2, the article on the judiciary, be adopted as part of the Alaska state constitution?" The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 47 - Armstrong, Aves, Barr, Boswell, Collins, Cooper, Cross, Davis, Doogan, Emberg, H. Fischer, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Hurley, Johnson, Kilcher, King, Lee, McCutcheon, McLaughlin, McNees, Marston, Metcalf, Merland, Nolan, Nordale, Peratrovich, Reader, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Stewart, Sundborg, Sweeney, Taylor, VanderLeest, Walsh, White, Wien, Mr. President.

Nays: 6 - Coghill, Knight, Laws, Londborg, McNealy, Poulsen.

Absent: 2 - Buckalew, Riley.)

PRESIDENT EGAN: Mr. McCutcheon.

McCUTCHEON: Mr. President, I change my vote from "no" to "yes", please.

PRESIDENT EGAN: Mr. McCutcheon changes his vote from "no" to "yes".

CHIEF CLERK: 47 yeas, 6 nays and 2 absent.

PRESIDENT EGAN: So the "yeas" have it and the article on the judiciary has become a part of Alaska's state constitution. Mr. Sundborg.

SUNDBORG: Mr. President, I am wondering, in accordance with our rules is that now referred back to Style and Drafting for placement in the final constitution?

PRESIDENT EGAN: That is correct, Mr. Sundborg. Mr. Sundborg, did you wish the floor at this time?

COMMITTEE PROPOSAL NO. 2

Introduced by Committee on Judiciary Branch

ARTICLE ON THE JUDICIARY

RESOLVED, that the following be agreed upon as part of the Alaska State Constitution.

Judicial Power

1 Section 1. The judicial power of the State is vested in
2 a Supreme Court, a Superior Court, and such other courts
3 as the legislature may establish. The jurisdiction of
4 the respective courts shall be prescribed by law and the
5 courts shall constitute a unified judicial system for
6 purposes of operation and administration.

Supreme Court

7 Section 2. The Supreme Court is the highest court of the
8 State with appellate jurisdiction and consists of three
9 justices, one of whom is Chief Justice. The number of
10 justices may be increased by law upon request of the
11 Supreme Court.

Superior Court

12 Section 3. The Superior Court is the trial court of gen-
13 eral jurisdiction and consists of five judges. The num-
14 ber of judges may be changed by law.

Nomina-
tion and
Appoint-
ment

15 Section 4. Justices of the Supreme Court and Judges of
16 the Superior Court are appointed by the Governor on nomi-
17 nation by the Judicial Council as provided in this
18 article.

Approval or 1 Section 5. Each justice of the Supreme Court and
 Rejection 2 each judge of the Superior Court shall, at the
 by Voters 3 next general election following a period of three
 5 years after his appointment, be subject to approval or
 6 rejection by the voters of the State on a non-parti-
 7 san ballot in the manner provided by law. Every
 8 ten years after approval each justice of the Su-
 9 preme Court, and every six years after approval
 10 each judge of the Superior Court, shall again be
 11 subject to approval or rejection by the voters in
 12 the same manner.

Vacancy
 in Judi-
 cial
 Office

13 Section 6. If, at any election, a majority of the
 14 voters declare that any justice or judge shall not
 15 be retained in office, the office shall become
 16 vacant ninety days after the election and shall be
 17 filled by the method of selection provided in this
 18 article. If a justice or judge fails to file, in
 19 advance of the election as prescribed by law, a
 20 declaration of his candidacy for election to suc-
 21 ceed himself, his office shall become vacant ninety
 22 days after the election, and shall be filled by the
 23 method of selection provided in this article.

Qualifica-
 tion of
 Judges

24 Section 7. To be eligible for appointment, Justices
 25 of the Supreme Court and Judges of the Superior
 26 Court shall be citizens of the United States and of

1 the State, who have been admitted to practice law in
 2 the State for at least five years and have been resi-
 3 dents of the State for at least five years next preced-
 4 ing their respective nominations.

Other
 Courts

5 Section 8. Judges of other courts shall be selected in
 6 the manner and for the terms and subject to eligibility
 7 qualifications to be prescribed by the Legislature.

Selection
 of Judges

8 Section 9. Whenever there is a vacancy in an office of
 9 Justice of the Supreme Court or Judge of the Superior
 10 Court, the Governor shall fill the vacancy by appointing
 11 one of not less than two qualified persons who shall
 12 have been nominated by a non-partisan judicial council
 13 established and organized as provided in this article.

Judicial
 Council;
 How
 Selected

14 Section 10. The Judicial Council consists of six mem-
 15 bers chosen in the following manner: On the basis of
 16 appropriate area representation the governing body of
 17 the organized State bar shall appoint three members of
 18 the bar to serve as members of the Judicial Council for
 19 terms as specified in this article. Three non-attorney
 20 members representing different major areas shall be ap-
 21 pointed by the Governor for terms as specified in this
 22 article, subject to confirmation by the Senate. The
 23 six members so appointed shall be compensated as pro-
 24 vided by law.

Judicial

25 Section 11. After the members first appointed to the

Council;
Chairman-
ship and
Quorum

1 Judicial Council have submitted to the Governor the
2 names of nominees for appointments to fill the initial
3 vacancies in the Supreme Court, including the office of
4 chief justice, and the justices have been appointed and
5 qualified, the chief justice shall thereafter be ex-
6 officio a seventh member and the chairman of the Judi-
7 cial Council which shall continue to act by the affirma-
8 tive vote of at least four of its members in accord-
9 ance with rules which it shall promulgate governing its
10 own procedure. No member of the Judicial Council, other
11 than the chief justice, may hold any office of the state
12 or of the United States while a member of the Council.

Judicial
Council;
Terms of
Office

13 Section 12. The terms of members of the Judicial Coun-
14 cil shall be six years, except that the attorney mem-
15 bers first selected shall be appointed to terms of one
16 year, three years and five years respectively, and the
17 non-attorney members first selected shall be appointed
18 to terms of two years, four years and six years respec-
19 tively. In the event of vacancy, a successor shall be
20 appointed to fill the unexpired term in the manner pro-
21 vided for initial appointment.

Judicial
Council;
Addition-
al duties

22 Section 13. In addition to nominating qualified persons
23 for appointment to fill court vacancies, the Judicial
24 Council shall be responsible for conducting studies
25 from time to time for improvement of the administration

1 of justice, including such matters as court structure,
 2 rules of procedure and administration of the courts, and
 3 for making reports and recommendations to the Supreme
 4 Court and the Legislature at intervals of not more than
 5 two years. The Judicial Council shall also perform such
 6 other specific duties as are assigned to it by law.

Retirement
 for In-
 capacity

7 Section 14. Whenever the Judicial Council certifies to
 8 the Governor that any justice of the Supreme Court ap-
 9 pears to be so incapacitated as substantially to prevent
 10 him from performing his judicial duties, the Governor
 11 shall appoint a board of three persons to inquire into
 12 the circumstances and, on the board's recommendation, the
 13 Governor may retire the justice. For judges of other
 14 courts, if a judge appears to be so incapacitated as sub-
 15 stantially to prevent him from performing his judicial
 16 duties, the Judicial Council shall recommend to the
 17 Supreme Court that the judge be put under early retire-
 18 ment. After notice and hearing, the Supreme Court by
 19 vote of a majority of its members may retire the judge.

Retire-
 ment for
 Age

20 Section 15. Except in cases of early retirement because
 21 of physical or mental infirmity each justice and judge
 22 shall be retired at the age of 70, on such retirement pay
 23 as may be prescribed by law, and shall render no further
 24 service on the bench, except for special assignments as
 25 are provided by court rule. The basis and amount of re-

- 1 tirement pay for justices and judges who retire or are
 2 retired at an earlier age shall be prescribed by law.
- Impeachment of Judges 3 Section 16. Impeachment of any justice or judge for mal-
 4 feasance or misfeasance in the performance of his offi-
 5 cial duties shall be effected as generally prescribed
 6 by law for State officials.
- Compensation of Judges 7 Section 17. The justices and judges shall receive for
 8 their services such compensation as is prescribed by law,
 9 which shall not be diminished during their respective
 10 terms of office, unless by general law applying to all
 11 salaried officers of the State.
- Ineligibility to Other Offices 12 Section 18. No Justice of the Supreme Court or Judge of
 13 the Superior Court, while serving as a Justice or Judge,
 14 may practice law, hold office in any political party, or
 15 hold any office or position of profit under the United
 16 States, or the State or a political subdivision of the
 17 State, and shall, if he files for elective public office,
 18 thereby forfeit his judicial position. Compensation for
 19 service in the State Militia or the armed forces of the
 20 United States is not "profit" as that term is here used.
- Rule-Making Power 21 Section 19. The Supreme Court shall make and promulgate
 22 rules governing the administration of all courts of the
 23 State. It shall also make and promulgate rules govern-
 24 ing practice and procedure in all civil and criminal
 25 cases in all courts, which rules may be changed by the

1 Legislature only upon a two-thirds vote of the members
2 elected to each house.

Court Ad-
ministra-
tion

3 Section 20. The Chief Justice of the Supreme Court shall
4 be the administrative head of all the Courts in the State.
5 He may assign judges from one court or division thereof
6 to another for temporary service. For other phases of
7 court administration the Chief Justice shall, with the
8 approval of the Supreme Court, appoint an administrative
9 director to serve at his pleasure and to supervise the
10 administrative operations of the judicial system.

Commentary on the Judiciary Article(Sec. 1 Judicial Power)

This section establishes the basic court structure and also provides needed flexibility for future enlargement by the addition of such local or other courts as the Legislature may deem necessary. The concept of a unified court system is in accord with the fundamental and minimum standards of judicial administration approved and supported by the American Bar Association.

(Sec. 2 Supreme Court)

The initial membership of the Supreme Court is fixed at three justices, one of whom is the chief justice. The provision for future enlargement by the Legislature is qualified by the provision that such enlargement be requested by the Court. A similar provision is found in the new constitution of Puerto Rico and is designed to prevent the number of justices from being increased for any purpose other than to meet the needs of judicial business.

(Sec. 3 Superior Court)

The placing of general trial jurisdiction in a single court, with as many judges thereof as may be necessary to handle the volume of cases, is in line with modern development, and is reversing the former trend toward a complex structure of specialized courts that has so greatly impeded efficient judicial administration in many states. The Legislature will be free, however, to create lower or other courts as may be necessary, and to determine the jurisdiction of courts and the geographical extent of their authority.

(Sec. 4 Nomination and Appointment)

The main features of the plan for judicial selection sponsored by the American Bar Association and embodied in the Missouri Plan, are summarized in the Association's handbook on judicial administration as: "(1) appointment by governor from list submitted by a nominating committee, the nominating and appointing authority being divided between two agencies; (2) periodic submission to the electorate with no opposing candidate, or 'running against the record.'" Both of these features are incorporated in the selection plan here presented.

(Sec. 5 Approval or Rejection)

The American Bar Association's handbook states: "The ideal solution is to provide that, after a specified period of service, and periodically thereafter, the appointee shall either come up for reappointment or should go before the people at a general

election on the basis of his record and with no opposing candidate. The latter alternative is probably preferable, especially since it retains for the voters an opportunity to participate in the process of judicial selection in about the only way in which they can effectively do so. The able judge has little to fear from such a system, while it does permit removal of a judge whom experience has shown to be plainly unqualified or who has become unfit to continue on the bench." It can be added that the type of plan here provided has functioned effectively in Missouri and also in California, where a comparable requirement has applied to appellate judges for more than twenty years.

(Sec. 6 Vacancy in Judicial Office)

In order to allow time for selecting a successor as well as for completing the judicial business remaining before a judge's service terminates, a period of 90 days is allowed after the election at which he is rejected or for which he fails to file. The provision for having a justice or judge file a declaration of his intention to be a candidate to succeed himself is a feature of both the Missouri and the California Constitutions. The details of such declaration such as its form and the time limits for its filing are properly, however, left to the Legislature as herein contemplated.

(Sec. 7 Qualification of Judges)

The requirements of citizenship and of minimum periods of membership in the bar and residence are comparable to those in a majority of states. It should be noted that the section refers to admission and residence "in the State", which will, by general provision elsewhere in the Constitution, presumably and necessarily be defined to include the predecessor Territory.

(Sec. 8 Other Courts)

This section confirms and implements the Legislature's authority to create such additional courts as may be needed, with appropriate methods of selection and qualifications for appointment.

(Sec. 9 Selection of Judges)

The appointment of justices and judges by the Governor from a list of several qualified persons selected by a non-partisan nominating agency is an essential feature of both the American Bar Association and the Missouri plans. The Association's handbook suggests that the nominating body should include laymen as well as lawyers, and that "if the state has a judicial council meeting these qualifications it may well serve as the nominating agency". The present article embodies this approach.

(Sec. 10 Judicial Council; How Selected)

Selection of lawyer members by the state bar association and of non-lawyers by the Governor, both groups of members on a geographical

representation basis, is a recommended feature of the Missouri Plan and has been adopted herein. The American Bar Association's handbook comments: "Nomination by a body of this sort, composed of high caliber men, should not only produce better judges but also remove any likelihood of improper motivation in their selection."

(Sec. 11 Judicial Council; Chairmanship and Quorum)

Since the establishment of the Judicial Council must precede the nomination of any judges, including the chief justice, the latter cannot become an ex officio chairman (as he did automatically in Missouri) until after his appointment has been effected. Thereafter, he will serve as a seventh member of the Council. In the event of his incapacity to serve, it is contemplated that rules of the Council will provide for an acting chief justice as his interim successor.

(Sec. 12 Judicial Council; Terms of Office)

This section provides for staggering the initial terms of the Judicial Council so that non-attorney and lawyer members are appointed in alternate years, respectively, and thereafter each successor member will serve for six years. Judge Laurance M. Hyde of the Missouri Supreme Court points out the reason for a similar six-year term in that state as being that, since a governor serves only a four-year term, no one governor will be able to appoint all of the non-lawyer members during any such term, and thereby control to that extent the personnel of the nominating body.

(Sec. 13 Judicial Council; Additional Duties)

This section empowers and directs the Judicial Council, with its experience and vantage-point in the field of judicial administration, to recommend needed improvements in the structure and operation of the court system.

(Sec. 14 Retirement for Incapacity)

It is becoming increasingly recognized that provision should be made, as this section does, for relieving a judge from his judicial duties when, as very occasionally happens, his retirement for reasons other than age or misconduct, becomes necessary to protect the administration of justice. Such retirement of a Supreme Court justice should be done only on recommendation of an outside board, rather than by the Supreme Court itself. This procedure is similar to that adopted in the Constitution for Hawaii. For other judges, removal by Supreme Court proceedings will be effective and adequate, as has been provided in the Constitution of Puerto Rico.

(Sec. 15 Retirement for Age)

The retirement laws for state judges have tended increasingly to adopt 70 as the maximum or mandatory retirement age. However, a retired justice or judge may still be called upon, in many states, for temporary service or special assignment, and this section permits

such service to be made possible by court rule.

(Sec. 16 Impeachment of Judges)

Procedure for impeachment of justices and judges should, as here provided, be in accord with that for other State officers.

(Sec. 17 Compensation of Judges)

While compensation for justices and judges should be prescribed by law, it should not be susceptible of arbitrary diminution during office. It should be subject to increase as future needs dictate, and should be subject to decrease only when a general reduction applying to all State officers becomes imperative.

(Sec. 18 Ineligibility to Other Offices)

The prohibition against the practice of law or holding other office by full-time justices and judges is a necessary and desirable one, and has been widely advocated. A similar provision was contained in the proposed new Judicial Article for the State of Illinois.

(Sec. 19 Rule-Making Power)

One of the major factors in New Jersey's remarkable achievement in bringing its trial calendars and court business up-to-date, and in simplifying and expediting the administration of justice, has been the vesting of the rule-making power in the Supreme Court, and the exercise of such power by the Court in adapting the Federal Rules of Civil Procedure to state court practice. The American Bar Association has strongly advocated, as its first and keystone recommendation in its program for reform of judicial procedure: "That practice and procedure in the courts should be regulated by rules of court; and that to this end the courts should be given full rule-making powers." This section places primary responsibility for such rule-making in the Supreme Court, reserving to the Legislature a power to change rules of procedure by a two-thirds vote.

(Sec. 20 Court Administration)

A coequal factor in New Jersey's historic modernization of its judicial system has been the vesting of administrative authority and responsibility in its chief justice, with power to assign judges to courts or areas for temporary service as needed. To assist the chief justice by supervising the management and housekeeping functions of the courts, both statewide and local, and by furnishing him with accurate and current statistics on court business, an administrative director is essential. This has been demonstrated not only by the economies effected by the Administrative Office of the United States Courts since its establishment in 1939, but also by the fact that nearly a third of the states have since followed the example thus set. Its inclusion in this section will, together with the other provisions contained in this article, place Alaska in the vanguard of jurisdictions whose judicial systems typify the best

and most modern principles of efficient judicial administration and will provide the guarantee of a strong, fearless and independent judiciary.



NORTHRIM ASSOCIATES



AN ANALYSIS OF THE RESULTS OF A SURVEY
FOR THE ALASKA JUDICIAL COUNCIL

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INTRODUCTION

As part of a continuing effort at self-evaluation, the Alaska Judicial Council commissioned this study concerning judge retention voting behavior and attitudes in early 1979. This report summarizes the results of this study, a survey of voters who voted in the 1978 Fall election. The survey questioned respondents about their voting behavior, particularly regarding their selection of judges for retention or non-retention, asked for their knowledge of or familiarity with the present system of judge evaluation used by the Alaska Judicial Council, their knowledge of or familiarity with the Alaska Judicial Council itself, requested suggestions for improvements in the rating and evaluation system now used and for preferences as to methods which the Alaska Judicial Council could use to communicate its evaluations and recommendations.

The study was conducted during the months of April - May 1979, by mail. A random sample of 1001 voters in the Third Judicial District was selected by computer to proportionally represent voters throughout the district. Each was mailed at least one of three mailings which included the survey questionnaire itself, a letter explaining briefly the reason for the study, and a return envelope. Second and third mailings were sent to those who did not respond to previous mailings or whose survey did not return due to a change of address. To protect the confidentiality of all respondents, mailing labels were used and stripped off returned

surveys on arrival. The questionnaire was designed in consultation with the Judicial Council Executive Director and was refined in consultation with him. Letters to respondents were written and mailed on Judicial Council letterhead.

Sample Design:

Table a shows the random sampling design and sample characteristics of the Alaska Judicial Council survey respondents by community of residence. Of the original 1001 voters selected, 75 questionnaires were returned as undeliverable, leaving 926 questionnaires presumably delivered to respondents. The first mailing resulted in 216 returned questionnaires, or 37.8 percent of the total.¹ The second mailing resulted in 187 returns, or 32.7 percent. Between the second and third mailings, telephone calls were made to 45 percent of the remaining sample over three evenings. With this additional encouragement, 158 returns or 29.4 percent of the 586 questionnaires were returned in time for computer processing. A total of 236 telephone calls were completed between May 29 and May 31, 1979.

Of the 926 delivered questionnaires, 586 were returned before computer processing. Another 9 were returned after computer processing and an additional 51 were eliminated either because they obviously had been completed by someone other than the respondent chosen, the respondent said they did not vote in the 1978 election or failed to complete any of the information requested in the questionnaire. A total of 571 valid questionnaires remain

1. Total of 571 analyzed

as the basis for the analysis which follows. This represents a
62 percent response rate based on the 926 delivered questionnaires.

Table a. Sample Design and Alaska Judicial Council Sample Characteristics by District

DISTRICT	No. Votes Cast 1978 Election	Percent of Total Votes	Sample N	AJC Survey Returns Percent	N =
5 - Valdez Cordova- Seward	4,071	5.3	53	5.0	28
6 - Matanuska Valley	6,515	8.5	85	9.3	52
7 - 12 Anchorage	53,180	69.2	692	69.3	388
13 - Western Kenai	8,109	10.6	106	10.5	59
14 - Kodiak	2,133	2.8	28	3.6	20
15 - Aleutian Chain	1,211	1.6	16	0.7	4
16 - Bristol ¹ Bay	1,354	1.8	18	1.4	8
19 - Copper ¹ Center Glenallen	224	0.3	3	0.2	1
	76,797	100.1	1001	100.0	560 ²

1. Only certain precincts within these election districts are also included in the Third Judicial District. The sample size and mailings are, therefore, limited to only those certain precincts.
2. Percentages were calculated from a base of 560 cases, since 11 respondents did not indicate community of residence.

Demographic Characteristics:

In keeping with the intent of this study and in order to maintain the strict confidentiality of respondents, little demographic information was obtained from those who returned the survey questionnaire. Only community of residence, sex, age and educational attainment were asked. While the results of the comparison of sample size by community of residence shown in Table a indicates that our sample is quite representative of the Third Judicial District as a whole on this factor, there is no direct comparison of our sample with a comparable population on other demographic characteristics. At this time, official election statistics are not maintained on a precinct level by age and sex although the State Elections Office did provide age and sex tabulations of Fall, 1978 voters for the State as a whole. Table b shows a comparison of the Alaska Judicial Council sex and age distributions as of 1978. While the sex distributions are quite similar, median age for our sample reflects a sample of voters as opposed to a total population reflected in the Anchorage Municipal age statistics.

Our sample of voters appears to be somewhat skewed in favor of better educated voters, since 67.6 percent of the sample have attained at least some college. The Anchorage Urban Observatory's statistics for 1978 indicate a total population median educational attainment of 13.2 years, with 54.9 percent having some college or more education. Table c compares these Anchorage municipal education levels with sample educational attainment levels.

