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THE LEGISLATURE OF THE STATE OF ALASKA
THIRTIETH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 79
 Title "An Act repealing peremptory disqualification of a judge...."
 Requested by House Judiciary Committee Date 1/26/83

II. FISCAL DETAIL

Agency Affected Department of Law
 Program Category Affected Administration of Justice
 BRU, Program, Or Subprogram(s) Affected Prosecution
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		X	X	X		

Costs that will occur cannot be determined at this time. See analysis below.

FUNDING (Thousands of Dollars)

General Funds costs that will occur cannot be determined at this time.
 Please see analysis below.

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND		X	X	X		
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL TIME						
PART TIME						
TEMPORARY						

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

Although not quantifiable at this time, this bill has the potential for causing a significant fiscal impact on the Department of Law, the Public Defender and the Court System. The department rarely uses peremptory disqualification and the department's Criminal Division probably does so only 10 or 12 times each year. The problem will arise from the private criminal defense bar which disqualifies some judges 30% or 40% of the time. If the private bar continues to seek this same level disqualification, based on cause, our prosecutors will then have to devote substantial portions of their time participating in a two-tier disqualification hearing process. Without any prior experience to guide us, the department is hesitant to speculate on the actual cost that this bill might cause. The department does believe that this bill will have the effect of hampering its

11. FISCAL DATA
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 BRU, Program, Or Subprogram(s) Affected Prosecution
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Costs that will occur cannot be determined at this time. See analysis below.

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 General Funds costs that will occur cannot be determined at this time.
 Please see analysis below.

GENERAL FUND		X	X	X	
FEDERAL FUNDS					
OTHER (Specify Source)					

POSITIONS

FULL TIME					
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Richard L. Peques

IV. DATE January 28, 1983 PREPARED BY Richard L. Peques, Dir. Adm. Svcs.
 AGENCY Department of Law
 PHONE 465-3572
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/82)
 OMB review by Guy Bell

Fiscal Note
HB 79
Page 2

overall ability to prosecute criminal offenses, by diverting already diminished resources from other matters currently being addressed.

Lawyers' muscle DR

THE LAWYERS in Homer continue to prevail in the case of the transfer of District Court Judge James Hornaday from their town to Anchorage.

Those lawyers wouldn't try criminal cases before the judge because he was handing out severe punishment for drunken drivers. So many of them boycotted his courtroom that Judge Hornaday had little to do. Anchorage lawyers had to be sent to Homer to handle the load.

Judge Hornaday protested his forced move by appealing it. This week, a memo filed with state and federal court from the attorney of the presiding judge who made the transfer maintains it was done through due process.

The peremptory challenges in Homer have turned out to

be a powerful instrument in the lawyers' control over that small community's judicial system. They also have frustrated the efforts of a conscientious judge to control the drunk driving on Alaska's roads and highways.

THE LAW that allows peremptory challenges needs modification so that abuses such as the one in Homer can be avoided. Judges need to be able to concentrate on the business at hand and not be required to concern themselves with lawyers' attitudes.

Working on proposals for such a modification would be a good job for the members of the legislature between the time they adjourn this year and meet again next January.

TIMES 5-20-83

Pre-emption

of judges

'disruptive'

by Jeff Berlner
Times Writer
2-6-83

A handful of state judges are "disrupting" the state court system because they are removed from cases so frequently, says state court administrator Art Snowden.

Court records show that one Anchorage judge and five other judges from around the state are excused from cases far more than their colleagues.

Although the current debate over pre-emptions has focused on Homer District Court Judge James Hornaday, he is not the only judge regularly excused from cases by lawyers. There are 42 trial judges in the state, (the eight appellate judges may not be pre-empted), and lawyers routinely excuse six of them.

According to court records, in addition to Hornaday, the judges being regularly bumped from
See Judges, page A-1

A-1 The Anchorage Times, Sunday, February 6, 1983

Judges

(Continued from page A-1)
cases are Juneau District Court Judge Gerald Williams, Fairbanks District Court Judge Stephen Cline, Anchorage Superior Court Judge Karl Johnstone, Juneau Superior Court Judge Roger Pegues, and Wrangell Superior Court Judge Henry Keene.

By law, attorneys have a right of pre-emption, called peremptory challenge, which means that each side in a case may excuse the judge assigned to that case one time. The parties involved do not have to state the reason. Lawyers have five days from the initiation of a case to file a notice for a change of judge. The legislature is now considering a bill to repeal lawyers' right to pre-empt a judge.

Court officials have called the pre-emption an "administrative nightmare" because of the problems in reassigning judges.

"It is more efficient without it,"

Snowden said, adding that the court system has not taken a policy on the peremptory challenge and is probably split on the issue.

Snowden called it "a disruption" that costs the state court system an average of \$20,000 yearly in extra costs of reassigning cases to other judges.

The biggest expense, Snowden said, is paying travel and expense money to have judges journey to one-judge areas to fill in where the only judge in town has been legally removed from a case.

That has happened so much in Homer that Hornaday has been ordered to pack up, leave town, and don his judicial robes in Anchorage. Even if lawyers pre-empt him there, the reasoning is, there are other judges to fill in. Presiding Judge Mark Rowland ordered Hornaday to move to Anchorage by June 1 to fill a judicial vacancy here.

Hornaday has been pre-empted from about 84 percent of the criminal cases assigned to him. His law-

yer, Henry Camarot, claims that Hornaday is pre-empted 8 percent of the time when all his cases are considered.

Cline, Williams and Johnstone are taken off cases up to half the time. All four of the most pre-empted judges have been retained in office by voters in recent elections.

Johnstone, the only Anchorage judge regularly excused, is also the only judge who hears civil cases almost exclusively. The others regularly hear criminal cases, too. Johnstone is pre-empted three times more than all the other Anchorage Superior Court civil judges put together, and his pre-emptions climbed to a high of 20 in December. Judges are assigned between 30 and 40 new cases monthly. Johnstone was pre-empted 153 times in 1982, up from 71 in 1981. And although Johnstone said last summer that his pre-emp-

tions were going down, court records show they are on the rise.

But in Anchorage, the state's biggest judicial district, Johnstone's cases, are simply reassigned to another Anchorage judge. That can't be done in Homer, where Hornaday is the only judge. His removal means that court administrators have to send in another judge to hear Hornaday's cases.

Last week the House Judiciary Committee held two days of hearings on the bill to abolish the pre-emption. Lawyers argued against the bill, claiming the pre-emption is used to excuse a judge who may not give their client a "fair shake."

Both defense attorneys and Anchorage municipal prosecutor Allen Bailey argued for keeping pre-emptions around so they have a tool to excuse a judge they think is either too lenient or too harsh when it comes to sentencing.