Table b: Comparison of 1978 Official Election Statistics and 1978 Statistics for the Municipality of Anchorage and Alaska Judicial Council Survey sample age and sex characteristics, 1979

SEX	1979 AJC SURVEY SAMPLE	1978 MUNICIPALITY OF ANCHORAGE	1978 ALASKA VOTERS
PERCENT MALE	52.2	52.4	54.1
PERCENT FEMALE	47.8	47.6	45.9

PERCENTAGE IN SELECTED AGE CATEGORIES

AJC SURVEY SAMPLE		1978 MUNICIPALITY OF ANCHORAGE		1978 ALASKA VOTERS	
18 & 19	1.9	15 - 19	10.5	18 & 19	2.4
20	0.8			20	2.0
21	0.6			21	2.4
22 - 24	5.6	20 - 24	11.4	22 - 24	9.4
25 - 34	34.5	25 - 34	21.1	25 - 34	33.9
35 - 44	23.7	35 - 44	14.1	35 - 44	21.4
45 - 54	16.9	45 - 54	9.6	45 - 54	14.9
55 - 59	6.2	55 - 59	2.4	55 - 59	5.6
60 - 61	2.5			60 - 61	1.6
62 - 64	2.2	60 - 64	2.1	62 - 64	2.0
65 - 74	5.1	65 - 74	1.9	65 - 74	3.2
74 +	-			74 +	1.1
TOTAL	100.0		73.1		100.0

SOURCE: Alaska Judicial Council Survey, 1979, by NORTHRIM ASSOCIATES, INC.; Anchorage Urban Observatory, 1978 Population Profile, Municipality of Anchorage, reprinted as Table II-3 in Anchorage Annual Planning Information FY 1980, Alaska Department of Labor, 1979; State Division of Elections, Statistical Summary of 1978-2 Elections, February 18, 1979 computer tabulation.

TABLE c: Comparison of Anchorage Municipal and Alaska Judicial Council Survey Educational Attainment Levels

	ALASKA JUDICIAL COUNCIL SURVEY - 1979 - VOTERS		ANCHORAGE MUNICIPALITY Total Population - 1978	
EDUCATIONAL ATTAINMENT	1 - 8 years	2.8	1 - 11 years	12.9
LEVEL	9 - 12 years	29.6	12 years	32.2
	13 - 16	48.7	13 - 15 years	25.6
	17 +	18.9	16 years	14.1
			17 +	15.0
	TOTAL	100.0	TOTAL	100.0

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979, by NORTHRIM ASSOCIATES, INC. and ANCHORAGE URBAN OBSERVATORY, 1978 POPULATION PROFILE, MUNICIPALITY OF ANCHORAGE, 1979.

Organization of the Report:

The report is organized into three sections. The first section reports the results of the analysis of all 571 cases by question. The second section reviews significant trends obtained from analysis of three groups of voters - those who voted a straight no ticket in judicial elections, those who voted a straight yes ticket and those who discriminated in their vote - i.e. those who voted both to retain and to not retain judges in the 1978 election. Finally, the third section reviews selected cross-tabulations which were found to be significantly related to three questions: 1) What influenced Third Judicial District voter's voting behavior, 2) What is the voter's evaluation of the current judicial evaluation system and 3) What methods of communication are favored in communicating Alaska Judicial Council evaluations to the public before elections. The report concludes with policy recommendations based on these three analyses.

An Appendix presents the questionnaire, letters to respondents, a complete set of tables used in the analyses, and a sampling of responses for each of the code categories used in the interpretation of open-ended responses. Selected answers to question 18 which encouraged respondents to freely express additional thoughts on the survey are also included in the appendix.

ANALYSIS OF THE TOTAL SAMPLE

Voting Behavior:

The first questions in the survey concerned respondents' actual voting behavior in the Fall, 1978 election. Questions 1,2,8 and 9 below show the percentage and total number of respondents who voted in the Fall 1978 election, who voted for or against judges in that election, and who specifically voted for or against the retention of the judges on the 1978 ballot.

1. First of all, many people who are registered voters don't actually get to vote on election day. Did you vote in the Fall 1978 general election?

YES	NO
100.0% n = 571	-

2. Did you vote for or against any judges in the Fall 1978 general election?

YES	NO
91.9% n = 519	8.1% n = 46

8. Did you vote to retain any of the judges on the ballot?

YES	NO
89.7% n = 481	10.3% n = 55

9. Did you vote not to retain any judges on the ballot?

YES	NO
76.1% n = 386	23.9% n = 121

Since the survey was conducted to assess the impact of the present system of judicial evaluation on voter decision-making, the few cases of respondents who did not vote in the Fall, 1978 election were eliminated from the analysis. Of the 571 valid cases, 519 or 92 percent also stated that they voted either for or against the judges on the ballot.² Slightly fewer (90 percent) stated that they voted to retain at least some of the judges on the ballot, while 76 percent stated that they voted to not retain "any of the judges on the ballot."

Pre-voting behavior: How prepared are voters in judicial elections? How informed are they about the judges they vote to retain or not retain? In an attempt to understand these pre-voting decisions and behaviors, the survey asked a number of questions including questions 3, 4, 5, 6 and 10 which are described below.

2. This and subsequent percentage comparisons are based on a total number which excludes these cases which had missing information or in which the question was unanswered. In this case, 519 is 92% of 563 cases, since 8 respondents did not answer this question.

3. Before you voted, had you read each judge's own summary about his/her background contained in the Election Pamphlet?

	YES		NO
	70.5%	n = 397	29.5% n = 166

4. Had you seen any advertisements in the media on behalf of or against any judge running in the election?

	YES		NO
	45.9%	n = 257	54.1% n = 303

5. Before you voted, had you read the Judicial Council's ratings of judges published in the Election Pamphlet?

	YES		NO
	71.1%	n = 401	38.9% n = 163

6. If you read those ratings, what was your opinion of them?

Helpful	55.4%	n = 230
Good Idea	38.1%	n = 158
Of No Use	4.3%	n = 18
Should be Eliminated	2.2%	n = 9

10. In deciding whether to retain or not retain a judge, which source of information was most important to you?

<u>Percent</u>	<u>n =</u>	
7.5	39	1. Judge's summary
23.4	121	2. Alaska Judicial Council Rating
7.9	41	3. AJC Recommendation
51.9	269	4. Knowledge of judge based on such things as media coverage of his/her decisions and actions
0.6	3	5. Paid ads
8.7	45	6. Other: (Please specify) _____

The first question concerned whether the voter had read the judge's own personal summary presented in the Election Pamphlet. Seventy percent of the respondents stated that they had read the Judge's summary. Slightly more stated that they had read the Alaska Judicial Council ratings prior to voting. (71 percent). A total of 46 percent stated that they had seen or heard advertisements in the media on behalf of or against judges before the Fall 1978 election.

When asked to evaluate how helpful the Judicial Council ratings were in providing pre-voting information on which to base voting decisions, 93 percent of the respondents responded favorably to the rating system, 55 percent of the sample stated that they found the ratings helpful and another 38 percent stated the ratings are a good idea. Only 6 percent felt the ratings were either "of no use" or "should be eliminated."

Question 10 asked "In deciding whether to retain or not retain a judge, which source of information was most important to you?" Rather surprisingly, 52 percent of the respondents mentioned "knowledge of the judge based on such things as media coverage of his/her decisions and actions" as their most important source of information. The Alaska Judicial Council rating was second in importance but drew significantly fewer respondents - 23 percent. The council's recommendation of the judge received another 7.9 percent of the responses.

Two additional open-ended questions shed some light on the pre-voting decision-making process.

QUESTION 8A: "Can you tell us why you voted to retain these judges? _____"

QUESTION 9A: "Can you tell us why you voted not to retain these judges? _____"

Responses to question 8A suggest that the most important reason for retaining a judge is satisfaction with the judge's performance. Voter satisfaction is based on either positive reports of the judge's performance or no negative reports. For example, respondents stated "They have done adequate jobs" but they also said "I knew nothing against them."

Additional factors mentioned as important under question 8A were the judge's performance record, the Alaska Judicial Council's ratings of the judge and personal knowledge of the judge. Fifth in importance was "information contained in the voter pamphlet", which could be interpreted either as the judge's summary or Alaska Judicial Council ratings or both.

Table 5 gives the percentage responses to this question. If we combine "doing adequate job", "judge's record" and "personal attributes of the judge" we find that 56.2 percent of the responses refer to one of these personal assessments of judicial performance. Combining "Alaska Judicial Council ratings" and "information in the voter pamphlet" yields an additional 20.4 percent of responses.

A second open-ended question asked why voters voted to not retain a judge, if they had done so. (Question 9A.) Twenty-eight percent of those respondents who voted against retention of judges in the Fall, 1978 election mentioned that the judge's performance was their primary reason for voting not to retain him/her. In contrast to responses to question 8A, respondents who voted not to retain a judge indicate some direct knowledge of the judge's performance in their answers. Examples of this choice are the following:

"Incompetent to serve"
"Unfair judge"
"Questioned integrity"
"Thought someone else could do
a better job"

The second most frequent response to this question was that the judge in question "was too lenient with criminals." The Alaska Judicial Council ratings of the judge and personal experience or knowledge of the judge were further criteria used in the decision to vote against retention, receiving 13.5 and 10.8 percent of the total responses to question 9A.

Combining the "doing an inadequate job", "judicial performance record" and "too lenient with criminals" categories, we find that 50.7 percent of the responses to question 9A are directly related to personal assessment of judicial performance. "Information in the voter pamphlet" and "Alaska Judicial Council ratings" received another 20.4 percent of the responses to question 9A. Another 13.2 percent cited either "personal opinion or experience" or "discussions with others" as their most important reason for voting not to retain

a judge. (See Table 6)

Knowledge of the Alaska Judicial Council: A central concern of the survey was a better understanding of voter awareness of the Alaska Judicial Council, its rating system and other components of the judicial evaluation system. Questions 13, 13a, and 13b addressed these issues.

13. Had you heard about the Alaska Judicial Council before the Fall, 1978 election?

YES		NO	
19.7%	n = 104	80.3%	n = 423

13a. If YES: what had you heard about the Council?

	<u>PERCENT</u>	<u>N =</u>
"That it existed"	43.5	37
"That it recommended/ evaluated judges"	35.3	30
"Doing a good job"	8.2	7
"Miscellaneous/other"	8.2	7

13b. How, or in what connection had you heard about the Council?

	<u>PERCENT</u>	<u>N =</u>
Media	46.1	47
Voter pamphlet	22.5	23
Friends in profession	13.7	14

There is still considerable lack of awareness about the Judicial Council on the part of many voters. When asked if they had heard about the Council prior to voting, 20 percent of the respondents stated that they had. Of those who had heard of the Council, 44 percent mentioned that they had heard it existed while another

35 percent mentioned that they knew that the Judicial Council rated and evaluated judges. When asked how they had heard about the Alaska Judicial Council, most respondents mentioned a media source (46 percent). The voter pamphlet was the second most important source of voter information. Unfortunately, with so few having information about the Judicial Council only 102 responded to this question. The extreme lack of information about the Alaska Judicial Council has important effects on utilization of the Judicial Council's rating system in voting as will be discussed in greater detail later in the report.

The Alaska Judicial Council System of Evaluation and Suggestions for Improvement:

Several questions in the survey were related to a list of characteristics of judges used by the Alaska Judicial Council in its present system of judicial evaluation. Question 11a below lists the first, second and third preferences of respondents on this list of characteristics. The top three characteristics are 1) the judge's sense of basic fairness and justice, 2) his/her legal knowledge and reasoning ability and 3) integrity.

A second question (question 11b) asked respondents to eliminate those factors from the same list which were considered unimportant in rating judges. The bottom three choices were: 1) willingness to work diligently, 2) human understanding and compassion and 3) consideration of relevant sentencing factors.

A third question (question 11c) asked for additional factors that might be added to the judicial rating system. The "judge's performance history" received 31.0 percent of the responses to this question. Other responses - a miscellaneous category - and "Personal attributes of the judge" each received about 20 percent of the responses to this question.

11. In the Alaska Judicial Council's survey of lawyers, peace officers and citizens who have served on juries, the Council asked them to rate the following characteristics of the judges:

1. LEGAL KNOWLEDGE AND REASONING ABILITY.
2. CONSIDERATION OF RELEVANT SENTENCING FACTORS.
3. EQUAL TREATMENT REGARDLESS OF RACE, SEX, SOCIAL OR ECONOMIC STATUS AND THE LIKE.
4. RESTRAINT FROM FAVORITISM TOWARD EITHER THE PROSECUTION OR DEFENSE IN CRIMINAL CASES.
5. SENSE OF BASIC FAIRNESS AND JUSTICE.
6. HUMAN UNDERSTANDING AND COMPASSION.
7. WILLINGNESS TO WORK DILIGENTLY.
8. INTEGRITY.

11a. In making your decision to retain or not to retain a judge, which of the factors listed above is most important to you? Which is second most important and third most important? (Please use the number next to the factor as listed above.)

Most Important - 5 - SENSE OF BASIC FAIRNESS AND JUSTICE

Second Most Important - 1 - LEGAL KNOWLEDGE AND REASONING ABILITY

Third Most Important - 8 - INTEGRITY

11b. If you think the Judicial Council included too many factors, which ones should be left out? (Please use the number next to the factor as listed above.)

7 - WILLINGNESS TO WORK DILIGENTLY

6 - HUMAN UNDERSTANDING AND COMPASSION

2 - CONSIDERATION OF RELEVANT SENTENCING FACTORS

11c. If you think the Judicial Council left something out, tell us what you'd like to see added.

	<u>PERCENT</u>	<u>N =</u>
Judge's performance history	31.0	31
Other	20.0	20
Personal attributes of judge	19.0	19

Another question (12) asked for other suggestions for improving the judicial evaluation system, other than surveying lawyers, peace officers and jurors. Respondents were evenly split concerning whether or not other ways of evaluating should be tried. Another virtually equal group did not respond to this question at all. Of those who answered yes to this question, the most frequent addition to the evaluation system they suggested was information about the judges' performance history. Two other choices to question 12a receiving at least 10 percent of the remaining responses were "more questionnaires" and various media approaches. A miscellaneous "other" category also received 14 percent of the responses to this open-ended question.

12. Aside from surveying lawyers, peace officers, and jurors, are there other ways that judicial performance could be evaluated that would make it easier for voters to decide whether or not to retain a judge?

YES		NO	
50.1%	n = 188	49.9%	n = 187

12a. If YES: what are these ways?

	<u>WAYS</u>	<u>n =</u>
Judge's performance record	37.7%	69
Other	14.2%	26
More questionnaires	13.1%	24
Media approaches	12.0%	22

	YES	NO
Survey people who appeared before the judge	8.7%	16
Survey people who work with judges	7.1%	13
Evaluate recidivism	3.8%	7
Make judges campaign	3.3%	6
	<u>99.9%</u>	<u>183</u>

Another question asked earlier in the survey (question 7) also addresses the needs of an expanded information base on which to evaluate judges prior to voting. It asks: "If you believe that more information should be provided, what would you like to know?" A typical response to this open-ended question is the following:

"I think we should know their views on drugs, alcohol and murder. How he or she feels about different races. What their reason for becoming a judge was - to help society or for personal profit."

Another response states:

"Laws can often be bent in favor or against a person. The "best" lawyers may protect a rich man. A judge shouldn't let this happen. If loop-holes are found they are responsible to change or help change the laws to penalize criminals and protect the public. If we could know which judges were which!"

These wide-ranging responses are difficult to categorize. The percentage distribution on this question is presented below. The reader may also wish to check the appendix to see how specific responses to this question were categorized.

7. If you believe that more information should be provided, what would you like to know?

	<u>PERCENT</u>	<u>N =</u>
1. Judges performance record	44.1	89
2. Personal attributes of the judge	13.4	27
3. Position on key laws, issues	11.4	23
4. Courtroom opinion	3.0	6
5. Need more information	10.4	21
6. Prejudice for/against special interests	4.5	9
7. Alaska - specific knowledge	1.5	3
8. Miscellaneous	11.9	24
	-----	-----
	100.0	202

While there was a fairly wide range of responses to this question, only the judge's performance record received close to a majority of responses (44 percent). The judge's personal attributes, his/her position on key laws or legal issues and a general request for "more information" were the next most frequently mentioned.

Methods of Communication:

One of the goals of this survey was to obtain information concerning voters views about the communication of information about judges prior to or during an election in which judge retention is on the ballot. Question 14 asked respondents whether the Alaska Judicial Council should publish information about judges in the Election Pamphlet - i.e. as in the present system. Not surprisingly, 94 percent of the respondents agreed that the

the Judicial Council should do so.

Question 15 asked whether the Alaska Judicial Council should make recommendations for or against retention of judges it evaluates. Here, only 60 percent of the respondents favored a recommendation by the Alaska Judicial Council.

Question 16 asked respondents to circle methods of communication which the Alaska Judicial Council might use to communicate its evaluation to voters.

14. Do you think it's a good idea to require the Alaska Judicial Council to evaluate judges and to publish information about them in the Alaska Official Election Pamphlet?

YES		NO	
93.6%	n = 500	6.4%	n = 34

15. Do you think it's a good idea for the Judicial Council to make a recommendation in favor of or against the retention of any judge it evaluates?

YES		NO	
60.5%	n = 319	39.5%	n = 208

16. Alaska State law requires the Alaska Judicial Council to provide information to the voters concerning its evaluation of judges. How do you think this information ought to be communicated to the voters? PLEASE CIRCLE EACH AND EVERY MEANS WHICH YOU THINK IS PROPER.

	<u>PERCENT CIRCLED</u>
1. The Official Alaska Election Pamphlet.	74.4
2. By direct mail to all registered voters.	58.3

	<u>PERCENT CIRCLED</u>
3. Speeches and other public appearances by Council members and staff explaining the results of the evaluation.	26.4
4. Newspaper advertising.	42.2
5. Radio and television advertising.	31.9
6. Other: (please specify)	5.6
	<hr/> 100.0
N =:	571

Responses to question 16 indicate a rather strong trend in favor of official, direct mail or newspaper advertising as acceptable means of communicating judicial evaluations. A full 74.4 percent of the responses were in favor of the Official Alaska Election Pamphlet. Second in support was direct mail appeals to registered voters (58.3 percent) Third with 42.2 percent support was newspaper advertising. Radio and television advertising received 31.9 percent support, while "speeches and other public appearances by Council members and staff explaining the results of the Evaluation" received only 26.4 percent support.

Finally, a serious concern of the Alaska Judicial Council is addressed in question 17 - how to inform voters when, after a judicial rating and evaluation is completed, it is determined that a judge is unqualified.

17. If the Alaska Judicial Council, as a result of its evaluation, concludes that a judge is unqualified to remain in office, what should the Council do?"

Express no opinion	10.7
<u>Only express opinion in</u> Official Election Pamphlet	40.1
Strongly advertise	<u>49.1</u>
Total	100.0
N =	521

Responses to this question show that 49.1 percent of the voters are in favor of strong advertising in important non-retention cases, another 40.1 percent were in favor of strictly expressing opinion in the Official Election Pamphlet. Only 10.7 percent of survey respondents favored no expression of opinion by the Alaska Judicial Council. Later analysis indicates that these responses vary somewhat with three types of voters - voters who voted a straight yes ticket in judicial elections, those who voted straight no and those who voted both yes and no in judicial elections. The analysis of these three groups of voters follows in the next section of this report.

THREE GROUPS OF VOTERS

Is there a difference between voters who vote only for judges, those who vote only against judges, and voters who vary their voting behavior to fit the judge, based on the judge's ratings and other information provided or known about this judge. In an attempt to determine whether these differences could be discerned, we divided the total sample into three groups of voters. The first group, "no voters", stated that they voted not to retain at least one of the judges on the ballot (question 9), but they also did not report having voted to retain any judges (question 8). There were 32 respondents who fit this category of voters voting only against retention.

The second group we called the "yes voters" because they said they voted to retain judges (question 8) but they answered no to question 9--i.e., they did not vote against any of the judges on the Fall, 1978 ballot. There were 124 "yes voters" among our respondents.

The third group, the "Discriminators", voted both to retain judges (question 8) and to not retain judges (question 9). The majority of respondents fit into this group (355). An additional 60 cases could not be categorized in any of the above groups and are excluded from the present analysis.

The analysis which follows selects the most important questions in the survey and compares these three groups of voters in their response to these question. It also addresses the issue of the extent to which these three groupings are the most important ones that could be made in assessing the variation in voter opinion and behavior concerning judicial retention. In other words, are there other influences that are more important than voting behavior itself which might be said to distinguish voters in judicial elections and about which we have information? Perhaps educational attainment is itself as important as whether one votes no, yes, or discriminates? Perhaps age or community of residence are as important in determining what one reads or attends to in the judicial voting process? Perhaps these characteristics of voters are more important than how one votes in determining how one would receive different types of communication about judicial performance.

Pre-voting Behavior:

3. Before you voted, had you read each judge's own summary about his/her background contained in the Election Pamphlet?

	YES		NO	
No voters	62.5%	n = 20	37.5%	n = 12
Yes voters	59.3%	n = 73	40.7%	n = 50
Discriminators	80.1%	n = 282	19.9%	n = 70

4. Had you seen any advertisements in the media on behalf of or against any judge running in the election?

	YES		NO	
No voters	35.5%	n = 11	54.5%	n = 20
Yes voters	37.1%	n = 46	62.9%	n = 78
Discriminators	53.0%	n = 184	47.0%	n = 163

5. Before you voted, had you read the Judicial Council's rating of judges published in the Election Pamphlet?

	YES		NO	
No voters	65.6%	n = 21	34.4%	n = 11
Yes voters	53.3%	n = 65	46.7%	n = 57
Discriminators	84.1%	n = 296	15.9%	n = 56

6. If you read those ratings, what was your opinion of them?

	1. Helpful		2. Good idea, but want more information	
No voters	27.3%	n = 6	63.6%	n = 14
Yes voters	69.7%	n = 46	27.3%	n = 18
Discriminators	55.1%	n = 167	37.6%	n = 114

	3. Of no use	4. Should be eliminated
No voters	9.1% n = 2	- -
Yes voters	1.5% n = 1	1.5% n = 1
Discriminators	4.6% n = 14	2.6% n = 8

10. In deciding whether to retain or not retain a judge, which source of information was most important to you? (Please circle only one - the most important)

RANKING BY MENTION

<u>No Voters</u>	<u>Yes Voters</u>	<u>Discriminators</u>	
2	3	4	1. The judge's own summary of his/her background.
4	2	2	2. The Alaska Judicial Council's rating of the judge.
3	5	3	3. The Judicial Council's recommendation of the judge.
1	1	1	4. A knowledge of the judge based on such things as media coverage of his/her decisions and actions.
-	6	5	5. Paid advertisements for or against the judge published or broadcast in the media.
2	4	4	6. Other: (Please specify) _____

While no voters and yes voters are about the same in their responses to all three pre-voting questions dealing with voter preparation in Judicial elections, the discriminator group is considerably better informed. They not only were more likely to have read the judges summary (question 3), they also were considerably more likely to have read the Judicial Council's ratings of judges--i.e., to have used the voter election pamphlet prior to voting (question 5). These voters were also more likely to have seen advertisements for or against a judge prior to voting--i.e., to have attended to ads

prior to voting (question 4). In keeping with this more informed stance, the discriminator group also was more balanced between wanting more information and feeling that the Judicial Council rating system is helpful as it is (question 10). Few of the respondents in any of the groups felt the rating system was "of no use" or "should be eliminated."

On Question 10, there are both similarities and differences between the three groups of voters. A knowledge of the judge based on media coverage of his/her decisions and actions ranked first for all three groups. For both the yes voters and discriminators, Judicial Council ratings or recommendations ranked second. No voters were more idiosyncratic in their choice of information, and appeared more swayed in their vote by personal characteristics of the judge. Yes voters and discriminators relied more heavily on information contained in the voter election pamphlet.

Knowledge of the Alaska Judicial Council:

As in the case of questions pertaining to pre-voting behavior, answers to question 13, 13a and 13b also reflect more knowledge of the Alaska Judicial Council on the part of the discriminator group. Almost twice the percentage of discriminators had heard of the Alaska Judicial Council, for example. Their source of information was primarily the Alaska Election Pamphlet or "word of mouth."

"Now we would like to ask you about the Alaska Judicial Council."

13. Had you heard about the Alaska Judicial Council before the Fall, 1978 election?

	YES		NO	
No voters	13.3%	n = 4	86.7%	n = 26
Yes voters	12.7%	n = 15	87.3%	n = 103
Discriminators	25.1%	n = 83	74.9%	n = 248

13a. If YES: what had you heard about the Council?

Heard that it existed:

No voters	-	-
Yes voters	25.0%	n = 3
Discriminators	48.5%	n = 33

Heard it rated judges:

No voters	66.7%	n = 2
Yes voters	50.0%	n = 6
Discriminators	30.9%	n = 21

Council too biased:

No voters	-	-
Yes voters	-	-
Discriminators	2.9%	n = 2

Other/miscellaneous:

No voters	-	-
Yes voters	16.7%	n = 2
Discriminators	7.4%	n = 5

13b. How, or in what connection had you heard about the Council?

Voter pamphlet:

No voters	25.0%	n = 1
Yes voters	22.2%	n = 4
Discriminators	22.1%	n = 17

Word of mouth:

No voters	-	-
Yes voters	16.7%	n = 3
Discriminators	5.2%	n = 4

Personal experience:

No voters	-	-
Yes voters	-	-
Discriminators	11.7%	n = 9

Friends in profession:

No voters	25.0%	n = 1
Yes voters	11.1%	n = 2
Discriminators	14.3%	n = 11

Media:

No voters	50.0%	n = 2
Yes voters	50.0%	n = 9
Discriminators	44.2%	n = 14

Other:

No voters	-	-
Yes voters	-	-
Discriminators	2.6%	n = 2

The Alaska Judicial Council System of Evaluation and Suggestions for Improvement:

Question 11 asked the respondents to consider a list of factors used in the Alaska Judicial Council's current rating system, and to select the most important and least important factors from this list. In comparing the three groups of voters, virtually no difference appears in either the positive or the negative ranking of these factors, as compared with rankings for the sample as a whole. In all three groups, willingness to work diligently, human understanding and compassion and consideration of relevant sentencing factors ranked as least important, while sense of basic fairness and justice, legal knowledge and reasoning ability and integrity were ranked as top three. Equal treatment regardless of race, sex, social or economic status and restraint from favoritism toward either the prosecution or defense in criminal cases fell in the middle of both scales.

11. In the Alaska Judicial Council's survey of lawyers, peace officers and citizens who have served on juries, the Council asked them to rate the following characteristics of the judges:

1. LEGAL KNOWLEDGE AND REASONING ABILITY
2. CONSIDERATION OF RELEVANT SENTENCING FACTORS
3. EQUAL TREATMENT REGARDLESS OF RACE, SEX, SOCIAL OR ECONOMIC STATUS AND THE LIKE
4. RESTRAINT FROM FAVORITISM TOWARD EITHER THE PROSECUTION OR DEFENSE IN CRIMINAL CASES
5. SENSE OF BASIC FAIRNESS AND JUSTICE
6. HUMAN UNDERSTANDING AND COMPASSION
7. WILLINGNESS TO WORK DILIGENTLY
8. INTEGRITY

11a. In making your decision to retain or not retain a judge, which of the factors listed above is most important to you? Which is second most important and third most important? (Please use the number next to the factor as listed above.)

Most Important - 5 - SENSE OF BASIC FAIRNESS AND JUSTICE

Second Most Important - 1 - LEGAL KNOWLEDGE AND REASONING ABILITY

Third Most Important - 8 - INTEGRITY

11b. If you think the Judicial Council included too many factors, which ones should be left out? (Please use the number next to the factor as listed above.)

Least Important - 7 - WILLINGNESS TO WORK DILIGENTLY

Second Least Important - 6 - HUMAN UNDERSTANDING AND COMPASSION

Third Least Important - 2 - CONSIDERATION OF RELEVANT SENTENCING FACTORS

While slight differences between the three groups and the sample as a whole did occur, the overall order in each group is virtually the same as that found for the total sample. It appears that evaluation of these basic characteristics of judges is unaffected by one's voting behavior. (See tables 8 and 9).

12. Aside from surveying lawyers, peace officers, and jurors, are there other ways that judicial performance could be evaluated that would make it easier for voters to decide whether or not to retain a judge?

	YES		NO	
No voters	45.0%	n = 9	55.0%	n = 11
Yes voters	34.6%	n = 28	65.4%	n = 53
Discriminators	56.9%	n = 144	43.1%	n = 109

Question 12 asked whether respondents felt that additions to the system of judicial evaluation could be made that would "make it easier for voters to decide whether or not to retain a judge." Again, discriminators favored additions to the system more than did the other two groups. No voters showed more interest in additional

information than did yes voters. The type of information that could be added does not appear to differ greatly between the three groups. As in the case of the total sample, more information about the judge's performance record ranked first and personal information about the judge ranked second in responses to the open-ended question 12a "What are these ways?" More use of questionnaires and surveys of people who have appeared before the judge were also suggested by the yes voters and discriminators especially. Since the number of no voters is small, there are fewer responses for this group. Yet for all three groups, only the judge's performance record appears as a significant choice - chosen by at least one-third of each group. Other choices show little consensus about other additions to the system and considerable variety of choice. (See table 10)

Questions 14 and 15 indicate little difference between the three groups of voters concerning Alaska Judicial Council evaluation and recommendation per se, but answers to question 16 indicate some difference in approach suggested by the three groups of voters.

14. Do you think it's a good idea to require the Alaska Judicial Council to evaluate judges and to publish information about them in the Alaska Official Election Pamphlet?

		YES		NO	
No voters	93.3%	n =	28	6.7%	n = 2
Yes voters	94.9%	n =	112	5.1%	n = 6
Discriminators	94.1%	n =	321	5.9%	n = 20

15. Do you think it's a good idea for the Judicial Council to make a recommendation in favor of or against the retention of any judge it evaluates?

		YES		NO
No voters	58.1%	n = 18	41.9%	n = 13
Yes voters	57.0%	n = 65	43.0%	n = 49
Discriminators	63.2%	n = 213	36.8%	n = 124

16. Alaska State law requires the Alaska Judicial Council to provide information to the voters concerning its evaluation of judges. How do you think this information ought to be communicated to the voters? PLEASE CIRCLE EACH AND EVERY MEANS YOU THINK IS PROPER.

<u>No</u>	<u>Yes</u>	<u>Discriminators</u>	
75.0	70.2	79.4	1. The Official Alaska Election Pamphlet
56.3	57.3	61.1	2. By direct mail to all registered voters
28.1	30.6	27.0	3. Speeches and other public appearances by Council members and staff explaining the results of the evaluation
46.9	44.4	43.1	4. Newspaper advertising
46.9	33.1	30.7	5. Radio and television advertising
9.4	3.2	6.5	6. Other: (Please specify) _____

It appears that different voting behavior is associated with different preferences regarding methods of communication in cases of judicial non-retention. Not surprisingly, no voters are more likely to favor strong advertising methods in cases of non-retention. Discriminators are more likely to favor the official election pamphlet or direct mail approaches. Yes voters fall in the middle of the other two groups on all approaches.

FURTHER ANALYSIS

We know that the three groups of voters each respond differently to questions asked in the survey. In an attempt to validate the distinctiveness of these three groups of voters, and their associated behavior and opinions, an additional analysis was undertaken. This analysis introduced additional demographic variables into a cross-tabulation of different questions in the survey for each of the three groups of voters. For example, we looked at pre-voting behavior for each of the three groups holding constant each group's educational attainment level, or age, or community of residence. Sex of respondent was also introduced but produced no significant differences. Table d shows the distribution of each of the three groups of voters on three important demographic characteristics.

Table d : Distribution of respondents by education, age, and residence inside or outside Anchorage by Judicial voting behavior

JUDICIAL VOTING BEHAVIOR						
<u>EDUCATION</u>	<u>NO VOTER</u>	<u>YES VOTER</u>	<u>DISCRIMINATOR</u>	<u>TOTAL</u>		
High School Graduate or less	(14) 46.7	(47) 39.2	(94) 27.4	(155) 100.0	31.4	
Some college or more	(16) 54.3	(73) 60.8	(249) 72.6	(338)	68.6	
<u>AGE</u>						
Up to 36	(15) 55.5	(56) 49.5	(166) 50.3	(237)	50.4	
37 or over	(12) 44.5	(57) 50.5	(164) 49.7	(233)	49.6	
<u>RESIDENCE</u>						
Inside Anchorage	(19) 63.3	(78) 63.9	(249) 71.1	(346)	68.9	
Outside Anchorage	(11) 36.7	(44) 36.1	(101) 29.9	(156)	31.1	

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979, by NORTHRIM ASSOCIATES, INC.

It is clear that the discriminator group is both the largest group in the total sample and is also the most highly educated and the most likely to live inside Anchorage. Perhaps these two characteristics are themselves more important than voting behavior per se in explaining certain behaviors and opinions. Without benefit of regression analysis, we cannot establish the priority of importance of the variables compared, but our analysis does indicate that votive behavior is the most important explanatory variable for at least one of the questions analyzed.

The presentation which follows is organized to provide a comparison for each of the groups of voters and the sample as a whole on the demographic characteristics mentioned. For ease of presentation, only the percentage comparisons are listed. "Less Education" refers to respondents with high school education or less (Total n=155). "More Education" refers to those with a college education or more (Total n=338). "Younger" refers to respondents 36 years of age or younger (Total n=237). "Older" refers to those who are 37 years or older (Total n=233). "Inside Anchorage" refers to respondents inside districts 7-12 (Total n=346); "Outside Anchorage" includes all others (Total n=156).

The number of cases in the no-voter, yes-voter, and discriminator categories for each of these comparisons is, in some cases, quite

small. Where this is the case, interpretations in the text take this into account.

5. Before you voted, had you read the Judicial Council's ratings of judges published in the Election Pamphlet?

PERCENT YES:	<u>TOTAL</u>	<u>NO VOTERS</u>	<u>YES VOTERS</u>	<u>DISCRIMINATORS</u>
ORIGINAL PER- CENTAGE:	71.1	65.6	53.3	84.1
LESS EDUCATION	75.2	78.6	50.0	87.1
MORE EDUCATION	76.4	56.3	55.6	83.8
YOUNGER	74.9	60.0	47.3	85.5
OLDER	77.4	83.3	58.9	83.3
IN ANCHORAGE	78.4	73.7	55.3	85.8
OUT OF ANCHORAGE	71.6	54.5	52.3	82.0

In the original percentage comparison between the three groups, the discriminators (84.1 percent) are almost one-third more likely to have utilized the Judicial Council ratings before voting than the yes voters, and close to 20 percent more likely to have done so than the no voters. This difference increases among the less educated voters but declines among the more educated--i.e., the difference between discriminators and yes voters is 28.2 percent and between discriminators and no voters is 27.5 percent. While the discriminators are still better informed, better educated no and yes voters approach each other in their preparation. Similarly, residents outside Anchorage who are no voters or yes voters are virtually alike in their preparation, while in Anchorage, no voters are closer to discriminators in preparation (73.7 percent vs. 85.8

percent). Among younger voters, discriminators are far and above either of the other two groups in preparation but among older voters, these differences decline. For older no voters, there is no difference in preparation for voting from that found for the discriminator group (83.3 in both cases).

10. In deciding whether to retain or not retain a judge, which source of information was most important to you?

<u>PERCENT PREFERRING AJC RATING AND/OR RECOMMENDATION</u>	<u>TOTAL</u>	<u>NO VOTERS</u>	<u>YES VOTERS</u>	<u>DISCRIMINATORS</u>
ORIGINAL PERCENTAGE	31.3	10.0	24.6	36.2
LESS EDUCATION	31.1	25.0	31.7	41.0
MORE EDUCATION	30.5	-	21.6	34.8
YOUNGER	34.2	7.1	23.5	39.8
OLDER	30.6	16.6	27.1	32.7
INSIDE ANCHORAGE	29.8	5.6	15.7	35.6
OUT OF ANCHORAGE	37.6	20.0	40.0	38.4

For question 10, the percent preferring either the Alaska Judicial Council rating or the Alaska Judicial Council recommendation gradually increases from a low among no voters to a high among discriminators with yes voters virtually equidistant between the two other groups of voters. This relationship between the three groups of voters is unchanged in each of the comparisons by education, age, and residence. In contrast to question 5, where preparation for voting was affected by age and residence in Anchorage in particular, preference for the Judicial Council ratings is unchanged by these factors.

17. If the Alaska Judicial Council, as a result of its evaluation, concludes that a judge is unqualified to remain in office, what should the Council do?

	<u>TOTAL</u>	<u>NO VOTERS</u>	<u>YES VOTERS</u>	<u>DISCRIMINATORS</u>
ORIGINAL PERCENTAGE				
Express no opinion	10.7	13.8	6.8	11.1
Only Election Pamphlet	40.1	20.7	48.3	40.0
Strongly advertise	49.1	65.5	44.9	48.9
LESS EDUCATION				
Express no opinion	7.5	7.7	4.3	9.2
Only Election Pamphlet	34.0	7.7	51.1	28.7
Strongly advertise	58.5	84.6	44.7	62.1
MORE EDUCATION				
Express no opinion	10.4	13.3	7.2	11.2
Only Election Pamphlet	44.5	33.3	46.4	44.6
Strongly advertise	45.1	53.3	46.4	44.2
YOUNGER				
Express no opinion	12.2	-	7.1	15.0
Only Election Pamphlet	43.7	38.5	48.2	42.5
Strongly advertise	44.1	61.5	44.6	42.5
OLDER				
Express no opinion	8.1	16.7	5.7	8.2
Only Election Pamphlet	38.1	8.3	49.1	36.7
Strongly advertise	53.8	75.0	45.3	55.1

17. (Cont'd.)	<u>TOTAL</u>	<u>NO VOTERS</u>	<u>YES VOTERS</u>	<u>DISCRIMINATORS</u>
IN ANCHORAGE				
Express no opinion	10.4	12.5	8.1	11.0
Only Election Pamphlet	39.7	12.5	45.9	39.6
Strongly advertise	49.8	75.0	45.9	49.3
OUT OF ANCHORAGE				
Express no opinion	8.8	9.1	2.4	11.6
Only Election Pamphlet	44.6	36.4	52.4	42.1
Strongly advertise	46.6	54.5	45.2	46.3

In the original percentage comparison, no voters are most likely to favor strong advertising in cases where a judge is evaluated as unqualified. Yes voters are almost equally likely to favor publication of information only in the election pamphlet or strong advertising. Discriminators, like no voters, are more likely to favor strong advertising, but their position is less extreme than the no voters. In comparing no voters in each of the demographic comparisons, one finds that no voters who are better educated closely resemble yes voters and discriminators in their choices on question 10, while less educated no voters are even more extreme in their preference for strong advertising. Less educated discriminators, too, are more extreme than other groups of discriminators. Throughout all comparisons, yes voters have a distinct preference for presentation in the Election Pamphlet only, except among better educated

voters, where they are equally likely to favor the Election Pamphlet choice or the strong advertising choice.

Summary:

We have seen that in two of the comparisons, age, education, and residence do alter the relationships between the three groups. In preparation for voting and attitudes toward various approaches to voter information in non-retention cases, education and age both increase the differences between groups. Less educated and younger voters are less prepared (question 5) and less educated and older voters are more likely to favor strong advertising (question 17) than other voters. Better educated voters tend to approach each other in their preferences on methods of communication--they are almost equally divided between favoring strong advertising and publication only in the election pamphlet.

This analysis indicates that utilization of the Judicial rating and evaluation system is more influenced by voting behavior per se, while preparation for voting and attitudes toward methods of communication vary somewhat with age, residence and education.

THREE QUESTIONS

From the preceding analyses, what do we know about the central concerns of this survey--i.e., 1) what most influenced people's voting behavior in judicial elections? 2) what do the voters believe are the strengths and weaknesses of the current judicial evaluation system; and 3) how should Alaska Judicial Council evaluations and recommendations be communicated before elections?

Question 1: What most influenced people's voting behavior in judicial elections? We know that over 70 percent of the survey respondents read the judge's summary, 46 percent read or saw advertisements about judges and 71 percent read Alaska Judicial Council ratings prior to voting in the last election. In each of these cases, discriminators were more likely to have used, read or attended to information concerning judicial retention or non-retention and to have utilized this information in voting. Only in the cases of older no-voters and Anchorage no-voters, do the percentage utilizing Alaska Judicial Council ratings approach the percentage for the discriminator group. Yes voters are uniformly less prepared, regardless of age, education, or residence inside or outside Anchorage.

Among voters who considered the Alaska Judicial Council ratings "helpful" (question 6), 53 percent also stated that they found the Alaska Judicial Council rating and/or the Alaska Judicial Council recommendation to be their most important source of information (question 10). On the other hand, if they mentioned that the

Alaska Judicial Council rating system was "a good idea", fewer of these voters mentioned Alaska Judicial Council ratings or recommendations in question 10, and more stated they relied on "knowledge of the judge, based on media coverage of his/her decisions and actions".

Table e : Relationship between Question 6 and Question 10: Opinion of ratings by most important source of information in judicial elections: selected percentages

6. If you read those ratings, what was your opinion of them?

HELPFUL		GOOD IDEA	
<u>Percent on Question 10</u>		<u>Percent on Question 10</u>	
38.8	AJC Rating	55.3	Knowledge of the judge based on media reports of decisions/actions
14.2	AJC Recommendation	21.7	AJC Ratings
32.9	Knowledge of the judge based on media reports of decisions/actions	5.3	AJC Recommendations
5.5	Judge's summary	7.2	Judge's Summary

10. In deciding whether to retain or not retain a judge, which source of information was most important to you?

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979, by NORTHRIM ASSOCIATES, INC.

This can be seen in Table e above.

It appears that the voters who are satisfied with the Alaska Judicial Council rating system are most likely to use it in voting, while those who are more skeptical rely more heavily on media reports of judge's decisions or actions.

Is there a difference between voter's needs in retention elections and their needs in cases where they vote to not retain a judge? To answer this question, we cross-tabulated question 8a (why the voter voted to retain judges) by question 10--their most important source of information. We also cross-tabulated question 9a (why the voter voted to not retain judges) by question 10. The results of these cross-tabulations are presented in tables e and g . Of those voters who chose "knowledge of the judge, based on media reports of his/her decisions/actions" on question 10, 40 percent stated that the judge "is doing an adequate job" and another 23 percent stated that they based their choice on the "judge's performance record". Those voters who selected either the Alaska Judicial Council rating or recommendation as their most important source of information, were also more likely to select Alaska Judicial Council ratings on question 8a, and less likely to rely on the judge's performance record or their assessment of his/her performance (doing adequate job).

Among voters who voted to not retain judges, a similar pattern emerges when this question is cross-tabulated with question 10. For those voters who state that "knowledge of the judge based on media reports of his/her decisions/actions" is their most important source of information, 30.5 percent state that the judges they voted against were "doing an adequate job" and another 26.9 percent stated that he/she is "too lenient with criminals". Of those relying on either Alaska Judicial Council ratings or recommendations, the rating system (26.1 percent and 48.4 percent respectively) and "information in the voter pamphlet" (15.9 and 16.1 percent, respectively) are more important than the voter's own assessment of the judge's performance ("doing an adequate job").

Table f : Relationship between Question 8a and Question 10

8a. Can you tell us why you voted to retain these judges?

MOST IMPORTANT SOURCE OF INFORMATION

<u>WHY RETAIN</u>	<u>KNOWLEDGE OF JUDGE</u>	<u>AJC RATING</u>	<u>AJC RECOMMENDATION</u>	<u>TOTAL</u>
Doing adequate job	(72) 39.6	(26) 26.8	(11) 32.4	(126) 34.6
Judge's Recommendation	(41) 22.5	(13) 13.4	(2) 5.2	(64) 17.6
AJC Rating	(4) 2.2	(24) 24.7	(14) 41.2	(45) 12.4
Read Everything	(18) 9.9	(7) 7.2	(1) 2.4	(27) 7.4
Voter's Pamphlet	(3) 1.6	(16) 16.5	(5) 14.7	(31) 8.5
Personal Attributes	(7) 3.8	(5) 5.2	(0)	(14) 3.8
Personal Knowledge	(24) 13.2	(3) 3.1	(1) 2.9	(36) 9.9
TOTALS	(182) 50.0	(97) 26.6	(34) 9.3	(364) 100.0

10. In deciding whether to retain or not retain a judge, which source of information was most important to you?

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979, by NORTHRIM ASSOCIATES, INC.