Judge blames lawyers for high disc

EMPIRE - 2-8-83

Lawyers counter that challenges are needed to guarantee fairness

By CHRIS JARVIS
Empire Staff Reporter

Lawyers, not judges, are to blame for the high frequency with which some judges are disqualified from cases, Juneau District Court Judge Gerald O. Williams

said today.

Williams is frequently disqualified from hearing cases because, in his opinion, "Alaska is the most lawyer-whipped state in a lawyer-whipped country."

Williams and Juneau Superior Court

Judge Rodger Pegues have been named as two of six Alaska trial judges most frequently disqualified from cases. Pegues is on vacation and was unavailable for comment.

Alaska Court Administrator Art Snowden said the peremptory challenges, which allow lawyers to ask for a different judge without stating a reason, are an "administrative nightmare," noting it costs the state an estimated \$30,000 a year to fit judges into a jurisdiction to hear a case.

Williams, a former Alaska State Trooper, said members of the bench should not be blamed.

Williams said it is his responsibility to make sure a person accused of a crime is brought to trial within 120 days of his arrest, he said. He thinks peremptory challenges are often used to prolong the time before trial.

Lawyers generally disagree.

"I don't know of any attorney" who uses peremptory challenges only to prolong

qualification rate

cases, said lawyer Richard Burnham.

According to current rules, an attorney on either side of a case can request a judge be disqualified without giving a reason.

Requiring attorneys to say why a judge should be disqualified would present problems if a judge is not disqualified and the attorney must then argue a case before him, Burnham said.

Although acknowledging it costs money to fly a judge to hear the cases of a disqualified judge, Burnham said there are

other solutions to the problem. For example, he said, a superior court judge could hear district court cases or, if that is not possible, another district judge could be hired.

"It doesn't seem to me the goal of the judicial system is to run cheaply. It's to give people their day in court," Burnham said.

Williams, however, said if a case is prolonged long enough, eventually a case

Continued on Page 2

Judge...

Continued from Page 1

could be dismissed because the time limit for trial has been passed.

Admitting he is sometimes curt when on the bench, Williams said he finds it difficult to "put someone in jail in a nice way."

He defended his record, saying he treats everyone who is convicted in his court in the same way.

"I've still got friends who are mad at me (for sentencing them to jail), but it goes with the turf," he said.

"I admit I'm old fashioned," Williams said. He seldom likes to grant delays in

court proceedings because cases often end up dismissed when delayed too long, he said.

Peremptory challenges are often used by attorneys in a "tactical and strategic" manner, Williams said.

Of defense attorneys, Williams said, "It is in their interest to prolong to avoid a trial."

However, it is not always in the best interest of the defendant, Williams said. Peremptory challenges and continuances might result in an attorney's client staying in jail, if not able to make bail, he said.

It is the court's responsibility to assure efficiency in the system especially with criminal case loads in Juneau almost

doubling in four years, he said.

Sometimes 30 to 60 days will have elapsed since a person's arrest before making the first court appearance. That leaves as few as 60 days before the case may go to trial, Williams said, noting motions for continuances, if granted, could extend beyond the 120 day limit.

Although some people who see Williams on the bench for the first time might see him as "a combination of Atilla the Hun and Genghis Kahn," he said it is because his experience has taught him he must be absolute when passing judgment.

"I may appear curt in court but I've learned through experience that you've got to do it," he said.

Christian Ministers Association of Kachemak Bay
P.O. Box 2018
Homer, Alaska 99603

December 9, 1982

Judge Mark C. Rowland
303 K Street, Courtroom D
Anchorage, AK 99501

Dear Judge Rowland,

Your office and the judicial system are held in high regard by us and our children. We value justice as one of the key ingredients in our democratic way of life. We regularly instruct our children to respect the law and to deal in a just way with their companions and fellow citizens.

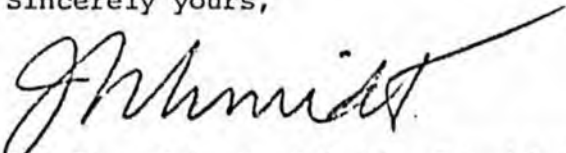
In this context we cannot understand why you should order Homer District Court Judge James Hornaday transferred to Anchorage against his will and against the overwhelming wishes of our community. As we understand, there is no precedence for this.

Therefore, we ask — for justice sake — that Judge Hornaday be retained as our District Court Judge. Secondly, you should know that we wholeheartedly endorse the policies of Judge Hornaday in sentencing DWI offenders. Finally, we request that the whole peremption policy be reviewed in light of these circumstances.

A judge serves his community in an exceptional manner. His policies are supported by the people he serves. He is an outstanding example for our children. Yet, he is transferred against his will. That seems a strange reward — even stranger justice.

Speaking for the Christian Ministers Association, I am

Sincerely yours,



The Rev. John D. Schmidt, President
235-7600

cc: Chief Justice Edmond Burke

COMMUNITY MENTAL HEALTH CENTER

Box 2274
Homer, Alaska 99603-2274
(907) 235-7701



RESOLUTION

SOUTH PENINSULA MENTAL HEALTH ASSOCIATION, INC.

December 11, 1982

Whereas, Judge James Hornaday has proven to be an effective and competent District Court Judge serving the Homer Court, and

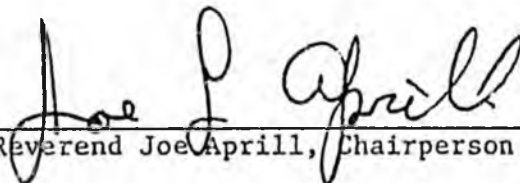
Whereas, Judge Hornaday was overwhelmingly endorsed by the residents of his jurisdiction during the recent election, and

Whereas, the right of the State Judicial system to move a Judge without public hearing or other procedural considerations is currently being questioned,

Be it hereby resolved that the South Peninsula Mental Health Association requests the retention of Judge Hornaday in the Homer District Court, and

Be it further resolved that the judicial pre-emption statutes in Alaska should be thoroughly reviewed and that the procedures for moving a Judge from one jurisdiction to another should be standardized through promulgation of appropriate regulations.

Resolution passed at the Board of Directors meeting on December 11, 1982.


Reverend Joe Aprill, Chairperson

December 6, 1982

Homer
Chamber
of
Commerce

Judge Mark C. Rowland
303 K Street
Courtroom D
Anchorage, AK 99501

Dear Judge Rowland:

The community and surrounding areas of Homer is greatly dismayed to learn of your decision to transfer Judge James C. Hornaday from Homer to Anchorage. We strongly urge your reconsideration in this matter.

Judge Hornaday has been an excellent judicial representative for Homer for many years. His home and family are here. We do not want to lose Judge Hornaday to this area.

This community has steadfastly supported Judge Hornaday's courageous stand against the crime of drunken driving and we wholeheartedly support his sentencing procedures.

Please find attached petitions of support in favor of Hornaday being retained as District Judge in this area.

Sincerely,

HOMER CHAMBER OF COMMERCE

Jim Daily
Jim Daily,
President

JD:lag
Enclosures

cc: Governor Bill Sheffield
Judge Edmond Burke
Homer City Council
Kenai Peninsula Borough Assembly
Rep. Milo Fritz
Hugh Malone
Sen. Paul Fischer
Don Gilman

CITY OF HOMER
P. O. BOX 335
HOMER, ALASKA 99603-0335



Box 335
Homer, Alaska 99603

REPLY TO:

- City Hall
Ph. (907) 235-8121
- Port of Homer
Ph. (907) 235-8597
- Harbor Master
Ph. (907) 235-8959
- Public Works Dept.
Ph. (907) 235-8120
- City Engineer
Ph. (907) 235-6368

December 6, 1982

The Honorable Mark Rowland
Presiding Judge of the Superior Court
303 "K" Street
Anchorage, AK 99501

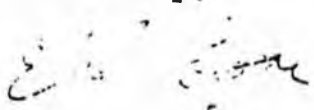
Dear Judge Rowland:

We, as a community, strongly oppose the transfer of Judge James Hornaday. Judge Hornaday's stance on drunk driving is looked upon as a favorable public service in the community. Perhaps the laws of pre-emption should be closely scrutinized and amended out of necessity in administering a trial court system.

Jim Hornaday is an active participant in community affairs, an impeccable family man, and contributes strong support to this rural community. The type of program he advocates serves the individual rights of our citizens to travel the streets of Homer with less probability of being harmed by drunk drivers.

As Mayor of Homer, I petition you to cancel the transfer order removing Judge Hornaday from this community as District Court Judge.

Sincerely,


Erle Cooper
Mayor

EC:lcr

CC: Governor Bill Sheffield
Judge Edmond Burke
District 5, Legislative Delegation

CITY OF HOMER
HOMER, ALASKA

RESOLUTION 82--20(S)

A RESOLUTION SUPPORTING A STIFF SENTENCING
POLICY FOR DRIVING WHILE INTOXICATED (DWI).

WHEREAS, the absence of sidewalks in Homer requires pedestrians to walk along the traveled ways, subjecting themselves to potential vehicle associated accidents; and,

WHEREAS, studies which have been conducted show that the higher the blood alcohol level, the greater the likelihood of an accident; and,

WHEREAS, there has been an increase in D.W.I. cases of some seventy-seven percent (77%) between 1980 and 1981 in the Homer District Court; and,

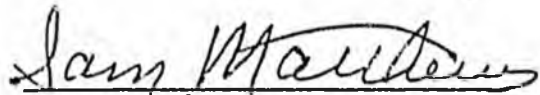
WHEREAS, the City Council of the City of Homer wishes to have life, liberty and property protected from potential injury by person(s) who drive while under the influence of alcohol;

NOW THEREFORE, BE IT RESOLVED that the Common Council of the City of Homer, Alaska, supports a stiff sentencing policy for Driving While Intoxicated (DWI).

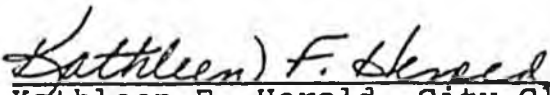
BE IT FURTHER RESOLVED that copies of this resolution be directed to the State legislators of Alaska.

DATED in Homer, Alaska this 14th day of June, 1982.

CITY OF HOMER


Sam Matthews, Mayor Pro tem

ATTEST:


Kathleen F. Herold, City Clerk

C. R. BALDWIN
ATTORNEY
P. O. BOX 4210
KENAI, ALASKA 99611
TELEPHONE (907) 283-7167

December 23, 1982

Milo H. Fritz
Box 158
Anchor Point, Alaska 99556

Dear Milo:

This letter is prompted by the article concerning your position on certain legal reforms you have proposed which appears in the December 20 issue of The Clarion.

You were quoted as indicating that you expected the legal profession to oppose your bill removing the right of peremptory challenges. I know of very few attorneys who have ever exercised their right to file a peremptory challenge against a judge. I, myself, have never filed one and I agree that no such right should exist. I have not made a study of other jurisdictions but would be very surprised if the right exists in very many states. Presumably, the law was originally passed by well meaning individuals who enjoy tinkering with the system. I wish you well in pushing the legislation and offer you my support.

I was surprised that you were quoted as indicating your interest in enacting legislation which would impose a limit on attorney's fees in probate matters. Although I do not do any probate work myself at the present time, it has been my experience in the past that after the passage of the Uniform Probate Act and the institution of simplified probate procedures, many attorneys are now charging fees which are lower than they were in the past. In the case of a large estate I would suggest that a fee based upon the percentage of that estate would be unconscionable. From the attorney standpoint, it generally does not cost any more to probate a large estate than to probate a small one. Prior to the passage of the Uniform Probate Act, that was not the case.

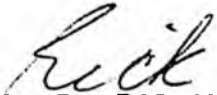
Philosophically, I am opposed, as I am sure you are,

Milo H. Fritz
December 23, 1982
Page Two

to the State interfering in contract relationships between professionals and their clients. I would suggest that a legislature which would concern itself with fees charged by an attorney to his client would also not hesitate in interfering with the fees charged by a physician to his patient. As a practical matter, a client who is overcharged by an attorney presently has recourse to the fee arbitration panel which operates under the auspices of the Alaska Bar Association. In light of the foregoing, I would request that you rethink your position on supporting a limit on attorneys fees.

Thank you for your attention to my comments. I wish you well in Juneau this year.

Very truly yours,


C. R. BALDWIN

CRB/hs



LAWS OF ALASKA

1967

Source

SB 66 am

Chapter No.

48

AN ACT

Relating to the disqualifications of judicial officers; and providing for an effective date.

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

* Section 1. AS 22.20.020 is repealed and re-enacted to read:

Sec. 22.20.020. DISQUALIFICATION OF JUDICIAL OFFICER FOR CAUSE. (a) A judicial officer may not act as such in a court of which he is a member in an action in which

- (1) he is a party or is directly interested;
- (2) he was not present and sitting as a member of the court at the hearing of a matter submitted for its decision;
- (3) he is a material witness;
- (4) he is related to either party by consanguinity or affinity within the third degree;
- (5) either party has retained him as their attorney or has been professionally counseled by him in any matter within two years preceding the filing of the action;
- (6) the judicial officer feels that, for any reason, he cannot give a fair and impartial decision.

(b) In an action specified in (a)(4) and (5) of this section the disqualification may be waived by the parties and is waived unless a party raises the objection.