The consistency between these two voting decisions can be seen in Table h below, where questions 8a and 9a are cross-tabulated. In this table two percentages are presented in each table. The top percentage is the row percentage (read across), and the bottom percentage is the column percentage (read down) in each case. In considering either column or row percentages, it is clear that voters

tend to use the same standards in both retention and non-retention voting. Those who rely heavily on their own judgements (doing adequate job, doing inadequate job) tend to vote that way in both retention and non-retention cases. Those who rely on the judge's performance record do so in both cases. Those who rely on Alaska Judicial Council ratings do so in both cases.

Table g : Relationship between Question 9a and Question 10

9a. Can you tell us why you voted not to retain these judges?

MOST IMPORTANT SOURCE OF INFORMATION

<u>WHY NOT RETAIN</u>	<u>KNOWLEDGE OF JUDGE</u>	<u>AJC RATING</u>	<u>AJC RECOMMENDATION</u>	<u>TOTAL</u>
Inadequate Job	(51) 30.5	(23) 26.1	(3) 9.7	(91) 27.6
Sentencing Record	(14) 8.4	(3) 3.4	(1) 3.2	(19) 5.8
Too Lenient	(45) 26.9	(6) 6.8	(1) 3.2	(57) 17.3
AJC Rating	(4) 2.4	(23) 26.1	(15) 15.4	(45) 13.6
Information in Pamphlet	(2) 1.1	(14) 15.9	(5) 16.1	(23) 7.0
Media Reports	(14) 8.4	(5) 5.7	(1) 3.2	(21) 6.4
Personal Opinion	(15) 9.0	(11) 12.5	(2) 6.5	(36) 10.9
Discussion with Others	(7) 4.2			
TOTAL	(167) 50.6	(88) 26.7	(31) 9.4	(330) 100.0

10. In deciding whether to retain or not retain a judge, which source of information was most important to you?

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979, by NORTHTRIM ASSOCIATES, INC.

Summary of Question 1:

Several themes are evident in a review of analyses already completed as well as present cross-tabulations aimed at answering this question. First, over 70 percent of voters and even more of the discriminators, who are themselves the majority of the sample, use Alaska Judicial Council ratings and the judge's summary provided in the Alaska Election Pamphlet. Fewer voters (46 percent) rely on advertisements preceeding elections.

The extent to which voters rely on Alaska Judicial Council ratings and recommendations is closely associated with their satisfaction with the present system of evaluation. The more satisfied they are, the more likely they are to use the ratings and recommendations in voting. This applies in both retention and non-retention cases.

Of all the characteristics used in voting, some measure or assessment of the judge's performance record is the most important factor in voting decisions--both for retention and non-retention. Voters who are most in favor of the present Judicial rating system rely heavily on judicial ratings of performance. Voters less satisfied with the present rating system rely more heavily on their own assessments of judicial performance or on attitudes about the judge's performance. It is clear that judicial performance is the dominant factor considered in voting, but the question still remains, to what extent does the present system of evaluation give adequate information about judicial performance to satisfy most voters? This question will be the focus of question 2 below.

Table h: Relationship between Question 8a and Question 9a

8a. Can you tell us why you voted to retain these judges?

WHY NOT TO RETAIN

WHY RETAIN	Inadequate Job		Performance Record/ Too Lenient with Criminals		AJC Ratings			
	(n)	%	(n)	%	(n)	%		
Doing adequate job	(52)	54.2 62.7	(17)	17.7 18.7	(7)	7.3 16.3	(96)	34.4
Based on Judge's Record	(11)	23.9 13.3	(24)	52.2 44.4	(3)	6.5 7.0	(46)	16.5
AJC Ratings	(4)	9.8 4.8	(2)	4.8 3.7	(31)	75.6 72.1	(41)	14.7
	(83)	29.7	(54)	19.4	(43)	15.4	(279)	100.0

9a. Can you tell us why you voted not to retain these judges?

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979, by NORTHRIM ASSOCIATES, INC.

Question 2: What do voters believe are the strengths and weaknesses of the current judicial evaluation system? The relationship between satisfaction with the present system of evaluation and needs for additional information is addressed in a cross-tabulation of question 7 ("If you believe that more information should be provided, what would you like to know?") with question 6 (opinion of the ratings). Table i shows this cross-tabulation. Among those stating that the judicial rating system is "helpful", 58 percent favor more information about the judge's performance history. In other words, they responded either "judges performance record" (50.9 percent) or they

referred to the judge's "prejudice for or against special interests" (7.5 percent). While "position on key laws or issues" would appear also to be a performance-related response, the statements coded under this heading indicate that this category reflects more of a respondent's attitudes toward judges than a perception of his/her performance.

Table i : Relationship between Question 6 and Question 7: Opinion of ratings by composite of three suggested additions to the judicial evaluation system

6. If you read those ratings, what was your opinion of them?

<u>SUGGESTED ADDITIONS</u>	<u>OPINION OF RATINGS</u>			
	<u>HELPFUL</u>		<u>GOOD IDEA</u>	
Judge's Performance History	(27)	50.9	(58)	36.0
Personal Attributes of Judge	(11)	20.7	(26)	16.1
Courtroom Opinion	(5)	9.4	(4)	2.5
Miscellaneous Comments	(5)	9.4	(18)	11.2
Prejudice for/ against Special Interests	(4)	7.5	(13)	8.1
Position on Key Laws, Issues	(3)	5.7	(23)	14.3
More Information Needed	(2)	3.8	(16)	9.9
Alaska Knowledge	(1)	1.9	(3)	1.9

n = 53

n = 161

7. If you believe that more information should be provided, what would you like to know?

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979, by NORTHRIM ASSOCIATES, INC.

Of those voters who ranked the judicial rating system as "a good idea", fewer stressed judicial performance history. Again combining "judge's performance history" and "prejudice for or against special interests" yields a total of 44 percent emphasizing performance.

No other choice is as important among voters who rate the system as "helpful" or among those who rate it as "a good idea". Personal attributes of judges ranked second in both cases with 20.7 percent (among the "helpful" group) and 16.1 percent (among the "good idea" group).

Another cross-tabulation also points to this relationship between satisfaction with the present system and utilization of the judicial rating system. Table j shows the important percentage comparisons between question 6 (opinion of the Alaska Judicial Council ratings) and question 11c, which asked respondents to suggest additions to the list of qualities of judges, if they felt the present list is incomplete.

The voters who stated that the present system of evaluation is "helpful"--i.e., those voters most satisfied with the present system, were less likely to state that "judge's performance record" should be added to the rating system, while those less satisfied--those who stated the system is a "good idea"--were more likely to stress addition of the judge's performance record. On the other hand, both voters selecting "helpful" and those selecting "good idea" among the choices on question 6 were more in favor of adding "judge's performance record" than any other choice on question 11c. In other words,

while the less satisfied stressed the judge's performance record more than did the more satisfied, it was the significant choice in both cases.

Table j : Relationship between Question 6 and Question 11c: Opinion of ratings by what should be added to the present list of judicial characteristics--selected percentages

6. If you read those ratings, what was your opinion of them?

	HELPFUL		GOOD IDEA
	<u>Percent on Question 11c</u>		<u>Percent on Question 11c</u>
32.4	Judge's performance record	38.2	Judge's Performance Record
13.5	Personal attributes of the judge	20.6	Personal attributes of the judge
47.4	Total in Helpful Column	43.6	Total in Good Idea Column
	n = 37		n = 34

11c. If you think the Judicial Council left something out, tell us what you'd like to see added.

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979, by NORTHRIM ASSOCIATES, INC.

This theme runs throughout all of the analysis conducted so far. The less convinced voters are about the completeness of the Judicial evaluation system, the more likely they are to rely more heavily on reports of judicial decisions and actions. For example, in earlier analyses, older and better educated discriminators were the ones least likely to rely on Alaska Judicial Council ratings and recommendations--compared with other discriminators. These voters are more skeptical of the present system of evaluation without a component relating to judicial performance history. In each of the three groups,

the top choice on question 10 was "knowledge of the judge based on media coverage of his/her decisions and actions." This percentage increases for better educated discriminators and for older discriminators.

On the other hand, a second theme is also evident: regardless of satisfaction with the present system of evaluation, judicial performance history is the first and most important additional factor suggested.

Question 12 asked respondents, "Aside from surveying lawyers, peace officers, and jurors, are there other ways that judicial performance could be evaluated that would make it easier for voters to decide whether or not to retain a judge?" And 12a asked "IF YES: What are these ways?" Table k shows the cross tabulation of question 12a responses with question 6 (opinion of the Judicial ratings). Again judicial performance history is the single most important choice both for respondents who rate the present system as "helpful" and for those who consider it a "good idea". Forty-five percent of the respondents who rate the system as helpful also responded "judicial performance history" while 31.2 percent of the "good idea" respondents also chose "judicial performance history".

Summary of Question 2:

Clearly, the major improvement in the present system of evaluation suggested by our sample of 1973 voters is addition of judicial per-

formance history to the system of evaluation. Without a measure of judicial performance over time, voters evaluate judicial performance themselves. There is considerable consensus about the factors which are important in judicial performance. This does not fluctuate with no voters, yes voters, or discriminators. It is consistent across education, age, and residence groupings. While there is consensus about the qualities of judges that are most important--a sense of fairness and justice, legal knowledge, and reasoning ability and integrity--without a measure of a judge's performance history built into the present rating system, voters must fall back on other sources of information in their choice of which judges to retain or not retain at election. In retention cases, voters tend to assume that the judge is doing an adequate job, unless they are confronted with information that is sufficiently convincing to establish that the judge is not "doing an adequate job". In non-retention cases, only those voters who are sufficiently informed or aware of specific cases that suggest judicial incompetence vote no. This is clear from the responses to "doing an inadequate job" which are quite specific. Unless the evidence is quite convincing, the tendency to give judges the benefit of the doubt and to respect their high prestige and their general isolation from the more personal aspects of political campaigning appear to outweigh other considerations.

Table k : Relationship between Question 6 and Question 12a: Opinion of ratings by suggestions for improving the Alaska Judicial Council evaluation system

6. If you read those ratings, what was your opinion of them?

OPINION OF RATINGS	SUGGESTIONS FOR ADDITIONS				Those Who Work W/Them	TOTAL
	Judge's Performance History	Evaluate Recidivism	More Questionnaires	Survey People Who Appeared		
HELPFUL	(25) 45.5 45.5	(1) 1.8 14.3	(6) 10.4 33.3	(4) 7.3 33.3	(4) 7.3 40.0	(55) 37.1
GOOD IDEA	(24) 31.2 43.6	(5) 6.5 71.4	(11) 14.3 61.1	(8) 10.4 66.7	(5) 6.5 50.0	
TOTAL	(55) 37.7	(7) 4.8	(18) 12.3	(12) 8.2	(10) 6.8	(146) 100.0

12a. If YES: What are these ways?

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979, by NORTHRIM ASSOCIATES, INC.

Question 3: How should Alaska Judicial Council evaluations and recommendations be communicated before elections? To answer this question, we related responses to three questions concerning the extent to which the Alaska Judicial Council should publish and recommend in cases where an evaluation determines that a judge is unqualified with one relating to methods of communication. Table 1 shows the relationship between question 14 (should the Alaska Judicial Council publish information . . .) and question 16 (method of communication referred). Clearly most respondents favor both publishing information about judicial evaluations and utilizing the

Official Election Pamphlet (75.3 percent). This level of consensus drops sharply when other methods of communication are suggested. Still a majority (58.8 percent) favor both publishing the information and using direct mail approaches to voters prior to the election. Only 26.4 percent of those favoring the publishing of information favor speeches by the Judicial Council members and staff. Forty-two percent of those favoring publishing of information also approve of newspaper advertising and 31.1 percent of these respondents favor radio and TV advertising.

Table 1 : Relationship between Question 14 and Question 16

14. Do you think it's a good idea to require the Alaska Judicial Council to evaluate judges and to publish information about them in the Alaska Official Election Pamphlet?

	METHOD OF COMMUNICATION		<u>Total</u>
	<u>Circled</u>	<u>Not Circled</u>	
ELECTION PAMPHLET			
YES	(402) 75.3	(98) 18.4	(500) 93.6
DIRECT MAIL			
YES	(314) 58.8	(186) 34.8	(500) 93.6
SPEECHES			
YES	(141) 26.4	(359) 67.2	(500) 93.6
NEWSPAPER ADS			
YES	(224) 41.9	(276) 51.7	(500) 93.6
RADIO/TV ADS			
YES	(166) 31.1	(334) 62.5	(500) 93.6

16. Alaska State law requires the Alaska Judicial Council to provide information to the voters concerning its evaluation of judges. How do you think this information ought to be communicated to the voters?

We know from our earlier analysis that while 93.6 percent of the sample favored publishing of information about judicial evaluations in the official election pamphlet, only 60.5 percent favored Judicial Council recommendations in favor of or against any judge it evaluates. Table m shows the relationship between responses to question 14 and responses to question 15. We see that over half of all respondents answered yes to both questions. Yet a significant third of those respondents in favor of the Alaska Judicial Council's publication of evaluations in the Official Election Pamphlet did not favor recommendations by the Council.

Table m : Relationship between responses to question 14 and question 15

14. Do you think it's a good idea to require the Alaska Judicial Council to evaluate judges and to publish information about them in the Alaska Official Election Pamphlet?

QUESTION 14	QUESTION 15		Row Total
	<u>Yes</u>	<u>No</u>	
YES	(313) 60.2	(174) 33.5	(487) 93.7
NC	(4) 0.8	(29) 5.6	(33) 6.3
COLUMN TOTAL	(317) 61.0	(203) 39.0	(520) 100.0

15. Do you think it's a good idea for the Judicial Council to make a recommendation in favor of or against the retention of any judge it evaluates?

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979, by NORTHRIM ASSOCIATES, INC.

Table n relates responses to question 15 (should the Alaska Judicial Council recommend) to question 16 (methods of communication). Again we see that publication in the Official Election Pamphlet receives high acceptance, direct mail approaches are less acceptable, followed by newspaper ads, radio and TV advertising and, finally, speeches by Council members or staff.

Table n : Relationship between question 15 and question 16

15. Do you think it's a good idea for the Judicial Council to make a recommendation in favor of or against the retention of any judge it evaluates?

	<u>Circled</u>	<u>Not Circled</u>	<u>Total</u>
ELECTION PAMPHLET			
YES	81.2	18.8	(527) 60.5
DIRECT MAIL			
YES	63.3	36.7	(527) 60.5
SPEECHES			
YES	31.7	68.3	(527) 60.5
NEWSPAPER ADS			
YES	48.9	51.1	(527) 60.5
RADIO/TV ADS			
YES	36.7	63.3	(527) 60.5

16. Alaska State law requires the Alaska Judicial Council to provide information to the voters concerning its evaluation of judges. How do you think this information ought to be communicated to the voters.

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979, by NORTHRIM ASSOCIATES, INC.

In fact, the percentage of respondents who favor both Alaska Judicial Council recommendations and publication in the Official Election Pamphlet is higher than for the earlier question 14 by 16 cross-tabulation. In other words, once one agrees that recommendation is a proper role for the Alaska Judicial Council, then there is even greater support for those recommendations within the context of the Official Election Pamphlet.

Similarly, the percentage in favor of each of the alternatives to communication is slightly higher among those favoring Judicial Council recommendations than for those responding to the earlier question on publishing of judicial evaluations. While those favoring Judicial Council recommendations appear more willing to support official, direct mail and newspaper approaches, there is still less support for either radio or television advertising or for speeches by Judicial Council members or staff. Even though the percentages for these two approaches are slightly higher than among respondents to question 14 (Table 1) there are still only 32 percent who favor speeches and 37 percent who favor radio or TV advertising here.

There is one more cross-tabulation that directly relates to the extent to which the Alaska Judicial Council should become directly involved in advertising against judges it determines, after evaluation, are unqualified. Table 0 shows the relationship between question 16 (method of communication) with question 17, which asked "If the Alaska Judicial Council, as a result of its evaluation, concludes that a judge is unqualified to remain in office, what should the

Council do?" Percentage comparisons are proportions of the sample as a whole, except for column and row percents.

First of all, few of the survey respondents favor the first alternative--express no opinion. Virtually all responses fall in the other two categories--i.e., either "Publish only in the Official Election Pamphlet" or "strongly advertise". For those who circled the election pamphlet, there is almost equal preference for communication only in the election pamphlet and strong advertising. For those who circled direct mail, slightly more are in favor of strong advertising. For those who circled speeches and newspaper ads, twice as many favored strong advertising as favored publication only in the Official Election Pamphlet. For those in favor of radio/TV advertising, three times as many favor strong advertising in cases of non-retention.

As in the case with Judicial Council recommendations, (question 15) the smaller proportion of respondents who favor newspaper advertising speeches and radio/TV advertising are also more likely to favor strong advertising in cases of judicial non-retention. In the cases of speeches and radio/TV ads, those not circling these choices are almost equally divided between favoring publication in the election pamphlet and strong advertising. In other words, the few who favor strong advertising are consistent in their choice of methods of communication, while the majority of respondents are almost equally divided between supporting publication only in the Official Election Pamphlet and strong advertising. This ambivalence is apparent throughout the

survey in responses to questions dealing with non-retention. Only a distinct minority of survey respondents have conquered this ambivalence sufficiently to whole-heartedly support full-scale campaigns in cases of judicial non-retention. The majority of responses indicate that only official, direct mail or newspaper advertising will receive substantial support.

Summary of Question 3: Our sample of 1978 Judicial election voters appear somewhat ambivalent concerning methods of communication in cases of non-retention. The largest support is for the evaluation system itself and for the publication of results in the official election pamphlet. Direct mail appeals to voters are also supported by a majority of respondents. Newspaper advertising is supported by close to half the respondents to the survey. These three approaches appear to be supported consistently throughout the present analysis. Speeches, and radio and TV advertising, like the option "strong advertising" attract fewer supporters and those who support one tend to support the other. The majority of the survey respondents are equally divided between favoring strong advertising and favoring publication only in the election pamphlet in cases of judicial non-retention.

Table o : Relationship between Question 16 and Question 17 responses

17. If the Alaska Judicial Council, as a result of its evaluation, concludes that a judge is unqualified to remain in office, what should the Council do? (Please choose only one)

QUESTION 17	QUESTION 16								
	ELECTION PAMPHLET			DIRECT MAIL			SPEECHES		
	<u>Circled</u>	<u>Not Circled</u>	<u>Total</u>	<u>Circled</u>	<u>Not Circled</u>	<u>Total</u>	<u>Circled</u>	<u>Not Circled</u>	<u>Total</u>
Express No Opinion	7.9	2.9	10.7	6.7	4.0	10.7	2.3	8.4	10.7
Only in Election Pamphlet	33.8	6.3	40.1	22.3	17.9	40.1	8.1	32.1	40.1
Strongly advertise	35.9	13.2	49.1	32.6	16.5	49.1	16.7	32.4	49.1
TOTAL	77.5	22.5	100.0	38.4	61.6	100.0	27.1	72.9	100.0
N =			(521)			(521)			(521)

QUESTION 17	NEWSPAPER ADS			RADIO/TV ADS		
	<u>Circled</u>	<u>Not Circled</u>	<u>Total</u>	<u>Circled</u>	<u>Not Circled</u>	<u>Total</u>
	Express No Opinion	3.8	6.9	10.7	3.1	7.7	10.7
Only in Election Pamphlet	10.6	29.6	40.1	7.7	32.4	40.1
Strongly advertise	29.4	19.8	49.1	22.1	27.1	49.1
TOTAL	43.8	56.2	100.1	32.8	67.2	100.0
N =			(521)			(521)

16. Alaska State law requires the Alaska Judicial Council to provide information to the voters concerning its evaluation of judges. How do you think this information ought to be communicated to the voters?

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979, by NORTHRIM ASSOCIATES, INC.

SUMMARY AND CONCLUSIONS

This study was conducted to aid the Alaska Judicial Council in its efforts at self-evaluation of the present judicial rating system used in judicial elections. It surveyed voters in the Fall, 1978 judicial election, asked them about their voting behavior, their attitudes, opinions, and knowledge about the present judicial rating system, their preparation for voting, asked for suggestions for improving the present system of judicial evaluation as well as for preferences for methods of communication to be used in informing voters of judicial evaluations.

Our sample of 571 voters in the Fall, 1978 judicial election provided a great deal of information about these issues as well as insight into the judicial voting process as it is experienced by voters in judicial elections. It is on the basis of these answers and insights that this summary is constructed.

Preparation for Voting:

Of our sample of 571 voters, 92 percent said they voted for or against judges in the Fall, 1978 election. Ninety percent said they voted for judges on the ballot and 76 percent said they voted against judges on the ballot. Most of these voters stated that they read the judge's summary before voting (71 percent). Most said they read the Judicial Council ratings of judges before

voting (71 percent). Slightly less than half (46 percent) had read advertisements about judges prior to voting.

Of those who read the ratings prior to voting, over half felt the ratings were helpful and another 38 percent felt they were "a good idea". The more satisfied they were, the more likely they were to use the rating system in voting.

Of all the sources of information provided, respondents mentioned "knowledge of the judge, based on such things as media coverage of his/her decisions and actions" as their primary source of information, in spite of the fact that less than half said they saw advertisements concerning judicial retention prior to voting. Emphasis on knowledge of judicial performance is the first and dominant theme running throughout the survey. Dissatisfaction with the present system of evaluation centers on the need for additional information about judicial performance over time. Discussion of additions to the system and preference for types of information center consistently on some form of quantitative measure of judicial performance. In the absence of this information, it is clear that voters make their own judgements based on media reports, personal knowledge or associations, or "word of mouth".

Responding to questions asking for why they voted to retain or not retain judges, voters continually stated that it was because the judge was "doing an adequate job" or "doing an inadequate job".

But the knowledge base used to make the assessment that a judge is "doing an adequate job" is far smaller than that needed to make an assessment that he/she is "doing an inadequate job". Responses to the latter show a high degree of specific information. In contrast, "doing an adequate job" is both an assessment based on no negative information and/or an assessment based on positive reports or ratings. If we combine similar response categories on these two questions, we find that over half of the responses to each one have to do with judicial performance history. Either they state "doing an adequate job" or they refer to "judge's record" or to "personal attributes of the judge". Either they state "doing an inadequate job" or they state "too lenient with criminals."