(c) If a judicial officer disqualifies himself or

consents to disqualification, the presiding judge of the district shall immediately transfer the action to another judge of that district to which the objections of the parties do not apply or are least applicable and if there be no such judge, then the chief justice of the supreme court shall assign a judge for the hearing or trial of the action. If a judicial officer denies his disqualification the question shall be heard and determined by another judge assigned for the purpose by the presiding judge of the next higher level of courts or, if none, by the other members of the supreme court. The hearing may be ex parte and without notice to the parties or judge.

* Sec. 2. AS 22.20 is amended by adding a new section to read:

Sec. 22.20.022. PREEMPTORY DISQUALIFICATION OF A SUPERIOR COURT JUDGE. (a) If a party or his attorney in a superior court action, civil or criminal, files an affidavit alleging under oath that he believes that he cannot obtain a fair and impartial trial, the presiding judge shall at once, and without requiring proof, assign the action to another judge of that district, or if there be none, then the chief justice of the supreme court shall assign a judge for the hearing or trial of the action. The affidavit shall contain a statement that it is made in good faith and not for the purpose of delay.

(b) No judge or court may punish a person for contempt for making, filing or presenting the affidavit provided for in this section, or a motion founded on the affidavit.

(c) The affidavit shall be filed within five days after the case is at issue upon a question of fact, or within five days after the issue is assigned to a judge, whichever event occurs later, unless good cause is shown for the failure to file it within that time.

(d) No party or his attorney may file more than one affidavit under this section in an action and no more than two affidavits in an action.

* Sec. 3. This Act applies to all actions pending, but not set for trial on the effective date of this Act.

* Sec. 4. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.

Appeal from joint judgment.—Sec Am. Jur. reference.—2 Am. Jur., Stanley v. Greenberg, 5 Alaska 178. Appeal and Error, § 1 et seq.

Sec. 22.15.250. Disposition of fines. When by law any fees, fines, forfeitures, or penalties are levied and collected by the district magistrate or deputy magistrate, the proceeds and all other money collected shall be accounted for and transmitted to the administrative director of the judicial system for transfer to the general fund of the state except as provided in § 270 of this chapter. (§ 21 ch 184 SLA 1959)

Sec. 22.15.260. Bond. Before entering upon his duties each district magistrate and deputy magistrate shall execute and file with the administrative director a surety bond in form and amount to be determined by rule of the supreme court. The state shall pay for the bond. (§ 22 ch 184 SLA 1959)

Am. Jur. reference.—30A Am. Jur., Judges, § 12.

Sec. 22.15.270. Retention of fines, etc., by political subdivisions. All fines, penalties and forfeitures resulting from violations of ordinances of political subdivisions shall be returned to the political subdivision whose ordinance is involved in the manner provided by rule of the supreme court. The political subdivision shall pay to the state administrative director of the court for transfer to the general fund of the state such sums as shall pay for the judicial services rendered to the political subdivision by the magistrate rendering the services. Fines, penalties and forfeitures imposed after appeals accrue to the state, unless the appeal is prosecuted by the political subdivision. (§ 23 ch 184 SLA 1959)

Chapter 20. Officers and Employees.

Article

1. Judicial Officers (§§ 22.20.010—22.20.030)
2. Attorneys (§§ 22.20.040—22.20.090)
3. Commissioner of Public Safety (§§ 22.20.100—22.20.140)

Article 1. Judicial Officers.

Section

10. Judicial officer defined
20. Disqualification of judicial officer

Section

30. Power of judicial officers

Sec. 22.20.010. Judicial officer defined. The term "judicial officer" means a supreme court justice, including the chief justice, a judge of the superior court, a district magistrate and a deputy magistrate. (§ 54-2-1 ACLA 1949)

Am. Jur. reference.—14 Am. Jur., Courts, § 22.

Sec. 22.20.020. Disqualification of judicial officer. (a) A judicial officer may not act as such in a court of which he is a member in any of the following cases:

*Pre-1967
Law*

- (1) in an action or proceeding to which he is a party or in which he is directly interested;
- (2) when he was not present and sitting as a member of the court at the hearing of a matter submitted for its decision;
- (3) when he is related to either party by consanguinity or affinity within the third degree;
- (4) when he has been attorney in the action or proceeding in question for either party;

(5) when a party, or an attorney for a party to an action or proceeding, civil or criminal, files an affidavit that the judge before whom the action or proceeding is to be tried or heard has a personal bias or prejudice either against him or his attorney or in favor of an opposite party, or attorney for an opposite party, to the suit, and that it is made in good faith and not for the purpose of delay, and the affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed within one day after the action, suit, or proceeding is at issue upon a question of fact, unless good cause is shown for the failure to file it within that time. No party or attorney may file more than one such affidavit in any case. The provisions of this subdivision apply only to the superior court.

(b) In the cases specified in (3) and (4) of this section the disqualification may be waived by the parties and is waived unless a party raises the objection. (§ 54-2-1 ACLA 1949)

Revisor's note.—Also see the Rules of Civil Procedure relating to "Disability of a Judge."

This section contains the only conditions under which the judge should abandon the trial of a cause and send it to another judge. *United States v. Pratt*, 3 Alaska 400, affirmed in 170 F. 881.

The affidavit must assert facts from which a sane and reasonable mind may infer bias or prejudice. *United States v. Pioneer Packing Co.*, 10 Alaska 70; *Graff v. Electrical Enterprises, Inc.*, 12 Alaska 322.

And is subject to strict construction.—That affidavits of prejudice are to be strictly construed has been held consistently. *United States v. Pioneer Packing Co.*, 10 Alaska 70.

Personal bias must be shown.—The affidavit of prejudice must show that a personal bias exists, and the holding is that judicial bias or rulings of a judge which are the subjects of correction on appeal do not constitute personal bias. *United States v. Pioneer Packing Co.*, 10 Alaska 70.

Filing of affidavit.—The affidavit must be filed within the time speci-

fied by statute and the recused judge must determine the question. *United States v. Pioneer Packing Co.*, 10 Alaska 70.

Requires that cause be at issue upon question of fact.—This section specifically requires that the cause be at issue upon a question of fact before the affidavit may be filed. *United States v. Pioneer Packing Co.*, 10 Alaska 70.

When cause is at issue.—A cause is not at issue upon a question of fact until all permissible motions and demurrers have been waived or filed and passed upon, and the proper pleading, setting forth the claims of the respective parties, has been filed. *United States v. Pioneer Packing Co.*, 10 Alaska 70.

Mere assertion of bias insufficient.—A mere assertion of belief that the judge is biased or prejudiced, giving no reasons in its support, does not disqualify the judge under the provisions of this section. *Pacific Coal, etc., Co. v. Pioneer Min. Co.*, 205 F. 577.