Answers to these two "why" questions are consistent with each other as well. If a voter votes to retain judges based on his/her personal assessment of their performance, then he or she uses the same standards in voting against judges. If the voter stresses the judge's performance record or a specific stance taken by a judge ("too lenient with criminals") then these decisions, based on the judge's record are consistent in both retention and non-retention voting. If the voter utilizes the Alaska Judicial Council rating system in voting to retain a judge he/she is likely to use it in non-retention voting decisions as well.

Knowledge of the Judicial Council:

very few of the respondents to this survey had heard of the Alaska Judicial Council or remembered that they had. While they were familiar with the rating system used in the Official Election Pamphlet, it appears few associated this rating system with the Alaska Judicial Council per se. Fewer still had a clear idea of the functions served by the Council or its relationship to the Judicial System.

Without a clear sense of identity, the Alaska Judicial Council's recommendations are attended to within the context of the Official Election Pamphlet, but outside this official source, it appears voters become confused. They prefer the dignity and demeanor associated with the Judicial system itself above and beyond the necessity to advertise in cases of non-retention. Their tendency to give judges the benefit of the doubt, coupled with very low identification with the Alaska Judicial Council appear to converge in non-retention cases in particular. Without benefit of a clearly negative rating on the few cases of non-retention in the last election, and without a highly visible Council or other source of prestige to pin their choice, most voters either voted for these judges or they used their own personal decision-making process in voting against retention.

Assessments of the Current Alaska Judicial Council Rating System:

Surveyed voters appear satisfied with the list of characteristics

used in the present judicial rating system. Top ranked characteristics were "sense of basic fairness and justice", "legal knowledge and reasoning ability" and "integrity". Those characteristics considered least important by the survey respondents were "willingness to work diligently", "human understanding and compassion", and "consideration of relevant sentencing factors". When asked what should be added to the present list, only one choice appeared frequently enough to be considered significant--judicial performance history. Another question also yields the same result--when asked what should be added to the present evaluation system, 38 percent of the respondents mentioned "judge's performance record". A third question, which asked "If you believe that more information should be provided, what would you like to know?" yielded the same result--"judge's performance record".

Methods of Communication:

Almost all of the surveyed voters felt the Alaska Judicial Council should publish information and ratings about judges in the Official Election Pamphlet, but fewer (60 percent) agreed the Alaska Judicial Council should recommend for or against judicial retention. Similarly, when asked how information about judges should be communicated, the highest support was for the Official Election Pamphlet (74 percent) followed by "direct mail" approaches (58 percent) and newspaper advertising (42 percent). Other methods drew lower support. Only 32 percent favored radio or television advertising and 26 percent favored speeches and other public appearances by Council members or staff.

Yes-Voters, No-Voters, and Discriminators:

The largest group of voters in this survey voted both for some judges and against some judges in the Fall, 1978 election--close to two-thirds of the sample. A few respondents voted only against one or more judges on the ballot and slightly more than 20 percent voted only in favor of judges on the ballot. We found that the discriminator group is more likely to live in Anchorage and to be better educated. While these two characteristics in themselves influence voting behavior and attitudes, we found that discriminators are also more likely to be prepared in the voting process--to have read the information available and to have attended to advertisements about judges prior to voting.

Discriminators are more likely to both use the judicial rating system prior to voting, to have heard of the Alaska Judicial Council, and to feel that there are improvements in the present system of evaluation which should be considered to improve its effectiveness. They do not appear to differ from the other two groups on their choice of judicial characteristics which are part of the current rating system. They also do not differ in their choice of additions to the system--favoring judicial performance history and personal information about the judge above other additions.

Discriminators are slightly more likely to favor use of the Official Alaska Election Pamphlet or direct mail above other

methods of communication. They are less in favor of speeches and radio and television advertising than the other two groups. What they appear to reflect is the majority opinion in the survey which favors slight improvements in the judicial evaluation system, particularly in the area of judicial performance history, but a continuation of the dignified and non-obtrusive style of the present judicial evaluation system and its official, written, or printed methods of communication.

RECOMMENDATIONS

There are several related recommendations that derive from analysis of this voter survey. First, the current system of evaluation needs to include some quantitative measurement of judicial performance over time.

Second, the qualitative aspects of judicial evaluation need to be clearly explained and justified to provide the additional context within which voters can determine the strengths and weaknesses of individual candidates and make their choices in voting to retain or not retain.

Third, the respect for the high prestige of judges and a general reluctance to force them into the political arena appears to discourage non-retention voting. Faced with a general reluctance to vote against judges, and without benefit of a rating system which shows a wide disparity between judges who are recommended and those who are recommended against, the voter either votes to retain or uses his/her own basis for deciding to retain or not retain.

Fourth, the Alaska Judicial Council should consider weighting procedures within the rating system that would allow for more dispersion in the scores of individual judges. Weighting could be based on the ranking of judicial characteristics by this sample of voters, or on other methods.

Fifth, the Alaska Judicial Council appears to suffer a lack of identity in the minds of voters, which, in turn, influences its effectiveness as a communicator of judicial evaluations. The Council must begin to take steps which will increase community awareness of the Council without violating judicial demeanor.

Sixth, it appears that the majority of voters do not favor a major break with the current non-obtrusive style of communication used in either the Official Election Pamphlet or a similar approach that could be used in direct mailings to voters prior to elections. While newspaper advertising receives fairly strong support, speeches and radio or television advertising appear to violate norms of good taste for many voters in judicial elections. There is little evidence from this survey to indicate that voters want judges or the Alaska Judicial Council to sacrifice judicial demeanor even in cases of non-retention. The majority appear to be almost equally divided between favoring strong advertising and choosing the alternative "only in the Election Pamphlet" in cases where a judge is recommended against. This ambivalence can only be countered by a number of steps over a period of years that both add to voter information about the judicial rating system while augmenting the present rating system so that a clearer choice is offered.

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APPENDIX A

DISTRIBUTION OF RESPONSES ON QUESTIONS

TABLE 1: DISTRIBUTION OF RESPONSES ON QUESTIONS

1, 2, 8 and 9.

VOTING BEHAVIOR OF RESPONDENTS

<u>Reported Voting Behavior</u>	<u>Total</u>	<u>PERCENT</u>		
		<u>No Voters</u>	<u>Yes Voters</u>	<u>Discriminators</u>
Respondents who voted, Fall 1978	100.0	100.0	100.0	100.0
n =	571	32	124	355
Respondents who voted for judges, Fall, 1978	91.9	96.9	95.1	98.9
n =	565	32	123	354
Respondents who voted to retain judges, Fall, 1978	89.7	-	100.0	100.0
n =	536	-	124	355
Respondents who voted to not retain judges, Fall, 1978	76.1	100.0	-	100.0
n =	507	31	-	355

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979 by NORTHRIM ASSOCIATES.

QUESTION 1: "First of all, many people who are registered voters don't actually get to vote on election day. Did you vote in the Fall 1978 general election?"

QUESTION 2: "Did you vote for or against any judges in the Fall 1978 general election?"

QUESTION 8: "Did you vote to retain any of the judges on the ballot?"

QUESTION 9: "Did you vote not to retain any judges on the ballot?"

TABLE 2: DISTRIBUTION OF RESPONSES ON QUESTIONS
3, 4 and 5.

PRE-VOTING BEHAVIOR OF RESPONDENTS

	<u>Total</u>	<u>No Voters</u>	<u>Yes Voters</u>	<u>Discriminators</u>
Percent who report reading judge's summary prior to voting	70.5	62.5	59.3	80.1
n =	563	32	123	352
Percent who report having seen advertisements for or against judges before voting	45.9	35.5	37.1	53.0
n =	560	31	124	347
Percent who report having read Alaska Judicial Council ratings before voting	71.1	65.6	53.3	84.1
n =	564	32	122	352

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979 by NORTHRIM ASSOCIATES

QUESTION 3: "Before you voted, had you read each judge's own summary about his/her background contained in the Election Pamphlet?"

QUESTION 4: "Had you seen any advertisements in the media on behalf of or against any judge running in the election?"

QUESTION 5: "Before you voted, had you read the Judicial Council's ratings of judges published in the Election Pamphlet?"

TABLE 3: DISTRIBUTION OF RESPONSES ON QUESTION 6.

VOTER OPINION ABOUT ALASKA JUDICIAL
COUNCIL RATINGS.

		PERCENT		
<u>Ratings are:</u>	<u>Total</u>	<u>No Voters</u>	<u>Yes Voters</u>	<u>Discriminators</u>
Helpful	55.4	27.3	69.7	55.1
Good Idea	38.1	63.6	27.3	37.6
Of No Use	4.3	9.1	1.5	4.0
Should Be Eliminated	2.2	-	1.5	2.6
	-----	-----	-----	-----
Total	100.0	100.0	100.0	100.0
n =	415	22	66	303

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979 by NORTHRIM ASSOCIATES

QUESTION 6: "If you read those ratings, what was your opinion of them?"

TABLE 4: DISTRIBUTION OF RESPONSES ON QUESTION 10.

VOTER PREFERENCES FOR ADDITIONAL INFORMATION
IN RATING JUDGES

<u>Source of Additional Information</u>	<u>Percent Preferring</u>			
	<u>Total</u>	<u>No Voters</u>	<u>Yes Voters</u>	<u>Discriminators</u>
Judge's Own Summary	7.5	10.0	10.9	5.2
Alaska Judicial Council Rating	23.4	3.3	19.1	27.0
Alaska Judicial Council Recommendation	7.9	6.7	5.5	9.2
Knowledge of the Judge	51.9	70.0	54.5	50.0
Paid Ads	0.6	10.0	1.8	0.3
Other	8.7	-	8.2	8.3
Total	100.0	100.0	100.0	100.0
n =	518	30	110	348

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979 by NORTHRIM ASSOCIATES

QUESTION 10: "In deciding whether to retain or not retain a judge, which source of information was most important to you?"

TABLE 5: DISTRIBUTION OF RESPONSES ON QUESTION 8a.

MOST IMPORTANT REASONS GIVEN FOR VOTING
TO RETAIN A JUDGE.

<u>Reasons Given:</u>	<u>Total</u>	PERCENT		<u>Discriminators</u>
		<u>No Voters</u>	<u>Yes Voters</u>	
Doing Adequate Job	35.2	-	37.6	34.3
Judges performance history	17.2	-	18.8	16.8
Alaska Judicial Council Ratings	12.1	-	4.7	14.3
Reading Everything About the Judge	7.3	-	9.4	6.6
Information in Voter Pamphlet	8.3	-	3.5	9.8
Personal Attributes	3.8	-	2.4	4.2
Discussion With Others	2.2	-	1.2	2.4
Personal Knowledge/ Experience	9.7	-	11.8	9.1
Miscellaneous/Other	4.3	-	10.6	2.4
Total	100.0	-	100.0	100.0
n =	372	-	85	286

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979 by NORTHRIM ASSOCIATES

QUESTION 8a: "Can you tell us why you voted to retain these judges?"

TABLE 6: DISTRIBUTION OF RESPONSES ON QUESTION 9a.

MOST IMPORTANT REASONS GIVEN FOR VOTING
NOT TO RETAIN A JUDGE.

<u>Reasons Given:</u>	<u>Total</u>	PERCENT		<u>Discriminators</u>
		<u>No Voters</u>	<u>Yes Voters</u>	
Doing Inadequate Job	27.9	18.5	-	28.8
Information in Voter Pamphlet	6.9	-	-	7.5
Judge's Performance History	5.7	7.4	-	5.6
Alaska Judicial Council Ratings	13.5	-	-	14.7
Personal Experience/Opinion	10.8	14.8	-	10.5
Media Sources	6.3	-	-	6.9
Discussions With Others	2.4	-	-	2.6
Too Lenient With Criminals	17.1	37.0	-	15.4
Other/Miscellaneous	9.3	22.2	-	8.2
Total	100.0	100.0	-	100.0
n =	333	27	-	306

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979 by NORTHRIM ASSOCIATES

QUESTION 9a: "Can you tell us why you voted not to retain these judges?"

TABLE 7: DISTRIBUTION OF RESPONSES ON QUESTIONS 13, 13a, 13b.

KNOWLEDGE OF THE ALASKA JUDICIAL COUNCIL.

	PERCENT			
	<u>Total</u>	<u>No Voters</u>	<u>Yes Voters</u>	<u>Discriminators</u>
A. Percent who had heard of the Alaska Judicial Council	19.7	13.3	12.7	25.1
Percent who had not heard of the Alaska Judicial Council	80.3	86.7	87.3	74.9
	100.0	100.0	100.0	100.0
n =	527	30	118	331

	PERCENT			
	<u>Total</u>	<u>No Voters</u>	<u>Yes Voters</u>	<u>Discriminators</u>
B. OF THOSE WHO HAD HEARD OF THE ALASKA JUDICIAL COUNCIL				
<u>Type of Knowledge</u>				
Knew it exists	43.5	-	25.0	48.5
Knew it recommended and evaluated judges	35.3	66.7	50.0	30.9
Feels council is biased	2.4	-	-	2.9
Waste of money	2.4	-	-	2.9
Doing a good job	8.2	33.3	8.3	7.4
Miscellaneous/other	8.2	-	16.7	7.4
Total	100.0	100.0	100.0	100.0
n =	85	3	12	68

TABLE 7: DISTRIBUTION OF RESPONSES ON QUESTIONS 13, 13a, 13b.
CONTINUED.

C. <u>Information Source</u>	<u>Total</u>	PERCENT		<u>Discriminators</u>
		<u>No Voters</u>	<u>Yes Voters</u>	
Voter pamphlet	22.5	25.0	22.2	22.1
Word of mouth	6.9	-	16.7	5.2
Personal experience	8.8	-	-	11.7
Friends in profession	13.7	25.0	11.1	14.3
Media	46.1	50.0	50.0	44.2
Other	2.0	-	-	2.5
Total	100.0	100.0	100.0	100.0
n =	102	4	18	77

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979 by NORTH RIM ASSOCIATES

QUESTION 13: "Had you heard about the Alaska Judicial Council before the Fall 1978 election?"

QUESTION 13a: "If YES: what had you heard about the Council?"

QUESTION 13b: "How, or in what connection had you heard about the Council?"

TABLE 8A: DISTRIBUTION OF RESPONSES ON QUESTION 11a.

RANK OF FIRST, SECOND AND THIRD MOST IMPORTANT CHARACTERISTICS OF JUDGES BASED ON PERCENT CHOOSING EACH OF EIGHT LISTED CHARACTERISTICS.

	<u>Total</u>	<u>No Voters</u>	<u>Yes Voters</u>	<u>Discriminators</u>
Sense of fairness	1	1	1	1
Legal knowledge	2	2	2	2
Integrity	3	3	4	3
Equal treatment of all cases	4	4	3	4
Restraint from fav- oritism	5	5	5	5
Sentencing factors	6	6	7	6
Human understanding and compassion	7	7	6	7
Willing to work	8	8	8	8

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979 by NORTHRIM ASSOCIATES

QUESTION 11a: "In making your decision to retain or not retain a judge, which of the factors listed above is most important to you? Which is second most important and third most important?"

TABLE 8B: DISTRIBUTION OF RESPONSES ON QUESTION 11a.

COMPOSITE SCORE OF FIRST, SECOND AND THIRD MOST IMPORTANT CHARACTERISTICS OF JUDGES BASED ON PERCENT CHOOSING EACH OF EIGHT LISTED CHARACTERISTICS.

	<u>Total</u>	<u>No Voters</u>	<u>Yes Voters</u>	<u>Discriminators</u>
Sense of fairness	792	53	178	503
Legal Knowledge	722	32	153	478
Integrity	549	31	94	377
Equal treatment of all cases	472	21	114	201
Restraint from favoritism	287	15	67	173
Sentencing factors	186	14	37	118
Human understanding and compassion	180	8	61	94
Willing to work	56	1	5	46

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979 by NORTHRIM ASSOCIATES

QUESTION 11a: "In making your decision to retain or not retain a judge, which of the factors listed above is most important to you? Which is second most important and third most important?"

TABLE 9A: DISTRIBUTION OF RESPONSES ON QUESTION 11b.

RANK OF FIRST, SECOND AND THIRD CHOICES OF CHARACTERISTICS OF JUDGES WHICH COULD BE ELIMINATED FROM THE RATING SYSTEM BASED ON PERCENT CHOOSING EACH OF EIGHT LISTED CHARACTERISTICS.

	<u>Total</u>	<u>No Voters</u>	<u>Yes Voters</u>	<u>Discriminators</u>
Willing to work	1	1	1	1
Human understanding	2	1	3	2
Sentencing factors	3	3	2	3
Equal treatment of all cases	4	2	4	4
Restraint from favoritism	5	4	4	5
Integrity	6	4	4	6
Sense of fairness	7	3	5	7
Legal knowledge of the judge	8	4	5	8

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979 by NORTHRIM ASSOCIATES

QUESTION 11b: "If you think the Judicial Council included too many factors, which ones should be left out?"

TABLE 9B: DISTRIBUTION OF RESPONSES ON QUESTION 11b.

COMPOSITE SCORE OF FIRST, SECOND AND THIRD CHOICES OF CHARACTERISTICS OF JUDGES WHICH COULD BE ELIMINATED FROM THE RATING SYSTEM BASED ON PERCENT CHOOSING EACH OF EIGHT LISTED CHARACTERISTICS.

	<u>Total</u>	<u>No Voters</u>	<u>Yes Voters</u>	<u>Discriminators</u>
Willing to work	93	6	22	57
Human understanding	62	6	10	48
Sentencing factors	46	2	11	31
Equal treatment of all cases	39	3	9	24
Restraint from favoritism	36	1	9	23
Integrity	34	1	9	22
Sense of fairness	24	2	3	18
Legal knowledge of the judge	15	1	3	11

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979 by NORTHRIM ASSOCIATES

QUESTION 11b: "If you think the Judicial Council included too many factors, which ones should be left out?"

TABLE 10: DISTRIBUTION OF RESPONSES ON QUESTION 12a.

TYPES OF ADDITIONAL INFORMATION SUGGESTED
FOR JUDICIAL EVALUATION SYSTEM.

<u>Information Suggested</u>	<u>Total</u>	PERCENT		<u>Discriminators</u>
		<u>No Voters</u>	<u>Yes Voters</u>	
Judge's Performance History	37.7	33.3	33.3	40.0
More Questionnaires	13.1	11.1	18.5	10.7
Survey People Who Appeared Before the Judge	8.7	-	7.4	10.0
Evaluate Recidivism	3.8	-	7.4	4.3
Make Judge's Campaign	3.3	-	-	2.9
Media Approaches	12.0	11.1	14.8	12.1
Other	14.2	33.3	7.4	13.6
Survey Those Who Work With Judges	7.1	11.1	11.1	6.4
Total	100.0	100.0	100.0	100.0
n =	183	9	27	140

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979 by NORTHRIM ASSOCIATES

QUESTION 12a: "Aside from surveying lawyers, peace officers, and jurors, are there other ways that judicial performance could be evaluated that would make it easier for voters to decide whether or not to retain a judge? If YES: what are these ways?"

TABLE 11: DISTRIBUTION OF RESPONSES ON QUESTION 7.

SUMMARY OF FIRST, SECOND AND THIRD RESPONSES TO THE NEED FOR MORE INFORMATION CONCERNING JUDGES AS A PART OF JUDICIAL EVALUATION - PERCENT IN EACH OPEN-ENDED CATEGORY.

<u>Type of Information Suggested</u>	<u>Number of Mentions</u>	<u>Rank</u>
Judge's performance history	111	1
Judge's personal attributes	47	2
Judge's position on key legal issues	43	3
Miscellaneous/other	31	4
Need more information (general answer)	23	5
Judge's prejudice for or against special interests	23	5
Courtroom opinion of lawyers, jurors or audience	9	6
Alaskan knowledge	6	7
n =	202	

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979 by NORTHRIM ASSOCIATES

QUESTION 7: "If you believe that more information should be provided, what would you like to know?"

TABLE 12: DISTRIBUTION OF RESPONSES ON QUESTIONS 14 & 15.

METHODS OF COMMUNICATING EVALUATIONS OF JUDGES.

<u>Question 14:</u>	<u>Total</u>	PERCENT		<u>Discriminators</u>
		<u>No Voters</u>	<u>Yes Voters</u>	
Should the Alaska Judicial Council publish judicial evaluations in the Alaska official Election Pamphlet?	93.6	93.3	94.9	94.1
PERCENT YES				
n =	534	30	118	341
<u>Question 15:</u>				
Should the Alaska Judicial Council recommend in favor of or against judge retention?	60.5	58.1	57.0	63.2
PERCENT YES				
n =	527	31	114	337

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979 by NORTHRIM ASSOCIATES

QUESTION 14: "Do you think it's a good idea to require the Alaska Judicial Council to evaluate judges and to publish information about them in the Alaska Official Election Pamphlet?"

QUESTION 15: "Do you think it's a good idea for the Judicial Council to make a recommendation in favor of or against the retention of any judge it evaluates?"

TABLE 13: DISTRIBUTION OF RESPONSES ON QUESTION 16.

PREFERRED METHODS OF COMMUNICATING
JUDICIAL EVALUATIONS

<u>Type of Communication</u>	<u>Total</u>	PERCENT		<u>Discriminators</u>
		<u>No Voters</u>	<u>Yes Voters</u>	
The official Election Pamphlet	74.4	75.0	70.2	79.4
Direct Mail to all Registered Voters	58.3	56.3	57.3	61.1
Speeches/Public Appearances	26.4	28.1	30.6	27.0
Newspaper Advertisements	42.2	46.9	44.4	43.1
Radio and T.V. Advertisements	31.9	46.9	33.1	30.7
Other	5.6	9.4	3.2	6.5
	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>
n =	571	32	124	355

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979 by NORTHRIM ASSOCIATES

QUESTION 16: "Alaska State law requires the Alaska Judicial Council to provide information to the voters concerning its evaluation of judges. How do you think this information ought to be communicated to the voters?"

TABLE 14: DISTRIBUTION OF RESPONSES ON QUESTION 17.

WHAT SHOULD THE JUDICIAL COUNCIL DO IN
CASES WHERE A JUDGE IS EVALUATED AS
UNQUALIFIED?