It is a mistake to assume that a judge can be ousted from jurisdic-

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tion to try a cause upon an allegation of mere bias or prejudice. *United States v. Pratt*, 3 Alaska 400, affirmed in 170 F. 881.

Attorney may allege prejudice in a respectful manner.—An attorney may in a proper case, in a respectful manner, allege that the judge is prejudiced against his client, and unless the act is done with reckless disregard of truth, or with the express intention to reflect upon the honor and integrity of the judge, it is not a contempt. *Tjosevig v. United States*, 225 F. 5.

And untrue or excess facts are not proper ground for contempt or criticism.—Where an attorney filed a proper affidavit of prejudice and of interest, if the facts therein stated were untrue, the fact that they were untrue is not a proper basis for adjudging a contempt, nor is the fact that the affidavit contained more than was necessary to accomplish the change of judges a ground for punishment or criticism. *Paul v. United States*, 36 F. (2d) 639.

Duty of judge not to withdraw from case where affidavit is insufficient.—A judge against whom an insufficient showing for recusation has been made owes it to his oath of

office and to the litigant who has invoked the jurisdiction of the court over which he regularly presides not to withdraw from the case, where an insufficient affidavit of prejudice has been filed, however much his personal feelings may incline him to do so. *Graff v. Electrical Enterprises, Inc.*, 12 Alaska 322.

Statements made by the judge in a prior suit involving a different defendant, and in the case at bar, did not show any objectionable attitude on the part of the judge, or any personal bias against the defendant in the case at bar. *United States v. Pioneer Packing Co.*, 10 Alaska 70.

Cited in *Stringer v. United States*, 16 Alaska 305, 233 F. (2d) 947.

ALR references.—Disqualification of judge by relative's ownership of stock in corporation which is party to action, 8 ALR 295; 110 ALR 472.

State's right to file affidavit disqualifying judge for bias, 115 ALR 866.

Right of party in course of litigation to challenge title or authority of judge, 144 ALR 1207.

Disqualification of judge in pending case as subject to revocation or removal, 162 ALR 641.

Sec. 22.20.030. Power of judicial officers. A judicial officer may

(1) preserve and enforce order in his immediate presence, and in the proceedings before him, when he is engaged in the performance of a duty imposed upon him by law;

(2) compel obedience to his lawful orders, as provided by law;

(3) compel the attendance of persons to testify in a proceeding pending before him in the cases and manner provided by law;

(4) administer oaths to persons, in a proceeding pending before him, and in all other cases where it may be necessary in the exercise of his powers and the performance of his duties;

(5) take and certify the proof and acknowledgment of a conveyance of real property, or any other written instrument authorized or required to be proved or acknowledged;

(6) take and certify the acknowledgment of satisfaction of a judgment in any court;

(7) take and certify an affidavit or deposition to be used in any court of justice or other tribunal of the state. (§§ 54-2-3, 54-2-5, 54-2-6 ACLA 1949)

The power to punish for contempt is the highest exercise of judicial power. *United States v. Pratt*, 3

Alaska 400, affirmed in 170 F. 881.

It is not an incident to the mere exercise of judicial functions. *United*

Memorandum

Alaska Court System

TO: Karla Forsythe
General Counsel

DATE : February 2, 1983

FROM: Robert G. Fisher
Fiscal Officer

SUBJECT: Travel Costs -
Pre-emptions

The following information is provided in response to your request for information on the cost of travel arising from the pre-emption of judges.

Several problems prevent an accurate reporting of these costs. To begin with, Technical Operations does not accumulate statistics strictly on the number of pre-emptions. Some statistics are available for all the categories of disqualifications, but not all courts are represented. Secondly, the travelling judges do not report the specific reason for travelling to other courts on their reimbursement claims. The result is the court does not have the capability to identify the actual cost of pre-emptive disqualifications.

Despite these problems, all judicial travel claims for the period of 7/1 through 12/31/82 were reviewed. Those claims which appeared to be related to the pre-emption or disqualification of a judge were analyzed further. While this method of estimating costs is not perfect, it provides an approximate cost figure.

The schedule presented below shows the travel costs of providing judicial coverage for disqualifications at various court locations during the six month period ending 12/31/82.

<u>COURT LOCATION</u>	<u>TRAVEL COSTS</u>
Juneau - District Court	\$ 2,500
- Superior Court	600
Ketchikan - District Court	1,250
- Superior Court	1,100
Bethel - Trial Courts	3,900
Kenai - Trial Courts	650
Homer - District Court	<u>2,700</u>
TOTAL	<u>\$12,700</u>

The approximate annual cost would be \$25,400. To obtain estimated costs for individual locations the six month figures should be doubled.

*Note -
With Per diem
for traveling
Judges, Annual costs
would probably be
\$50,000 or so,
according to
Art Snowden -
- JJ Brewer*

TESTIMONY OF ATTORNEY HENRY CAMAROT, ANCHORAGE
February 3, 1983

Gentlemen and (unable to hear the period of 4 log numbers due to static in the teleconference) except for a short period when I left Alaska I practiced in the State of Oregon. I presently represent District Judge James Hornaday in respect to an order that was issued by the Honorable Mark Rowland, presiding Superior Court Judge for the Third Judicial District. In that order, Judge Hornaday had been directed to move from Homer, Alaska, his place of residence for some seven years, to Anchorage, Alaska to permanently fill the office of District Judge in the Anchorage area. I come in favor of repealing the perempt statute. Alternatively I wish to make several other comments and I think they can be interpreted as clear recommendations. The consideration of the perempt statute repeal perhaps can be invaluating against the framework of the true factual situation that currently exists; in fact, I got the impression as I was listening to some of the witnesses testify, that this law seems to be directed all towards Judge Hornaday, when I believe the issue is far greater than Judge Hornaday.

Some eight years ago more or less Judge Hornaday gave up a successful 10 year law practice to accept an appointment as the acting district judge in Homer. The condition of his employment at the time that he moved to Homer. He moved to Homer. The Legislature established a Homer District Judge position. He applied to the judicial council for that office in Homer. His name was forwarded to the Governor for that office and that office began in Homer. He was appointed by the Governor for that specific office. The Judicial council twice recommended him for retention and he has twice been overwhelmingly retained by the vote in the election of the Third District. More recently, in the election of 1982, more people turned out to testify on his behalf before the judicial council meetings held in Homer than for any other judge in the state. He also passed with the lawyers in the bar poll and received the highest rating of any judge with the Alaska Peace Officers Association.