	PERCENT			
	<u>Total</u>	<u>No Voters</u>	<u>Yes Voters</u>	<u>Discriminators</u>
Express no opinion	10.7	13.8	6.8	11.1
<u>Only express opinion in Official Election Pamphlet</u>	40.1	20.7	48.3	40.0
Strongly advertise	49.1	65.5	44.9	48.9
Total	100.0	100.0	100.0	100.0
n =	521	29	118	325

SOURCE: ALASKA JUDICIAL COUNCIL SURVEY, 1979 by NORTHRIM ASSOCIATES

QUESTION 17: "If the Alaska Judicial Council, as a result of its evaluation, concludes that a judge is unqualified to remain in office, what should the Council do?"

APPENDIX B

SELECTED RESPONSES OF TOTAL SAMPLE
BY CODE CATEGORY

APPENDIX B

SELECTED RESPONSES OF TOTAL SAMPLE

BY CODE CATEGORY

QUESTION 7: "If you believe that more information should be provided, what would you like to know?"

01 JUDGE'S PERFORMANCE HISTORY

Sentencing practices especially on repeat offenders

More about the individuals past performance in reference to fairness and just decisions

Quality of sentencing

Decisions on important cases which public has interest in

Percent of decisions reversed from higher court

Why accused get by so easy

02 PERSONAL ATTRIBUTES OF JUDGE

Political affiliation /how many days on job per year

Less about education/more about intelligence

Ability to work unpressured

What are reasons for becoming a judge - to help society or for personal profit

Religious faith

Primary law field

Philosophy

03 POSITION ON KEY LAWS/ISSUES

Attitude toward drugs

Judges position on protection of public and compensation for victims of crime

Record with regard to constitutional questions

Judge's ideas for improving judicial system

04 COURTROOM OPINION

How judges perform; his duty as noted by others in court; how juries regard his opinions

Judges opinions of other judges

Information from law enforcement agencies

05 REFERENCE - NEEDING MORE INFORMATION - TIMING OF INFORMATION FLOW

More time to make a decision. Have information printed sooner and more often

Results of prior polls; evaluations

Court records should be more available

06 PREJUDICE FOR/AGAINST SPECIAL INTEREST

Laws can often be bent in favor/against person. A judge shouldn't let this happen. If loopholes are found they are responsible to change or help change the laws to penalize criminals and protect public.

More investigation into conflicts of interest possibilities

Track record on minorities

07 ALASKA SPECIFIC KNOWLEDGE/STANCE

Community involvement

Opinions and judgements on major issues regarding Alaska, its people

Expertise dealing with Alaska minorities

What they think of state/state government

08 MISCELLANEOUS/OTHER

Salaries for judges/fringe benefits

Just don't get a pilgrim - stick with old timers

Judges need to get out and meet the public

Only see what council wanted you to see and read

Is a Judge's performance improving

09 WHO IS MEMBER OF JUDICIAL COUNCIL

How the council is made up or composed; is the council truly objective or are there possible axes to grind with the membership

What AJC opinion is based on

QUESTION 8a: "Can you tell us why you voted to retain these judges?"

01 DOING ADEQUATE JOB

They had done adequate jobs

A man doing a satisfactory (not necessarily marvelous) job should be rewarded by permitting to keep his job

Knew nothing against them

Judges seemed to have a feeling of responsibility in regards to why he sits on bench

Weeding out the ones that were undesirable

Believed in them

02 BASED ON JUDGES PERFORMANCE HISTORY

Record of sentencing and judicial conduct appeared equitable but firm

Way they handled some cases

Experience seemed adequate

Imaginative sentencing

Having empathy for victims, imposing sentences and demonstrating ability to meet out punishment

03 ALASKA JUDICIAL COUNCIL RATINGS

Primarily based on AJC ratings

Heavily swayed by Judicial Council ratings

04 READING EVERYTHING AVAILABLE

Newspaper articles on one or two of them

Had read in newsmedia of their ratings

Based on info (general) available to public

05 INFORMATION IN VOTER PAMPHLET

By reading all captions and how bar rated them

By information provided

Judges' summary

06 PERSONAL ATTRIBUTES OF JUDGE

Because of their conservative law and order stand

Fairminded

Didn't give women and minorities harder line

07 DISCUSSING WITH OTHERS

After discussing with others

Word of mouth

My husband is police officer, decisions are based on his experience

08 PERSONAL KNOWLEDGE/EXPERIENCE

Personal knowledge of their ability

Seemed to fit my ideas

I voted for 2 judges rated lowest in election pamphlet because council rated them low

Personal recommendation from someone

I am a lawyer - know which judges I believe are competent

Lack of knowledge of their opposition

13 MISCELLANEOUS/OTHER

No choice

Their names were on the ballot

Did not vote because forgot to read information

QUESTION 9a: "Can you tell us why you voted not to retain these judges?"

01 INADEQUATE JOB

Some judges go with case up and down - others go just one way

Incompetent to serve

Unfair judge

Questioned integrity

Thought someone else could do a better job

Many decisions overturned

Felt those not voted for would make better plumbers

02 INFORMATION IN PAMPHLET

Because of information in pamphlet and ratings

Didn't like information on them

Judges own summaries and backgrounds

03 JUDGE'S PERFORMANCE HISTORY

Because of decisions they had made

Didn't agree with stands on various cases

04 ALASKA JUDICIAL COUNCIL RATINGS

Because of Alaska Judicial Council suggestion
A judge with a poor rating must be prejudiced

05 PERSONAL OPINION/EXPERIENCE

First hand experience
I felt I had good reasons
Don't like their remarks
Practiced before them

06 MEDIA REPORTS

Material I had read about them
Media coverage

07 DISCUSSING WITH OTHERS

Talking with other people who had experience with judges
Opinion from people more closely associated with courts

08 TOO LENIENT WITH CRIMINALS

Because of too liberal policies in sentencing and handling
of criminals

Does not protect victim - just criminal

Too lax with minorities; twice as harsh on caucasians

Too radical; too soft

09 FAVORITISM TOWARD SPECIAL INTERESTS

Favoritism toward people of title and social status

Prejudice against natives

His decision was what the papers (Anchorage Times) said he had to decide

10 OTHER

Too long in office

Continuity and experience

Didn't know them/didn't like them

QUESTION 10: "In deciding whether to retain or not retain a judge, which source of information was most important to you? Other - "

01 PERSONAL OPINION/EXPERIENCE

Some degree of personal knowledge

My own opinions

02 LACK OF KNOWLEDGE - DIDN'T VOTE

I had no information on the judges, so I felt I could not vote regarding them

03 FRIENDS OPINIONS

Friends opinions - knowledgeable friends

Other people's involvement with that judge and how they feel

04 MEDIA REPORTS

Newspapers were the best source of information

05 POLICE VIEWPOINTS

The viewpoints held by policemen

07 OTHER/MISCELLANEOUS

Protesting leniency and increased crime and stupid judgements

QUESTION 11c: "If you think the Judicial Council left something out, tell us what you'd like to see added."

01 JUDGE'S PERFORMANCE HISTORY

Attitude toward repeat offenders

Track record

Consistency

Willingness to speak up for justice when law does not provide it

02 MEANS OF ESTABLISHING CREDIBILITY

Honest and a human being

There should be a means of establishing a judge's credibility

Corruptibility

03 PREJUDICE FOR/AGAINST SPECIAL INTERESTS

04 EXTENT JUDGE KEEPS UP WITH NEW IDEAS/CHANGES IN CRIMINAL JUSTICE SYSTEM

Continuing education in the profession

Innovative approaches to sentencing in court procedures

A sense of where the state is going; in the way of criminal justice; procedure; awareness.

05 KNOWLEDGE OF ALASKA ISSUES, COMMUNITY ISSUES

I believe that judges must know the community they serve

Background information on judges position on relevent issues to Alaska voters

06 PERSONAL ATTRIBUTES

I feel the way they conduct their personal lives is very relevent to the public position they are in

Personal financial/political involvement

He should have at least a ten year residency

Common sense to uphold the law

10 OTHER

Baptism of Holy Spirit

Respect of other judges

Consider the burden (mental and physical) pain imposed on victims by criminals and law breakers

I can't understand what a judge's personal feelings have to do with his or her ability to weigh and determine the facts in a case

QUESTION 12a: "Aside from surveying lawyers, peace officers, and jurors, are there other ways that judicial performance could be evaluated that would make it easier for voters to decide whether or not to retain a judge? If YES: what are these ways?"

01 JUDGE'S PERFORMANCE HISTORY

An objective evaluation of track record - what was actually accomplished

A recap of decisions rendered and sentences granted on various cases

Analyze sentencing records

Comparison of sentences imposed for similar offenses

Percentage of cases overruled by a higher court

02 MORE QUESTIONAIRES TO PUBLIC/MEDIA

Including mayor, city manager and councilmen in survey might help

Survey local newspapers and radio that might have followed the judges actions more clearly

Survey public opinion

Send surveys sooner

Interview victims of criminals

03 SURVEY PEOPLE WHO APPEARED BEFORE JUDGE

Survey defendants and complainants

Survey of crime victims to see if satisfied with punishment

04 EVALUATE RECIDIVISM OF THOSE SENTENCED

Percentage of criminals tried by judge who repeated crimes after acquittal

05 MAKE THEM CAMPAIGN

Elect judges

Put all judges open to run for their offices like any other politician

06 MEDIA APPROACHES

Advertising

Reviews of performance with qualified person on call in T.V. program

Perhaps a public forum

More mailing information

Weekly newspaper columns on how judges decided their cases

07 OTHER

Survey judges peers

Allow the citizens to be the sole decision makers on whether to retain a judge or not

People too close to courts should not be only evaluators

Persons at criminal justice center at U.A.A. who might be helpful

Job description, type of qualifications the man needs for the job

08 THOSE WHO WORK WITH THEM

Let people who work around the court system, evaluate the judges

Legal secretaries

Court recorder, who is always present might be a source of information

Judges feelings on other judges

QUESTION 13a: "Had you heard about the Alaska Judicial Council before the Fall 1978 election? If YES: what had you heard about the Council?"

01 THAT IT EXISTED

Merely a knowledge of its existance

Not very much

Can't recall other than the pamphlet, maybe this is a sign that the public is not made aware of the Alaska Judicial Council

Various things

I know when it was formed and sometime prior, I probably voted for something that authorized it

02 RECOMMENDED AND EVALUATED JUDGES

Provided election information

Their duties

Rating of judges, rating of judge applicants, composition of council

Improve the quality of the bench, by selecting men who's knowledge of how and the characteristics of human behavior would be beyond question

That the council was concerned with law enforcement and the fairness exhibited by judges on the bench

03 COUNCIL TOO BIASED

Not good - shows bias toward the lawyers viewpoint

04 WASTE OF MONEY

Supported by ABA - more taxes required to support it

A waste of taxpayers money

05 DOING A GOOD JOB

I believe the average voter (90% of them) are not capable of evaluating or voting on a judge. So the Judicial Council is definitely a better process

Good remarks

All good things, good work

06 MISCELLANEOUS/OTHER

May exercise a vendetta

My uncle was on it

Some of it was good and some of it was bad

That it was too powerful in some ways and not powerful enough in others

QUESTION 13b: "How, or in what connection had you heard about the Council?"

01 VOTER PAMPHLET

In the election pamphlet

02 WORD OF MOUTH

General conversations with many people

Husband mentioned it

From mouth to ear

By being an Alaskan for 30 years

03 PERSONAL EXPERIENCE

As a lawyer, I was familiar with it

Police work

Working in a law office

Attending the council meetings

04 FRIENDS IN PROFESSION

Knowledge of membership and knowing some of the members

Friends in profession

From a former member whose opinion I do not always agree with

05 MEDIA

Media coverage

The Anchorage Times newspaper

Television

On the radio while driving

07 OTHER

This questionnaire

QUESTION 16: "Alaska State law requires the Alaska Judicial Council to provide information to voters concerning its evaluation of judges. How do you think this information ought to be communicated to the voters?"

01 RADIO/T.V. INTERVIEWS OF JUDGES

Programs on public/commercial radio and T.V. stations

Radio and T.V. interviewing of judges

Public meetings with question and answer

02 PUBLIC ACCESS TO ALASKA JUDICIAL COUNCIL INFORMATION

Public access to all council information and decisions

Make a report available to all who request it

Direct mail of more case background

Special emphasis on getting information to the bush concerning those judges or decisions that may effect their way of life

Places where large amounts of public visit

03 COURTROOM OBSERVATION

Alaskan's should be encouraged to sit in on various judge's courts to view procedures and attitudes

06 OTHER

Keep costs down and information up

None at taxpayers expense

Testimony by the peace officers association

QUESTION 18: "If you have any comments or suggestions concerning the Alaska Judicial Council's evaluation of judges (or this questionnaire itself), please write them on the back of this page."

01 SUGGESTIONS FOR IMPROVED CRIMINAL JUSTICE SYSTEM

To bring home to the voter the importance of the voting process; it would be very helpful to preface the evaluation of judges with statistics regarding the cost of:

The Judicial system per year

The cost of enforcement per year

The estimated cost of crime per year in Alaska

The percentage of felons who repeat crimes

Lets give sentences to match the crime. I'm for building bigger and better jails, with strong bars and anyone who does not want to spend time there will keep his nose clean

I think the whole Alaska Court System needs revamping. Especially the Juvenile System whereby parents are put on trial for something a teenager does and the kid goes scott free even when the parents turn the kid in with more evidence than the police...the Juvenile System stinks.

I am extremely unhappy with the crime rate in Alaska, as most everyone is. I put the blame on the judges and their light sentences plus "compassion" for the criminals instead of the victims.

02 SUGGESTIONS FOR IMPROVED JUDGE RATING SYSTEM

The average voter needs this information since she is relatively naive of judicial practices, however members of the council should be selected by very stringent character guidelines to reflect unbiased analysis.

The council should present the facts on performance. Any information showing a judge should be published but no recommendation should be made. The voter should make the decision on his own.

Having a council channel and present information to voters is too easy of a way to corrupt the information they are supposed to be putting out. A very good way to keep facts away from those who are voting.

I really don't think that judges should be elected. I was all in favor of keeping them in office by appointment. I think that election will make it more if it is not already political.

The Alaska Judicial Council should print the true facts using a point system, as to how the law is upheld by the judge, strictness on repeat offenders etc. Explain the system used on the pamphlet so every voter will understand and then let the voter make up his own mind who to vote for without any suggestions or hints from the council.

I do not believe that either peace officers or attorneys are capable of making an objective and unemotional evaluation. Jurors may be able to make an objective evaluation but they are poorly qualified and have limited experience. Perhaps other judges are in a better position to evaluate performances.

03 PERSONAL OPINIONS/BIAS

These pamphlets are probably very expensive to print, is there anyway to send one to a household? We have four registered voters with the same last name in the household and we each received a pamphlet when one would have been sufficient.

I think the council has no business expressing and impressing and pressing its own opinions on the public. I think my tax dollars are being wasted by a group of people trying to impose their own ideals on a free election. Since it is tax money that supports it or at least government money, I don't want the government telling or implying to me about how I should vote.

The original intent of the law is to protect the innocent victim not the guilty criminal. Judges should not be punitive but must take into account the wrong suffered by the innocent victim.

I think most people who are never confronted with court action are not interested in judicial matters. Most people have no idea of who the judges are or what their performance is.

I am a lawyer and it seems silly to ask these questions to me.

Don't waste my time with this.

04 OTHER

Take every precaution to insure that the credibility of the council is not damaged or suspect. Paramount to its value is our ability to trust in their results.

I feel the election pamphlet is too lengthy and that the prime perusal is given by most readers to the candidates for governor etc. and the candidate for judge retention is lost in a volume of paper. Most persons I have talked to have never met a judge or seen a judge in action in a courtroom, consequently the media is the only basis for decision when voting time is at hand. Since judges are not too often in the spotlight as are Senators and Representatives, I would welcome an intelligent guideline for voicing my vote, preferably a separate ballot. In a small town in Texas "Dog Catcher" is listed last on the ballot; whereas the election of Judges is listed last on our ballot and consequently takes the position of least importance, least consideration, least knowledge by the public.

05 POSITIVE RESPONSE TO ALASKA JUDICIAL COUNCIL QUESTIONNAIRE

I was happy to take this time to complete this survey for it is by this means that citizens such as myself can be informed and express our views regarding the judiciary.

I think the questionnaire is okay however, there are a lot of alternatives which were not offered.

Questionnaire is well-written with excellent opportunities to respond. It is commendable that the Judicial Council provides quality control over its own actions and recommendations.

Thanks for the persistence (third letter). My lack of community participation is unforgivable.

06 NEGATIVE RESPONSE TO ALASKA JUDICIAL COUNCIL QUESTIONNAIRE

Personally I feel this is a waste of the taxpayers money. As you stated, the Alaska Judicial Council is required by law to provide information to voters on judges so what does answering questions for you accomplish. Maybe the citizens of Alaska should be answering questions on how we could improve our electoral process in general.

I feel that the Alaska Judicial Council is a special interest group dedicated to the maintenance of the present judicial system and should thus be stated in all this information that has been circulating about. We need to hear from more than one group if we are to make rational choices in judgeship retention.

Minimize study and/or review committees of state government.

I think some of the questions are a little too prying.

07 QUESTIONNAIRE SHOULD HAVE BEEN SENT OUT SOONER AFTER ELECTION

Had this form been sent earlier I would have remembered more of what happened last fall.

I can't remember that far back (7 months since Nov.) and I didn't understand half the things in the voting system.

APPENDIX C

SELECTED RESPONSES OF A RANDOM SAMPLING
OF ALL DISCRIMINATORS

DISCRIMINATORS

SELECTED RESPONSES OF A RANDOM SAMPLING OF ALL DISCRIMINATORS

QUESTION 7: "If you believe that more information should be provided, what would you like to know?"

Sentencing records--stern or mild

Consistency of sentencing, regardless of race; important interpretations of laws; community involvement

How the judge performs his duty as noted by others in the court; how juries regard his opinions

History of cases heard and verdicts delivered

Their judgements in such cases as abortion, drugs, and violent crime

Track record for sentences handed out for various types of offenses, such as dope pushing, homicide, game law violations

Court records, sentencing records, judges' salaries; conviction records should be more available

Academic background; objective evaluation by other than attorneys; decision records for several years

More negative aspects instead of only the good points to help one decide. Information given makes every judge seem a saint; such as, this judge lenient towards etc. (marijuana users, first offenders--whatever)

A little more background of each judge; input from judge himself as to good points--not self-defense

Background, years as attorney (experience), would like to see something on past cases, but realize it would be too involved

The quality of his sentencing; whether he/she coddles criminals or protects law abiding citizens

I'd like to read more on the sentencing record of each judge. There have been questions concerning possible discrimination. I'd like more information on who's sentenced (race, age and sex)

Constitutional evaluation by public interest groups; both political party evaluations; elimination of judges participating in evaluations

The judge's action on second and third offenders

Need to know more about judge's personal lives; judges need to get out and meet the public

More details as to why they were not recommended

Percentage of decision reversals from a higher court and percentage of decision affirmations; who was responsible for getting the judge his position to begin with. Political? Reward? Earned? More about the tenure of each judgeship; i.e., are we stuck with someone for "x" number of years regardless of performance

Why they turn the drug pushers out on the streets to resume their activities

Religious backgrounds and beliefs; their stand on humanism

Percentage factors as to the sentencing imposed, time suspended and fines for those found guilty per type of crime (i.e., assault, traffic cases, etc.)

The information arrived after the election--mail the pamphlet earlier

Would like judges rated by American Civil Liberties Union--there is a chapter in Anchorage

Case results (i.e., judgement records by specifics)

Case load; list of decisions; analysis of important decisions

Expertise in Alaska dealing with minorities and Alaskan problems

How some of them were ever appointed in the first place

More background information

Lenient to offenders--hard on repeat offenders

QUESTION 8a: "Can you tell us why you voted to retain these judges?"

By apparent performance records and personal knowledge

They had done adequate jobs

Because of their conservative law and order stands

Good legal background/record

My opinion of their work based on the pamphlet and discussions with involved citizens

I knew nothing against them

That they were doing a good job

As a police officer, I felt that some of the judges were fair and just

After discussing with others and reading all information available

Having read the pamphlet and newspaper accounts of their actions in various cases, I felt they were worthy of retention

Analysis of track record in sentencing seemed to indicate a hard line attitude toward crime and criminals

Based on their record and previous major decisions

Their record seemed good

They did their job

I felt that the judge had been fair and had handed out at least adequate punishment

Knew their record of decisions

Because the Judicial Council and the Peace Officers Association rated them acceptable

Past record

As much as possible, I read the papers and how judges hand down sentences. If a judge consistently tries to deter crime with stiff sentences, I vote for him

From what I read in pamphlet and newspapers, year 'round

I felt they had handled good decisions on drug and other violations

Their fairness and restraint from favoritism

Some I know personally, others by reputation

I voted to retain one judge because of the way he ruled in a certain hearing

They appeared to be doing a good job

One I have followed in the papers consistently for a year or two. Those I didn't know, but who had good ratings from both the Bar and jurors, I voted for

In my opinion, they were good judges

Handed out stiffer penalties

They seemed to be doing their job of putting away crooks and avoiding hair-brained decisions

Just simply from the information in the voter's pamphlet and ratings

From information I received either through the media or the Council's pamphlet. I felt the judges would do us a good job

Favorable Judicial Council ratings; media, exposure regarding court proceedings; opinions of friends

Namely, due to opinions in media of persons or groups whose judgement on the subject we respected. Not from any personal knowledge of judges professionally or as individuals

His impartial and sterner decisions

If I felt they had Godly characteristics

Track record as appeared in Anchorage Times (Court Records)

Basis of past records

Figured they were doing a good job

From the decisions they had made that were published last year in the newspaper

Believe they had a good rating

I would vote from them if we had the normal voter's right to vote for our judges and district attorneys

Based on information (general) provided to public

Doing the best job they can under the present laws

Mainly from the survey, the ones that seemed to be fair and just and not hypocritical

I like them

Based on what I knew of their records

Publicity was favorable concerning them. Outcome of cases seemed fair and ran along my train of thought

Their records since being seated

Was impressed by reports in pamphlets

On their overall record--no one is perfect

Past record of performance

Because we need some good judges

Names and actions known through public media throughout the year

Personal knowledge of; also--Judicial Council seemed slanted; so voted for judge due to media

From the evaluations, I figured someone has to hold down the fort, went on the opinions of the lawyers

QUESTION 9a: "Can you tell us why you voted not to retain these judges?"