Judge Hornaday has established deep roots in Homer. His wife, Karen, teaches violin to many children and serves as chairperson on the Homer Parks and Recreation Commission. She serves on many church and civic activities and just recently helped pass the bond issue of the building of the new high school in Homer. His daughter, Mary, is a sophomore in college and his son, Dan, is a high school sophomore who worked his way up to the starting quarterback on the football team. He also plays on the basketball team. Dan is usually on the honor roll. Their son, Joshua, is in the third grade and is into music, Little League and Cub Scouts. Five year old Matthew has just started kindergarten. The Judge is active in Little League matters, Chamber of Commerce matters and plenty of other activities. When he left the private practice and accepted the appointment as the district judge in Homer, he made substantial financial sacrifices. He was required to sell his home and a commercial building that had been partially set aside as a retirement income. When he moved to Homer, he bought a home there. That was to be his home and that was to be his community for years to come.

We have all heard about how in early 1982, the first part of 1982, Judge Hornaday decided to do something about the drunk driving. He was deeply concerned about this continuing highway travesty, which he was aware resulted in the killing and maiming of over 200,000 Americans a year. It was frustrating to him. Apparently, drunk driving cases constitute over 50% of all the jury trials in the Alaska court system. For many reasons, and because he also serves at times as a coroner and probate judge, because of times when he has come in direct contact with auto crash results, leaving maimed bodies and grieved families or person who have suffered injuries, thereby, felt he had to do

something. He wanted to do it, not by legislative action, but what he wanted to do was in a true effort to be fair, give notice beforehand that persons convicted of a drunk driving in his court would receive a 60 day sentence with 45 suspended and 15 days actually having to be served. Now at the outstead let me point out this is not the maximum sentence, as some people have suggested. The maximum sentence under AS23.35.030 is \$1000 or by imprisonment for not more than one year or by both. Now it is not the minimum sentence, which is 72 consecutive hours in the first instance. But what he was really doing, was, he was really giving fair warning beforehand to attorneys and drivers, particularly those consuming alcohol and driving under the influence, that this is what he would do. Now that resulted in an increase in Judge Hornaday being perempted. This is not to say that Judge Hornaday had not been perempted on prior occasions, but this announced policy seemed to have resulted in a definite increase in the peremptions that he experienced prior to the spring of 1982. Let me stop here and note that he was not legislating at that time. He was not attempting to. But what he was doing again just simply identifying the symptom patterns. Now when it was called to his attention that the public statement could not be followed, that he had to consider matters on a case to case basis, he acknowledged that. He publicly recinded the policy and he did sentence on a case-by-case basis. And he did not give 15 days in every insistence. He did go back to the 72 hours, frequently. But the peremptions continued. Continued to the point that Presiding Judge Mark Rowland determined, as he put it, it became administratively a nightmare and was costly to the system. And the system is one of the things I want to talk about.

Now the statistics put together by the court administrator regarding Judge Hornaday and our statistics will be at odds. Truthfully speaking, we don't think that there is comparable statistics that show that one District Judge or Superior Court Judge, particularly in areas where there is only one judge, that experience any more or less peremptions than Judge Hornaday had been experiencing. We don't know to what degree the peremptions compare. But we do know that there are problems and there are serious problems and the problems are going to continue in our opinion with the peremption statute in other areas as they have happened in the past in Wrangell, Petersburg, Ketchikan, Juneau and Kodiak. In any event, Judge Rowland believes that Judge Hornaday's peremptions in Homer were occurring to such a degree that he determined that he had to move Judge Hornaday out of Homer. I don't suggest that Judge Rowland is not acting in good faith. He was very candid when he said that it is the exercising of the peremption by counsel out of the current statute and the resulting costs of bringing in another judge from Anchorage, which is causing him to issue his order. Judge Rowland is attempting to follow obligations imposed on him as the presiding judge to properly administer the court system. And also to be concerned about the costs endowed in his responsibility.

In that regard, as I understand it from Judge Hornaday, Judge Hornaday was advised that he should consider peremptory challenges in sentencing persons before him as a particular consideration. I am sure this is done to avoid having the expense of the cost of having to send another District Judge to Homer when Judge Hornaday was perempted. Chief Justice Burke in a public hearing in Homer indicated perempts had to be considered in sentencing. So, I think we ought to recognize the issue that peremptions affect sentencing, that with the statute as it exists, the system should accept that the consequences and cost and, threaten, the independence of the judiciary. So it's understood, are we challenging Judge Rowland's order on Judge Hornaday's behalf because I believe that there are serious constitutional and legal arguments on whether he has the authority to take the action he did. But aside from that, and if it be found that Judge Rowland does have the power and authority to remove a District Judge

from his place of residence and the office to which he is assigned, then the problem will still remain. Let's turn for a moment to the defense attorneys or primarily to the ones that are utilizing the perempt statutes.

I have talked with defense attorneys, quite a few of them, and I recognize what they are saying. They can not claim that Judge Hornaday has been more stern in his sentencing practices than other judges. They contend they are under ethical duties to advise the client that he or she has a right to perempt Judge Hornaday. I hear what those defense counselors are saying. But I also know that this constitutes and is just as clear an act as judge-shopping as any other act would be if not for the perempt statute. Even if the attorney contended that he had a ethical responsibility, it's judge shopping. In other instances in my opinion, they are using the perempt for purposes of delay in coming to trial. The delay is always an act that has to do with the defendant because anything can happen between the time of the charge and the actual time of the trial. But what is truly more troubling is, and what must be troubling to an elected official, be he legislator or otherwise, be he judge or otherwise, regarding what the justification might be claimed in respect to the perempt statute, the bottom line is not withstanding thousands of voters particularly those voters in the Homer area voting in favor of the man, Judge Hornaday. There will still be a few members of the bar who are mainly able to sufficiently prevail upon the presiding judge so as to require Judge Hornaday to be removed from one area to another. I don't say they are making personal contact, I say they are doing that through the perempt statute. In my mind as it has already been indicated, the perempt statute and peremption rule interferes with the judicial process under the Constitution and the court responsibility to perform the duties endowed upon them. It also destroys the independence of the judge and to a degree I believe it interferes with the oath of office that each judge takes that he will support the state and federal constitution and will faithfully discharge the duties of his office as a judge of the court to which he is appointed, to the best of his ability. It destroys the independence of the judge. I sincerely believe that it is very wrong to remove a judge who is regarded as judicially competent and I would like to make a note that the major incidents that I have heard in respect to Judge Hornaday has nothing to do with his ability in a civil case, nothing to do with his ability during the course of a trial, presumably it has to do with his sentencing in DUI cases and some pre trial motions, other than that attorney after attorney have told me he is a very competent, capable judge. But the clutch of the issue comes down to this, if the peremption statutes are to stay in existence and Judge Rowland's order is to remain in effect, then every judge appointed to a district judge area is subject to be reassigned depending on how his rulings and sentencing practices are viewed by the attorneys. I suggest that the precedent being established here is extreme for the reasons already stated. It should be a matter of a state-wide concern. What happens to the next District Judge that goes to Homer. He accepts that office in the wake of Judge Hornaday's reassignment, if that occurs. He knows that the presiding judge doesn't want to have make another reassignment. He does know that he has to avoid peremptions and to avoid peremptions he obviously must not follow the practices followed by Judge Hornaday. Peremption has an effect on sentencing without a question. The matter of degree perhaps in Homer is a matter of degree anywhere. I know that there are many judges today in Alaska who are very concerned about this order. I think it is a matter for new judicial candidates to consider as part of the input as to whether or not they want to become judges. They are invited to place themselves, as now, in front of the judicial council for particular judicial office. They have to realize they maybe reassigned. Against this background I wish to make the following recommendations. I thought a lot about

the perempt statute and I believe that it has one part of it that makes me feel that it should be repealed and its the view of it being unfair.

I submit to you that whether its the filing of an affidavit or a simple notice of a change of judge of Criminal Rule 25 and Civil Rule 43, the accusation is that litigants can not receive a fair and impartial trial. If the judge has no opportunity to defend himself against that charge, although it clearly imputes his integrity. In my opinion the judge, whether it's Judge Hornaday or any other judge is denied due process, he cannot defend his integrity which is so important to a judge. I would suggest in the first inistance, therefore, that the particular AS22.20.022 be repealed.

Then I have an alternative suggestion. I have a lot of respect for my brethren. I see the attorneys here in mass. I've heard them. Accordingly, realistically speaking, that perempt statute cannot be repealed. I would like to give you perhaps a compromise. I would suggest that there would be a statute passed or present statute amended, rejecting the reassignment of any Superior Court or District Judge from the area of his residence to any other location. It is not say that a judge cannot be temporarily assigned, as the Constitution recognizes, and it takes place periodically, so long as there is a time limit on each assignment each year. I think the wholesome affect of this type of law is that if the perempt statute is to be continue as part of the Alaska Judicial processes that it be recognized as part of the overall system, including the cost of reassigning a judge to the area where the peremption right is imposed. It will also reassure other members of the judiciary or future potential members, that have to give that fact their consideration. They are weighing the pros and cons of continuing or becoming a judge.

Another alternative, the second alternative, I would suggest would be given serious consideration, would be to limit the perempt statute to those areas that have more than one judge serving a community, such as Anchorage and Fairbanks, and deny the invoking of the peremptory challenge for no cause where there are single judges, whether they be Superior or District Court Judges in other areas.

I realize that this would not be as popular and be subject to constitutional attack. However, I believe that it could withstand that constitutional attack.

I wish to thank the committee for allowing me to make this presentation. I sincerely hope that reservation in supporting this and that the recommendations maybe of some assistance to the committee. Needless to say, in the final analysis, in the case of Judge Hornaday, that any action taken by the legislature, I sincerely hope, will allow him to stay in Homer. Thank you.

TESTIMONY IN FAVOR OF PASSAGE OF HB 79

THANK YOU, MR. CHAIRMAN.

I AM REP. MILO FRITZ FROM ANCHOR POINT, NEAR HOMER ALASKA.

THE FIRST COURT OF JUSTICE IN ALASKA WAS ESTABLISHED BY THE U.S. IN 1900 UNDER JUDGE JAMES WICKERSHAM IN EAGLE ON THE YUKON RIVER. SINCE THEN, THE COURT SYSTEM HAS GROWN IN SIZE AND COMPLEXITY TO MEET THE CHANGING NEEDS OF THE TIMES AND THE INCREASE IN POPULATION.

GENERALLY SPEAKING, THE LEGAL NEEDS OF THE PEOPLE OF ALASKA, EXCEPTING THE DISSIDENTS AND ECCENTRICS PRESENT IN ANY AGE, WERE ADEQUATELY MET. UNTIL 1967, PEREMPTORY DISQUALIFICATION OF A JUDGE COULD ONLY BE INVOKED FOR CAUSE, THAT IS, FOR A GOOD, TRENCHANT REASON. AND I BELIEVE, MR. CHAIRMAN, THAT NO REASONABLE PERSON CAN OBJECT TO THAT.

IN 1967, ACCORDING TO THE SESSION LAWS OF ALASKA FOR THAT YEAR AND APPEARING IN ALASKA STATUTES, THAT IS THE LAWS OF ALASKA KNOWN AS ~~AS~~^{AS} 22.20.022, AN ADDITION WAS MADE, MAKING IT POSSIBLE FOR THE PETITIONER, THAT IS THE LAWYER OR THE CLIENT TO DISQUALIFY A JUDGE WITHOUT PROVIDING ANY REASON WHATSOEVER. AND IT IS THE PURPOSE OF HB 79 TO STRIKE THIS 1967 AMENDMENT TO ALASKA LAW FROM THE BOOKS MAKING PEREMPTORY CHALLENGE OF A JUDGE POSSIBLE ONLY FOR CAUSE, THAT IS, FOR A VALID REASON.

IN THE ELECTION OF NOVEMBER 2, 1982, THE VOTERS IN THE THIRD JUDICIAL DISTRICT VOTED 57,000 TO 38,000 TO RETAIN JUDGE JAMES C. HORNADAY ON THE BENCH. ON THE KENAI PENINSULA, WHERE

JUDGE HORNADAY RESIDES AND HOLDS COURT IN THE SMALL CITY OF HOMER, THE VOTE WAS 6000 TO 3000 IN FAVOR--AN IMPRESSIVE VOTE.

NOW IT HAPPENS THAT JUDGE HORNADAY HANDS OUT TOUGH SENTENCES TO THOSE CONVICTED OF DRUNK DRIVING. SO QUITE NATURALLY, THE TRANSGRESSOR AND HIS LAWYER, QUITE LOGICALLY AND WITHOUT HAVING TO GIVE A REASON, PEREMPTORILY CHALLENGED JUDGE HORNADAY ASKING THAT THE CASE BE HEARD BEFORE ANOTHER JUDGE SINCE, OF COURSE, THE SENTENCE ~~CAN'T LEGALLY BE~~ ^{IS NOT GENERALLY} MADE ANY MORE SEVERE AND MIGHT QUITE POSSIBLY BE LIGHTER. ANY GOOD LAWYER WHO DOES THIS IS QUITE WITHIN HIS RIGHTS, SINCE IT HIS DUTY TO OBTAIN FOR HIS CLIENT THE LIGHTEST POSSIBLE SENTENCE. IN OTHER WORDS, THE LAWYER IS NOT AT FAULT, THE LAW IS, AND THAT IS WHY I ASK YOU AND YOUR COMMITTEE TO REMEDY THIS DEFECT BY FAVORABLY PASSING OUT HB 79.