By apparent performance record and personal knowledge

Unacceptable actions/decisions

Because of their apparent liberal stands and lenient sentences given criminal defendants

Poor sentencing experience/unprofessional background

Mainly discussions with friends, acquaintances and attorneys as to who is honest and unbiased in rulings and who was not performing properly

I thought him to be biased in his opinion

They were not doing the job

As a police officer, I felt that some of the judges were unfair and unjust

After discussing with others and reading all information available

Having read the pamphlet and newspaper accounts of their actions in various cases, I felt they were unworthy of retention, especially certain judges lack of sound judgement (in my opinion)

Track record on sentencing seemed to indicate a soft line attitude toward crime and criminals

Any judge over sixty should be eliminated; he's made enough of the taxpayers money

They seemed incompetent and a waste of our time

Judge too lenient

Those judges, I feel, made and are making "contempt of court" a thing that should be a reward, not a penalty

Disagreed with their decisions in many cases

Because the Judicial Council and the Peace Officers Association rated them as unacceptable

Past record

It appears some judges have no interest in deferring crime from barking dogs to murder--and give weak sentences allowing criminals to roam the streets. I vote no to these judges

Too much self-defense against attack from peer group

Did not think they had made good decisions

Their favoritism toward people of title and social status

Material I had read about them

The same reason I voted for some judges; their actions (use of media) influenced my decisions

His rating by AJC wasn't good

Poor ratings and first hand experience when the judge was here

Because I thought someone else could do a better job

Too liberal

Some judges don't like punishing criminals, others like to punish the citizens by playing games like throwing out the Beirne Homestead or okaying marijuana. I kept track

From personal experience from living in a town where I (along with many others) felt the judge was too lenient

From information received

Reputation--newspaper

Media ads; negative Judicial Council ratings

Personal knowledge

Name: ... to media opinions of persons or groups whose judgement on the subject we respected. Certainly not from any personal knowledge of the judge's professionally or as individuals

Pampering the criminal

If I felt they had ungodly characteristics

Seemingly random decisions on similar types of cases

Basis of past record

They were not doing a good job

I felt they were too lenient

Too lenient

From the decisions they had made that were published last year in the newspaper

I felt those not voted for would make better plumbers

Because of a decision he had made which was bad

Because of your ratings

Too lenient to law violaters

Because of their decisions. I used the survey mainly to make my decision

Comments I heard about them

Based on what I knew of their record, I considered them unprofessional and undedicated

No information available to me and could find none close to voting date

I did not feel they were effective

Was not impressed by reports in pamphlet

Mostly because of the ridiculous sentences passed out on drug and felony cases

Didn't like the background information on some

Primarily from the Council's rating; somewhat from public media

Didn't like record

From the information that Judicial Council put out, not acceptable. See how easily I was led.

QUESTION 11c: "If you think the Judicial Council left something out, tell us what you'd like to see added."

I believe that judges should know the community they serve. They should have some involvement with community happenings to know the wants and needs and desires of the people whose problems they are helping to settle

Record of decisions

A sense of where the State is going; in the way of criminal justice and sentencing procedure--awareness

Sentences given on criminal matters

Common sense; courtroom arrogance toward trial participants and attorneys (both sides); personal character (as differentiated from personal popularity)

An actual scorecard of decisions. These 8 statements are too general and idealistic. A system of grading judges based on their decisions from soft to hard on those involved, criminal or civil

Common sense and, for God's sake, let us do something for the injured parties in felony cases--they are the real minority

Who can judge or rate human factors; daily moods;
attitudes; understanding; compassion

QUESTION 12a: "If YES: what are these ways?"

Sentencing record

If the 8 points in question 11 are answered correctly and in language the average voter can understand, think you have done a good job of getting the necessary information to the voters

A list of cases heard and verdicts and sentences delivered

Perhaps a public forum direct questioning of the judges like a TV question/answer program, if feasible

Survey of crime victims or their families to see whether they are satisfied with the punishment

Judge's impact on community; how do the judges' sentencing of second and third offenders compare with sentencing of first offenders

Television media--let us hear their views towards certain social injustices (or must they remain hidden)

Some kind of summary of past action on various cases. Send to all voters as they may have to vote absentee, include other judge's opinions, if possible (possibly they would not evaluate each other)

Survey public opinion also

There are persons in the Criminal Justice Center at the UAA who have a great understanding of the justice system. Maybe they could be helpful

Constitutional and conservative organizations evaluations; political parties evaluations, history of important decisions

Percentage of decisions upheld or overruled by a higher court; case load handled; absenteeism; such as illness, disqualification from a trial or other valid or invalid reasons a judge may not be on call

It would be helpful for me to have a job description; what types of qualifications does the man need for the job

Percentage factors as to sentence imposed, time suspended and fines for those found guilty per type of crime (i.e., assault, traffic cases, etc.)

Knowing the way judges feel about certain subjects

Publish a statistical summary of their decisions.
Example--number of Fish and Game violations found for or against defendant

Let the voters have the electing vote for Superior Court judges and the D.A.'s via the constitutional amendment. It was a noble experiment; judicial appointment, but it has failed; let's admit it. Elect said officers and receive decent judicial services

Would like judges rated by American Civil Liberties Union

Let the voter decide by giving him mountains of facts; i.e., all the decisions the judge has made could be compiled by general categories

Some way to learn the patterns their decisions follow

Make all of the media absolutely factual and responsible in their reporting--they can keep their opinions to themselves. Given the facts, I am perfectly capable of making up my own mind

History of decisions versus case particulars

Repeat offenses of criminals

A more detailed examination of their past sentencing history

Why don't we look through the eyes of the defendants; a possibility. Sure, most that were sentenced might say, "that no good . . .", but out of the masses may come something



Alaska Judicial Council

303 K STREET
ANCHORAGE, ALASKA
99501

EXECUTIVE DIRECTOR
MICHAEL L. RUBINSTEIN

LAY MEMBERS
KENNETH L. BRADY
JOHN E. LONGWORTH
ROBERT H. MOSS

LAW MEMBERS
MARCUS R. CLAPP
MICHAEL M. HOLMES
JOSEPH L. YOUNG

CHAIRMAN EX OFFICIO
JAY A. RABINOWITZ
CHIEF JUSTICE
SUPREME COURT

April 20, 1979

Dear Voter:

In 1975 the State Legislature required the Alaska Judicial Council to evaluate all judges before their retention elections and to provide the voters with information about those judges. The law also permitted the Alaska Judicial Council to make a recommendation whether or not any judge ought to be retained in office.

Under this legislation the Alaska Judicial Council, which consists of the Chief Justice of the Alaska Supreme Court, three non-attorney members, and three practicing lawyers, has provided voter information and made recommendations in the 1976 and 1978 general elections. The Council has developed a means of evaluating each judge by polling the opinions of law enforcement personnel, lawyers, and private citizens who have served on juries. The primary way the Council informs the public of its results has been through the Alaska Official Election Pamphlet, distributed to all registered voters prior to each general election.

The Judicial Council's program of evaluating judges and providing public information is now itself being evaluated. This evaluation is being conducted by Northrim Associates, an independent Alaskan firm specializing in such work. This is being done so that you, the voter, may let us know what you think the Council should use as criteria in rating the performance of judges, and how the Council best ought to communicate its information.

Enclosed is a questionnaire and a self-addressed, stamped envelope. Your answers will be kept confidential. The envelope and the questionnaire are separated as soon as they are received by Northrim. The return envelope contains your name only so that Northrim Associates can keep track of who returns the questionnaire in order not to mail another to any individual who has already returned it.

Please take a few minutes to complete this questionnaire and return it in the enclosed envelope by April 30, 1979. In cooperating with this effort you will be helping yourself and other citizens of Alaska to cast a more informed ballot the next time judges are up for retention. Ultimately, we hope your contribution will improve the quality of justice in Alaska. Thank you for your time and effort.

Sincerely,

Jay A. Rabinowitz
Chief Justice

Enclosure



LAY MEMBERS
KENNETH L. BRADY
JOHN E. LONGWORTH
ROBERT H. MOSS

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SUPREME COURT

Alaska Judicial Council

303 K STREET
ANCHORAGE, ALASKA
99501

EXECUTIVE DIRECTOR
MICHAEL L. RUBINSTEIN

May 4, 1979

Dear Voter:

On April 20 we asked for your assistance in evaluating the Alaska Judicial Council's program of rating judges and making recommendations about their retention or non-retention. We asked you to complete a questionnaire and return it to Northrim Associates, an independent Alaskan firm which specializes in this type of work.

We have not heard from you.

Assuming that you somehow mislaid the questionnaire, we have enclosed another copy and a self-addressed, stamped envelope.

As was pointed out in the first letter to you, the Judicial Council was mandated by the Alaska State Legislature to evaluate judges and make recommendations to you, the voter. We are now evaluating this system to determine how you, the voter, feels about the system. The only way we can perform our function, or modify it if need be, to your satisfaction, is to hear from you.

The entire process is completely confidential. The self-addressed, stamped envelope, with your name on it is separated from your questionnaire as soon as Northrim Associates receives it. The envelope is the only way they can keep track of who has returned the questionnaire and not send another to the same person.

In order to maintain a good judicial system in this state the Judicial Council has to do its job effectively. For this we need your help.

Please take the next few minutes to fill out the questionnaire and return it in the enclosed envelope.

Thank you for your time.

Sincerely,

Michael L. Rubinstein
Executive Director

Enclosure



Alaska Judicial Council

303 K STREET
ANCHORAGE, ALASKA
99501

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JOSEPH L. YOUNG

CHAIRMAN EX OFFICIO
JAY A. RABINOWITZ
CHIEF JUSTICE
SUPREME COURT

EXECUTIVE DIRECTOR
MICHAEL L. RUBINSTEIN

May 18, 1979

Dear Voter:

This is our third letter to you. We wrote to you first on April 20 and again on May 4. As you will recall, we asked for your assistance in evaluating the Alaska Judicial Council's system of rating judges and making recommendations to you, the voter, regarding their retention or non-retention.

We still haven't heard from you.

You are no doubt a busy person, but the questionnaire we sent to you takes only a few short minutes to complete. Please try to find the time to do it now.

At each election you are asked to vote whether to retain or not to retain the judges on the ballot. Our responsibility is to see that you get enough information to make an informed decision. The Alaska Judicial Council needs your suggestions to determine whether the Council's program of rating judges is meeting your needs. There is no way to know the answer to this question without hearing from you.

Please take the next few minutes to complete the confidential questionnaire and return it in the enclosed envelope. We need your assistance. Thank you for your time.

Sincerely,

Michael L. Rubinstein
Executive Director

Enclosure

APPENDIX E

QUESTIONNAIRE

12 13

14 15

16 17

7. If you believe that more information should be provided, what would you like to know?
1. _____

 2. _____

 3. _____

18

8. Did you vote to retain any of the judges on the ballot?
1. Yes
 2. No

19 20

- 8a. Can you tell us why you voted to retain these judges?
- _____
- _____

21

9. Did you vote not to retain any judges on the ballot?
1. Yes
 2. No

22 23

- 9a. Can you tell us why you voted not to retain these judges?
- _____
- _____

24

10. In deciding whether to retain or not retain a judge, which source of information was most important to you? (Please circle only one - the most important).
1. The judge's own summary of his/her background.
 2. The Alaska Judicial Council's rating of the judge.
 3. The Judicial Council's recommendation of the judge..
 4. A knowledge of the judge based on such things as media coverage of his/her decisions and actions.
 5. Paid advertisements for or against the judge published or broadcast in the media.
 6. Other: (please specify) _____

25 26

11. In the Alaska Judicial Council's survey of lawyers, peace officers and citizens who have served on juries, the Council asked them to rate the following characteristics of the judges:

1. LEGAL KNOWLEDGE AND REASONING ABILITY.
2. CONSIDERATION OF RELEVANT SENTENCING FACTORS.
3. EQUAL TREATMENT REGARDLESS OF RACE, SEX, SOCIAL OR ECONOMIC STATUS AND THE LIKE.
4. RESTRAINT FROM FAVORITISM TOWARD EITHER THE PROSECUTION OR DEFENSE IN CRIMINAL CASES.
5. SENSE OF BASIC FAIRNESS AND JUSTICE.
6. HUMAN UNDERSTANDING AND COMPASSION.
7. WILLINGNESS TO WORK DILIGENTLY.
8. INTEGRITY.

11a. In making your decision to retain or not retain a judge, which of the factors listed above is most important to you? Which is second most important and third most important? (Please use the number next to the factor as listed above).

- ___ Most important
- ___ Second most important
- ___ Third most important

27
28
29

11b. If you think the Judicial Council included too many factors, which ones should be left out? (Please use the number next to the factor as listed above).

1. ___
2. ___
3. ___

30
31
32

11c. If you think the Judicial Council left something out, tell us what you'd like to see added.

1. _____
2. _____
3. _____

33
34
35

16. Alaska State law requires the Alaska Judicial Council to provide information to the voters concerning its evaluation of judges. How do you think this information ought to be communicated to the voters? PLEASE CIRCLE EACH AND EVERY MEANS WHICH YOU THINK IS PROPER.

1. The Official Alaska Election Pamphlet.
2. By direct mail to all registered voters.
3. Speeches and other public appearances by Council members and staff explaining the results of the evaluation.
4. Newspaper advertising.
5. Radio and television advertising.
6. Other: (please specify) _____

47
48
49

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51

52 53

17. If the Alaska Judicial Council, as a result of its evaluation, concludes that a judge is unqualified to remain in office, what should the Council do? (Please choose only one).

1. Only express its opinion in the Official Election Pamphlet.
2. Strongly advertise its conclusion in the media to reach as many voters as possible.
3. Express no opinion on the matter. (Keep its conclusions to itself).

54

55

56

18. If you have any comments or suggestions concerning the Alaska Judicial Council's evaluation of judges (or this questionnaire itself), please write them on the back of this page.

57 58

59 60

61 62

19. Please provide the following information about yourself.

Sex: 1. Male 2. Female

Age: _____

Years of schooling completed: 1-8 9-12 13-16 17+

Community of residence: _____

63

64

65

66

THANK YOU VERY MUCH FOR YOUR TIME IN COMPLETING THIS QUESTIONNAIRE. IF YOU WOULD LIKE A COPY OF THE RESULTS, PLEASE CUT THIS OFF AT THE DOTTED LINE AND GIVE US YOUR NAME AND ADDRESS BELOW. PLEASE RETURN IT WITH THE COMPLETED QUESTIONNAIRE IN THE ENCLOSED ENVELOPE.

NAME _____

ADDRESS _____
(street address or box number)

(city)

(zip code)

APPENDIX F

CODING MANUAL

Column Number	Variable Number	Question	Code
1	---	Deck	1
2	1	Mailing Number	1=first mailing 2=second mailing 3=third mailing
3-5	1a	Questionnaire number	001 and consecutively thereafter
6	2	Q.1 Did you vote	1=yes 2=no 9=NA
7	3	Q.2 Did you vote on judges	1=yes 2=no 9=NA
8	4	Q.3 Had read judges own summary	1=yes 2=no 9=NA
9	5	Q.4 Had seen ads	1=yes 2=no 9=NA
10	6	Q.5 Had read AJC ratings	1=yes 2=no 9=NA
11	7	Q.6 Opinion of ratings	1=helpful 2=good idea 3=of no use 4=should be eliminated 9=NA

Column Number	Variable Number	Question	Code
12-13	8	Q.7 If you believe more info should be provided First Mention	01= Judge's Performance History 02=personal attributes of judge intelligence, religiosity, etc 03=position on key laws, issues 04=courtroom opinion: jurors, attorneys, audience 05=ref. need more info, timing of info, flow 06=prejudice for/against special interests 07=Alaska-specific knowledge, stance 08=Misc. comments/other 09=Who is a member of AJC 10= 11= 12= 13= 14= 99=NA
14-15	9	Q.7 Second Mention	Use Same Code
16-17	10	Q.7 Third Mention	Use Same Code
18	11	Q.8 Vote to retain	1=yes 2=no 9=NA

Column Number	Variable Number	Question	Code
19-20	12	Q.8a Why retain	01=doing adequate job, nothing negative 02=based on judges record 03=AJC ratings 04=reading everything available 05=info in Voter Pamphlet 06=personal attributes of judge (fairness, restraint from favorites, less lenient) 07=discussing w/others 08=personal knowledge/experience 09= 10= 11= 12= 13= misc./other 99=NA
21	13	Q.9 Vote <u>not</u> retain	1=yes 2=no 9=NA
22-23	14	Why <u>not</u> retain	01=inadequate job/not competent 02=info in pamphlet 03= Judge's Performance History 04=AJC ratings 05=personal opinion/experience 06=media reports 07=discussing w/others 08=too lenientw/criminals 09=favoritism toward special interests 10= other 11= 12= 99=NA

Column Number	Variable Number	Question	Code
24	15	Q10. Most important source of info	1=judge's own summary 2=AJC rating 3=AJC recommendation 4=knowledge of judge 5=paid ads 6=other 9=NA
25-26	15a	Q10. Open code for Other	01=personal opinion/experience 02=lack of knowledge/didn't vo 03=friend's opinions 04=media reports 05=police viewpoints 06= 07=other 08= 09= 10=did not specify reasons 99=NA
27	16	Q11a. Factors most important, etc. Most Important	1=legal knowledge 2=consider sentencing 3=equal treatment 4=restraint from favoritism 5=fairness 6=human understanding 7=willing to work 8=integrity 9=NA
28	17	Q11a. Second Most Import.	Use Same Code
29	18	Q11a. Third Most Import.	Use Same Code
30	19	Q11b. Too many factors First Mention	Use Same Code
31	20	Q11b. Second Mention	Use Same Code
32	21	Q11b Third Mention	Use Same Code
33	---	-----	Leave Blank

Column Number	Variable Number	Question	Code
34-35	22	Q11c. What added	01=judge's performance history (sentencing record, etc.) 02=means of establishing credibility 03=prejudice for/against special interests 04=extent judge keeps up with new laws/changes in criminal justice system 05=knowledge of Ak issues, community issues 06=personal attributes 07=agrees w/above list 08= 09= 10= other 99=NA
36	23	Q12. Other ways to evaluate	1=yes 2=no 9=NA
37	---	-----	Leave Blank
38-39	24	Q12a. What ways	01=Judge's Performance History 02=more questionnaires to public/media 03=survey people who appeared before judge 04=evaluate recidivism of those sentenced 05=make them campaign 06=media approaches 07=other 08=those who work w/them 09= 10= 88= DK 99=NA

Number	Number	Question	Code
40	25	Q13. Heard of AJC	1=yes 2=no 9=NA
41-42	26	Q13a. Heard what	01=that it existed 02=recommended and evaluated judges 03=council too biased 04=waste of money 05=doing a good job 06=misc./other 07= 08= 09= 10= 99=NA
43-44	27	Q13b. Heard how	01=voter pamphlet 02=word of mouth 03=personal experience 04=friends in profession 05=media 06= 07= other 08= 09= 10= 99=NA
45	28	Q14. AJC publish info good idea	1=yes 2=no 9=NA
46	29	Q15. AJC recommend a good idea	1=yes 2=no 9=NA

Column Number	Variable Number	Question	Code
---	---	Q16. Method of Communication	
47	30	Election Pamphlet	1=circled 2=not circled
48	31	Direct Mail	Use Same Code
49	32	Speeches	Use Same Code
50	33	Newspaper Ads	Use Same Code
51	34	Radio/TV Ads	Use Same Code
52	35	Other	Use Same Code
53	35a	Other-Open code	1= radio/TV interviews of judge 2=public access to AJC info 3=courtroom observation 4= 5= 6= other 7=did not specify 8=not circled
54	36	Q17.If AJC concludes unqualified	1=Only election pamphlet 2=strongly advertise 3=express no opinion 8=multiple answers 9=NA
55-56	---	-----	Leave Blank

Column Number	Variable Number	Question	Code
57-58	37	Q18.Comments/suggestions First Mention	01=suggestions for improved criminal justice system 02=suggestions for improved judge rating system 03=personal opinions/biases 04=other 05=positive response to AJC questionnaire 06=negative response to AJC questionnaire 07=questionnaire should be sent out sooner after election 08= 09= 10= 99=NA
59-60	38	Q18.Second Mention	Use Same Code
61-62	39	Q18. Third Mention	Use Same Code
63	40	Q19a. Sex	1=male 2=female 9=NA
64	---	----- (note:age is columns 68-69)	Leave Blank
65	41	Q19c.Years of school	1= 1-8 2= 9-12 3= 13-16 4= 17+ 9=NA
66-67	42	Q19d.Residence	01=Anchorage 05=District 5 06= " 6 13= " 13 14= " 14 15= " 15 16= " 16 19= " 19 99=NA
68-69	43	Q19b. Age	Code exact age 99=NA

Electing Alaska's Judges

Dear Editor:

I favor the election of judges as provided for in any number of bills pending in the Alaska Legislature.

Criticism of the current manner in which judge vacancies are filled from a list of names selected by a judicial council (the Missouri Plan) dates to the constitutional convention. It was feared that the three attorney members on the seven-member judicial council would combine with the council's presiding officer, the chief justice of the Supreme Court (himself a member of the bar), to nullify the influence of the three lay members. Presiding Judge Lester Wm. Roth of the California Court of Appeal says the organized bar would dominate the selection process and effectively appoint all judges even where its representation on the judicial council does not make up a majority, as it does in Alaska.

Although a lawyer, I must reject the arguments of the organized bar lobby in support of its continued domination of the judge selection process. Instead I share the views expressed by Judge Roth in a speech delivered to a local bar association in California.

First, Judge Roth disputes the Missouri Plan's underlying theory that selection of judges based on ratings by members of the bar insures obtaining better qualified persons while keeping the selection process out of politics. The proposition that lawyers know lawyers better than laymen do, or that they are in a better position to find out, is "a complete fallacy," says the judge.

There are simply too many lawyers, and no lawyer can honestly say that he has accurate knowledge of the character and competence of lawyers with whom he has not dealt. In many cases, laymen can give a more accurate appraisal of a lawyer than other lawyers can. Moreover, is there any reason why the results of the bar's screening method cannot be made known to the public for its consideration under an elective plan?

Second, the judge argues in the strongest language that political pressure which the Missouri Plan purports to eliminate is in reality increased. There is a firm of politics understood by the general public and to which the governor as final appointive power is subject. In addition there is "organized bar politics which is not understood by the public, nor are they of interest to the vast majority of lawyers, and to which the public and the vast majority of lawyers are not privy and which, in contrast to general politics, is an exact science

practiced by a self-perpetuating inner group.

To be sure, the suggestion that an election process could be totally depoliticized is nothing short of naive. However, Judge Roth says this form of politics is less undesirable than bar politics, which merely leads to appointment of the bar association buffs whose "primary claim to the job is his devotion to bar association personalities and his willingness to perform their chores."

Furthermore, by making the office of judge non-partisan, election by the people is freed of the intense party involvement which Chief Justice Bochever rightfully asserts may lead to political corruption.

On the other hand, judges elected by the people are more likely to reflect a broad range of social, ethnic, cultural and educational backgrounds than judges chosen by the bar's self-perpetuating inner group. "The history of bar politics has demonstrated that the organized bar or organized bar groups do not have the same hospitable attitude toward those who are members of ethnic minorities as does the public or an elected official," quoting Judge Roth.

In summary, the current manner of judge selection, while offering neither more competent nor less political judges, also offers none of the advantages of election by the people. What it does do is vest virtually exclusive power over judge selection in an elite and privileged few who are not accountable to or representative of the general public or even of the majority of lawyers.

Chief Justice Bochever's point that judges ought to be beholden to none is well taken. However, can he assert with equanimity that an elite clique of bar members who would hire legislative lobbyists to further special interests may not seek to use its power over judge selection to influence the judicial process as well?

The people of Alaska deserve better.

Ronald Wielkopolski
710 N. Pine St.

Sen. W. E. (BRAD) Bradley

Elective Justice

PROPOSALS to elect Alaska's attorney general and judges aren't exactly the hottest political issues of the day. But if the two questions reach the November ballot, they will become big issues.

Before the Senate are resolutions placing the two proposed constitutional amendments on the ballot. Both would make major changes in Alaska's justice system. Consequently, they have attracted considerable attention from the legal community if not from the general public.

Under the Alaska Constitution the attorney general and all judges are appointed by the governor. In the case of judges, the appointments are made from candidates selected by the Alaska Bar Association and the Alaska Judicial Council.

MOST STATES operate differently. Forty-three states elect their attorneys general. Twenty-six elect all their judges; 12 others elect some of them. Only Alaska and Arizona use the system whereby all judges are appointed to their first term then confirmed by voters later. In 10 states all judges are appointed with no confirmation vote.

Framers of the Alaska Constitution went against the tradition of elective judges and attorneys general because they wanted to free the court system from partisan politics and make the attorney general answerable to the governor.

THE QUESTION of electing the attorney general is not so complex as that of electing judges. Alaska's history has shown that, as an appointee, the attorney general is first and foremost the governor's lawyer. His job is to make a case for the governor's position. He is also supposed to be the state's chief law enforcement officer. Sometimes those two roles conflict.

An elected attorney general would not be subordinate to the governor. He would be free to enforce the laws impartially and effectively. His success would depend on his performance instead of the pleasure of the governor. He would be free to blow the whistle on the governor and his

administrative team if they stray from the straight and narrow path prescribed by the law.

Politicians fear that an elected attorney general would use the powers of his office to advance himself to the governorship. But the experiences of the 43 states that elect them do not prove this. In states where the attorney general is elected, few have been advanced to governor. Statistics compiled by the Legislative Affairs Agency in Juneau show that in the 41-year span from 1933 to 1974 four West Virginia attorneys general were elected governor. In 24 states the attorney general never made it, if he tried. A smattering of others had one, two or three instances where he did.

ELECTING JUDGES is another matter. Valid arguments abound on either side.

No one wants the court system subjected to partisan political pressures. On the other hand, Alaska's present system makes it possible for judges to operate in a legal ivory tower, virtually free from the responsibility of answering to the people.

If the courts stray away from interpreting the law in a manner acceptable to the people, the citizenry has virtually no way to change things.

Since the Bar Association plays a big part in selecting judges, many people believe judges are more responsible to lawyers than to the general public.

STATE SENATORS have tough decisions to make before voting on resolutions to place the two questions before voters.

Senators should be bold enough to vote against the proposals if they see no merit to them. But they also should consider the people's right to make the final decision at the ballot box.

As they debate the proposals in their own minds and on the Senate floor, one factor certainly should be that a significant number of Alaskans are concerned enough to want the issues on the fall ballot.

Another is that the decision at the polls will be more representative than one made in the political maze of the Legislature.

Sen. W. E. (Bud) Bradley

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM

February 9, 1978

SUBJECT: Selection of Judges (Supplement to W.O. #4382)

TO: The Honorable W. E. "Brad" Bradley

FROM: A. R. Latham
Research Analyst

In our previous memorandum to you (November, 1977) we indicated that much of the data requested was not available in a convenient central source. Thus, we were required to poll the fifty states. Unfortunately, the response to our poll was not at all prompt. Responses now are essentially complete (39 of 50); waiting for additional replies would be fruitless.

No state which replied to our poll indicated that there has been any recent move to change the method of selection of judges.

With respect to each state's age, residency, citizenship, education, past experience, and bar examination requirements, please refer to the attached tables which summarize our findings.

ARL:jm
Attachments

Table 1
Selected Statistics on Judgeships

State	Selection	Past Experience Required	Required Education	Bar Examination	Years Elected
Alabama	e	None f	b	Yes	d
Arizona	e/a	5-10 yrs f	b	Yes	
Arkansas	e	6- 8 yrs f	b	Yes	d
California	a/e	10 yrs f	b	Yes	d
Colorado	a	5 yrs f	None	Yes	
Florida	e	5-10 yrs f	b	Yes	d
Hawaii	a	5-10 yrs f	b	Yes	
Illinois	e	None	b	Yes	d
Indiana	e	Variable	b	Yes	d
Iowa	e/a	None f	b	Yes	n/a
Kansas	e/a	5-10 yrs f	b	Yes	117 yrs
Kentucky	e	2- 8 yrs f	b	Yes	d
Louisiana	e	5 yrs f	b	Yes	126 yrs
Maine	a	None	None	No	
Maryland	a/e	None	None	No	116 yrs
Michigan	e	None	None	No	d
Minnesota	e	None f	None	Yes	d
Mississippi	a	5 yrs f	b	Yes	
Missouri	a/e	None	b	Yes	129 yrs
Nebraska	a	None f	b	Yes	
New Jersey	a	10 yrs f	b	Yes	
New Mexico	e	3 yrs f	b	Yes	56 yrs

State	Selection	Past Experience Required	Required Education	Bar Examination	Years Elected
New York	a/e	^f 10 yrs	b	Yes	138 yrs
North Carolina	e	None	None	No	110 yrs
North Dakota	e	None	b	Yes	d
Ohio	e	^f 6 yrs	b	Yes	156 yrs
Oklahoma	e	^f 4-5 yrs	b	Yes	46 yrs
Oregon	e	None	b	Yes	119 yrs
Pennsylvania	e/a	Mem. Bar 1 yr	b	Yes	n/a
South Carolina	e/a	Lic. Attny 5 yrs	None	No	d
South Dakota	e/a	^f 1 yr	Learned in Law	n/a	n/a
Tennessee	a/e	None	b	Yes	n/a
Texas	e	^f 4-10 yrs	None	No	112 yrs
Vermont	a/e	None	b	Yes	n/a
Virginia	e	^f 5 yrs	b	Yes	d
Washington	e	^f 5 yrs	b	Yes	d
Wisconsin	e	^f 5 yrs	b	Yes	n/a
Wyoming	a	^f 5-9 yrs	Learned in Law	n/a	
West Virginia	e	^f 5-10 yrs		No	d

a = appointed
b = graduate of an accredited law school
d = since statehood
e = elected
f = practiced law
n/a = not available/not supplied when requested

Prepared by:
Legislative Affairs Agency
Research Division
9 February 1978

Table 3
Qualifications of Judges of State Appellate Courts and Trial Courts of General Jurisdiction

State or other jurisdiction	U.S. citizenship		Years of minimum residence				Minimum age		Learned in the law		Years of legal experience		Other	
	A.	T.	In State		In district		A.	T.	A.	T.	A.	T.	A.	T.
			A.	T.	A.	T.								
Alabama	x	x	5	5	..	1	25	25	x(a)	x(a)	..	..	..	..
Alaska	x	x	3	3	..	..	..	..	x	x	8	5	x(a)	x(a)
Arizona	x	x	10(b)	5	x(c)	..	30(c)	30	x	x	10(b)	5	x(z,d)	x(d)
Arkansas	x	x	2	2	..	..	30	28	x	x	8	6	x(d)	x(d)
California	x	x	..	..	..	..	31	31	x	x	10	10	x(a)	x(a)
Colorado	x	x	1	1	..	x	..	..	..	..	5	5	..	..
Connecticut	..	..	..	..	..	..	..	..	x	x	..	..	x(a)	x(a)
Delaware	x	x	..	..	..	..	..	..	x	x	..	..	..	..
Florida	x	x	(c)	..	..	..	..	..	x	x	..	..	x(a,e)	x(a)
Georgia	x	x	3	3	..	..	30	30	x	x	7	7	..	..
Hawaii	x	x	1	1	..	..	..	..	x	x	10	10	x(a)	x(a)
Idaho	x	x	..	..	..	x	..	30	x	x	..	5	x(a,f,g)	x(f,g)
Illinois	x	x	..	..	x	x	..	..	x	x	..	..	x(a,c)	x(a,c)
Indiana	x	x	5	x	x	x	21	21	x	x	10(h)	x	x(a)	x(a)
Iowa	x	x	..	..	..	..	..	..	x	x(i)	..	..	x(i)	x(i)
Kansas	x	x	..	x	..	x	30	30	x	x(x)	10	4 5 (h)	..	..
Kentucky(r)	..	..	5	2	2	2	35	35	x	x	8	8	x(c)	x(c)
Louisiana	..	..	2	2	2	2	..	..	..	..	5	5	x(a)	x(a)
Maine	x	x	..	..	..	..	..	..	x	x	..	..	x(i)	x(i)
Maryland	x	x	5	5	x	x	30	30	x	x	..	..	x(a,d)	x(a,d)
Massachusetts	No legal qualifications in state constitution													
Michigan	..	..	..	..	..	..	..	..	x	x	..	..	x(a,g)	x(a,g)
Minnesota	..	..	..	..	..	x	..	21	x	x	..	..	..	..
Mississippi	..	..	5	5	..	..	30	26	x	x	x	5	..	x(f)
Missouri	x	x	9(k)	3(k)	x	x	30	30	x	x	..	..	x(f)	x(f)
Montana	x	x	2	2	..	x	..	..	x	x	5	5	x(a)	x(a)
Nbraska	x	x	3	3	x	x	30	30	x	x	..	..	x(a)	x(a)
Nevada	x	x	2	..	..	..	25	25	x	x	..	..	x(a,f)	x(a,f)
New Hampshire	No legal qualifications													
New Jersey	Residence of principal law office in N.J.													
New Mexico	x	x	3	3	..	x	30	30	x	x	3	3	..	..
New York	x	x	x	x	..	x	18	18	x	x	10	10	x(a)	x(a)
North Carolina	x	x	1 mo.	1 mo.	..	x	21	21	..	..	..	..	x(f)	x(f)
North Dakota	x	x	3	2	..	x	30	25	x	x	..	..	..	..
Ohio	x	x	1	..	..	1	..	..	x	x	6	6	(a)	(a)
Oklahoma	x	x	..	1	1	6 mos.	30	18(!)	x	x	5	4(l)	(m)	(m)
Oregon	x	x	..	..	..	x	21	21	x	x	..	..	x(a,f)	x(a)
Pennsylvania	x	x	1	1	..	1	21	21	x	x	..	..	x(a,c)	x(a,c)
Rhode Island	x	x	2	2	..	..	21	21	..	x	..	..	..	..
South Carolina	x	x	5	5	..	x	26	26	..	x	5	5	..	..
South Dakota	x	x	1	1	x	x	18	18	x	x	..	..	(a)	(a)
Tennessee	..	..	5	5	..	x	35(n)	30	x	x	..	..	..	..
Texas	x	x	x	x	..	2	35	25	..	..	10	4	(v)	(e)
Utah	..	..	5	3	..	x	30	25	x	x	x	x	..	..
Vermont	x	x	x	x	..	..	..	..	..	..	x	5(u)	..	..

Virginia	x	x	..	..	..	..	21	21	..	..	5	5	..	..
Washington	x	x	1	1	..	..	21	21	x	x	..	..	x(a)	x(a)
West Virginia	x	x	5	5	..	..	30	30	..	..	10	5	x(f)	x(f)
Wisconsin	x	x	6 mos.	6 mos.	..	x	25	25	x	x	5	5	x(a,f)	x(a,f)
Wyoming	x	x	3	2	..	..	30	28	x	x	9	5	x(p)	x(p)
Dist. of Col.(q)	x	x	x	x	..	..	..	..	..	..	5	5	..	..
Guam	x	x	..	..	..	..	..	..	x	x	..	..	..	..
Puerto Rico	x	x	5	..	..	..	..	25	..	..	10	..	x(a)	x(a)

Symbols:

- A. Judges of courts of last resort and intermediate appellate courts.
- T. Judges of trial courts of general jurisdiction.
- x Indicates requirement exists.

(a) Member of, or admitted to, bar. In Alabama, licensed to practice law in the State. In Nevada, licensed and admitted to practice law in all courts in State. In Connecticut, Nebraska, New York, and Washington, shall not engage in private practice. In Montana and Wisconsin, member of the bar at least five years. In New Jersey, no outside law practice.

(b) For court of appeals, 5 years.

(c) For court of appeals.

(d) Good character. In Maryland, integrity and wisdom.

(e) State citizenship.

(f) Qualified voter. In Nevada, qualified elector in State for Supreme Court Justices; in State and district for trial court judges. In Oregon, qualified elector in county of residence for court of appeals judges.

(g) In Idaho and Michigan, judges must be under 70 at time of election or appointment.

(h) Member of state bar 10 years, or five years a trial judge.

(i) In Iowa, part-time judicial magistrates not required to be learned in the law, but like full-time magistrates, must be an elector of the county of appointment, less than 72 years of age, and retire upon attaining that age. Judges of Supreme Court and District Court Judges at time of appointment must be of an age which will permit them to serve an initial and one regular term before reaching an age of 72.

(j) Sobriety of manner.

(k) Required number of years as qualified voters.

(l) Associate district judges required to be licensed to practice in the State; number of years of practice and age not specified.

(m) Shall continue to be licensed attorney while holding office.

(n) Thirty years for judges of court of appeals and court of criminal appeals.

(o) Five out of 10 years preceding appointment or election.

(p) Shall have practiced law in the State at least one year immediately preceding election or appointment.

(q) Reflects 1974 survey. Later information not available.

(r) See footnote (d) on Table 10.

* District and associate district judges must be regularly admitted to the bar; district magistrate judges need not be admitted to the bar, but ^{must} be certified by the supreme court as qualified to serve. (The statute does state that a district magistrate judge must be a high school graduate. no specific educational requirement is indicated for any other judgeships.)

SENATE JUDICIARY COMMITTEE

Bill Number SJR 5 Original Sponser(s) BRADLEY

Title AMENDMENT TO CONSTITUTION PROVIDING FOR ELECTION OF SUPREME CT

Originally Recieved From JUSTICES AND SUPERIOR CT. JUDGES.

Contact BRADLEY Date 1-14-81

Committee Recommendation (MAJORITY) _____

Report Attached yes no) Supporters _____

MINORITY _____

Report Attached yes no) Supporters _____

Object of Bill _____

Committee Amendments _____

Fiscal Impact

LAA Legal/Research Contact _____ Research/Information _____

Concerned Parties:	
Supporting	Opposing
BRADLEY	AK JUDICIAL COUNCIL

Supporting

Opposing

Additional Remarks:

Called Bradley 1-20-81 for back-up material

Introduced: 1/14/81
Referred: Judiciary

1 IN THE SENATE

BY BRADLEY

2 SENATE JOINT RESOLUTION NO. 5

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 Proposing amendments to the Consti-
6 tution of the State of Alaska pro-
7 viding for the election of supreme
8 court justices and superior court
9 judges.

10 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. Article IV, sec. 2(b), Constitution of the State of Alaska,
12 is amended to read:

13 (b) The chief justice shall be selected from among the justices
14 of the supreme court by a majority vote of the justices. His term of
15 office as chief justice expires at the end of his term of office as a
16 supreme court justice [IS THREE YEARS]. A justice may not serve more
17 than one term or portion of a term as chief justice [BUT HE MAY NOT
18 SERVE CONSECUTIVE TERMS IN THAT OFFICE].

19 * Sec. 2. Article IV, Constitution of the State of Alas. , is amended by
20 adding new sections to read:

21 SECTION 17. ELECTION OF SUPREME COURT JUSTICES. Each supreme
22 court justice shall be chosen at a general election by the qualified
23 voters of the State. Each candidate for supreme court justice shall
24 run for a designated supreme court justice position. The candidate for
25 each position receiving the greatest number of votes shall be the
26 supreme court justice for that position.

27 SECTION 18. TERM OF OFFICE OF SUPREME COURT JUSTICES. The term
28 of office of a supreme court justice is six years, beginning at noon on
29 the first Monday in December following his election and ending at noon

1 on the first Monday in December six years later.

2 SECTION 19. LIMIT ON TENURE OF SUPREME COURT JUSTICES. A person
3 who has been elected a supreme court justice for two full successive
4 terms is not eligible to hold office as a supreme court justice until
5 two years have intervened.

6 SECTION 20. ELECTION OF SUPERIOR COURT JUDGES. Each superior
7 court judge shall be chosen at a general election by the qualified
8 voters of the judicial district in which he seeks to serve. Each can-
9 didate for superior court judge shall run for a designated superior
10 court judge position. The candidate for each position receiving the
11 greatest number of votes shall be the superior court judge for that
12 position.

13 SECTION 21. TERM OF OFFICE OF SUPERIOR COURT JUDGES. The term of
14 office of a superior court judge is four years, beginning at noon on
15 the first Monday in December following his election and ending at noon
16 on the first Monday in December four years later.

17 SECTION 22. LIMIT ON TENURE OF SUPERIOR COURT JUDGES. A person
18 who has been elected a superior court judge for three full successive
19 terms is not eligible to hold office as a superior court judge until
20 two years have intervened.

21 SECTION 23. VACANCY. In case of a vacancy in the office of a
22 supreme court justice or superior court judge, the governor may appoint
23 a qualified person to fill the office for the unexpired portion of the
24 term.

25 SECTION 24. TERM OF OFFICE OF SUPREME COURT JUSTICES AND SUPERIOR
26 COURT JUDGES APPOINTED UNDER FORMER PROVISIONS OF THE CONSTITUTION.
27 Notwithstanding Sections 17 - 23 of this article, the term of office of
28 each supreme court justice and superior court judge appointed before
29 the effective date of the repeal of Section 6 of this article expires

1 at noon on the first Monday in December following the general election
2 at which he would next have been subject to approval or rejection. An
3 earlier approval under former Section 6 of this article is not an
4 election to office under Sections 19 and 22 of this article.

5 * Sec. 3. Sections 5, 6, and 7 of art. IV of the Constitution of the
6 State of Alaska are repealed.

7 * Sec. 4. The amendments proposed by this resolution shall be placed
8 before the voters of the state at the next general election in conformity
9 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
10 tion laws of the state.

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MOST AMEND ~~AND~~ TITLE 22 ALSO

22:05:080
22:05:100
22:10:100
22.10.170
22.10.150

Judges &
Justices
(election)
(const. amend-
ment--state)

SENATE JOINT RESOLUTION NO. 5, by Senator Bradley. Proposes amendments to the state constitution providing for the election of supreme court justices and superior court judges. Adds new sections to Article IV (The Judiciary) providing for election of supreme court justices, stating that the candidate for each

position receiving the greatest number of votes shall be the supreme court justice for that position. Provides term of office is six years, and limits tenure by stating that a justice who has served two full terms is not eligible to hold office as a justice until two years have intervened. Provides for election of superior court judges, and states that term of office is four years. Limits tenure by stating that judge who has served three full terms is not eligible to hold office again until two years have intervened. Provides that governor may appoint qualified person to fill vacancy in office of justice or judge. Provides term of office of judges and justices appointed before effective date of resolution expire at noon on the first Monday in December following the general election. Repeals sections 5 (Nomination and Appointment); 6 (Approval or Rejection); and 7 (Vacancy) of Article IV (The Judiciary). Provides amendments to be placed before the voters of the state at the next general election.

Introduced January 14 and referred to Judiciary.

60

MSG 81-00008266 PRTY 1 03/13/81 17:24:12 ORIG: LM00 IN= 0006 OUT= 0087
FROM: MARY/MATSU TO: JUNEAU INFORMATION
TARGET: LJH2 SUBJ: P.O.M. PAGE 0001

TO: ALL LEGISLATORS
FR: FRANK SCHEIBL, BOX 2646, PALMER 99645, 745-4910, -3535, -3515
SINCE IT APPEARS THAT WE MAY HAVE ONLY A GAMBLING 50-50 CHANCE OF NON-
REVERSEABLE DECISIONS FROM APPELLATE COURTS OF ALASKA SUGGEST THAT
THE LEGISLATURE ALLOW LITIGANTS ACCESS DIRECTLY TO THE SUPREME COURTS
(BYPASSING APPELATE COURTS) UNTIL ELECTED JUDGES CAN OCCUPY THE APPELLATE
BENCHES. OR, FREEZE MOST APPELLATE ACTIVITY UNTIL ELECTED JUDGES CAN
BEGIN WORK.