NOW, IN A STATEMENT AT A HEARING REGARDING JUDGE HORNADAY HELD IN HOMER ON JANUARY 5, 1983, SUP. COURT JUDGE MARK ROWLAND TESTIFIED THAT JUDGE HORNADAY WAS PEREMPTORILY CHALLENGED IN ABOUT 80% OF THE CASES COMING BEFORE HIM, ONLY A SMALL PERCENTAGE OF WHICH HAD TO DO WITH DRUNKEN DRIVING. IN OTHER WORDS, BY ACCIDENT OR DESIGN, MOST OF THE LAWYERS ON THE KENAI PENINSULA INDULGED IN A VENDETTA AGAINST JUDGE HORNADAY PEREMPTORILY DISQUALIFYING HIM. IN EFFECT, THESE LAWYERS SAID, "OKAY, SO YOU ARE GOING TO HAND OUT MAXIMUM SENTENCES AGAINST OUR DRUNK DRIVING CLIENTS. THEREFORE, WE WILL PEREMPTORILY DISQUALIFY YOU FOR ALL OUR CASES." OF COURSE, THIS LEFT JUDGE HORNADAY WITH LITTLE TO DO AND MADE IT NECESSARY FOR SUP. COURT JUDGE

MARK ROWLAND TO DISPATCH A JUDGE FROM ANCHORAGE AT NEEDLESS EXPENSE TO HOMER TO HEAR JUDGE HORNADAY'S CASES. AND SINCE HORNADAY HAS BEEN RENDERED INEFFECTIVE, ROWLAND HAS TRANSFERRED HIM TO ANCHORAGE AS OF JUNE 1, THUS QUITE LEGALLY TRANSGRESSING THE WILL OF THE PEOPLE OF THE KENAI PENINSULA. JUDGE ROWLAND IS NOT WRONG; THE LAWYERS ARE NOT WRONG; THE LAW IS WRONG AND HB 79 RECTIFIES THE SITUATION.

IN ANCHORAGE, PEREMPTORY DISQUALIFICATION OF JUDGE HORNADAY WOULD COST NOTHING SINCE THERE ARE SEVERAL JUDGES OF JUDGE HORNADAY'S RANK AVAILABLE.

THEREFORE, IT SEEMS THAT PEREMPTORY CHALLENGE OF A JUDGE WITHOUT CAUSE SHOULD BE STRICKEN FROM THE BOOKS SINCE IT SERVES LAWYERS AND TRANSGRESSORS AND NOT THE ADMINISTRATION OF JUSTICE. REM ACU TETIGISTI.

IF, MR. CHAIRMAN, THIS 13TH STATE LEGISLATURE PROMPTLY PASSES OUT HB 79 WHICH WOULD ELIMINATE PEREMPTORY DISQUALIFICATION WITHOUT CAUSE, THE PEOPLE OF THE KENAI PENINSULA WILL KEEP THE JUDGE WHOSE ACTIONS THEY APPLAUDED BY VOTING FOR HIS RETENTION 2 TO 1.

PASSAGE OF THIS MEASURE WILL ALSO PREVENT THIS FROM OCCURRING IN OTHER ^{one -} JUDGE JURISDICTIONS WHERE, FOR FRIVOLOUS REASONS OR NO REASON AT ALL, A JUDGE MAY BE PEREMPTORILY DISQUALIFIED. THE JUDGES ARE NOT WRONG, THE LAWYERS ARE NOT WRONG, THE PEOPLE ARE NOT WRONG--THE LAW IS WRONG. LET US REPEAL IT BY PASSING HB 79.

I THANK YOU, MR. CHAIRMAN.

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. Box 4-1325
ANCHORAGE, ALASKA 99509
248-1515



CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

Wayne Anthony Ross
360 "K" Street, Suite 240
Anchorage, Alaska 99501

RE: HB 79, Legislation Pertaining to Peremptory
Disqualification

Dear Mr. Ross:

Thank you for taking the time to author and forward to the Committee the letter setting out your feelings with regard to HB 79. This letter, along with a great deal of other information, was considered by the Committee before making its findings and reporting the bill out without amendment or change.

On Wednesday, February 25, 1983, HB 79 was brought before the House for second reading and debate. After nearly two hours of debate and one attempt at having the bill amended, HB 79 was advanced to third reading and voted on by the body.

A copy of the House Journal covering action by the House for its thirty-eighth day is enclosed and shows the voting and progress of HB 79 as it passed the House. At the close of the floor action for the day on HB 79, Representative Fritz gave notice of reconsideration of his vote which carries the bill to the next legislative day for another vote if brought up at that time.

On the next legislative day, HB 79 was not again brought up, so it has passed the House as shown in the Journal for the thirty-eighth day.

Thank you again for taking the time to become involved with the legislative process.

Regards,

A handwritten signature in cursive script, appearing to read "C. Bussell".

Representative Charlie Bussell
Chairman Committee on Judiciary

CB:lyn

**Wayne
Anthony
Ross**

ATTORNEY AT LAW



ROBERT D. FRENZ
THOMAS S. GINGRAS
WILLIAM D. COOK

MAIN BRANCH · 360 "K" STREET, SUITE 240 · ANCHORAGE, ALASKA 99501 · AREA 907/277-6775 · 276-5307
CORDOVA BRANCH · POST OFFICE BOX 207 · CORDOVA, ALASKA 99574 · AREA 907/424-7229

February 10, 1983

Representative Charlie Bussell
Chairman House Judiciary Committee
Pouch V, Capitol Building
Juneau, Alaska 99801

Re: House Bill No. 79

"An Act repealing peremptory disqualification of a judge and changing Rule 10(c) and Rule 25(d), Rules of Criminal Procedure and Rule 2(c), Rules of Civil Procedure; and providing for an effective date."

Dear Representative Bussell:

This letter is to express our strong opposition to House Bill No. 79.

It was clearly apparent from the testimony of Representative Fritz in support of his bill, that this bill is tailored for only a few judges and primarily Judge Hornaday of Homer. The bill simply is inapplicable to the majority of the judges on the bench today.

The attorney handling the case is in the best position to gauge his rapport with a judge based upon the judge's past actions. A peremptory challenge allows a change of a judge without antagonizing or embarrassing a judge. There is no need to state your reason for the peremptory challenge. If there is a valid reason for a change of judge, and an attorney had to state his reasons, it would certainly destroy that attorney's rapport with that judge for any future cases in front of him. Judges are only human too.

A judge being only human, can easily be biased in one area of the law. If a fair trial is to be guaranteed, the attorney and his client should have the right to a change of judge when appearing in front of him in that area of the law. It is

Representative Charlie Bussell
February 10, 1983
Page 2

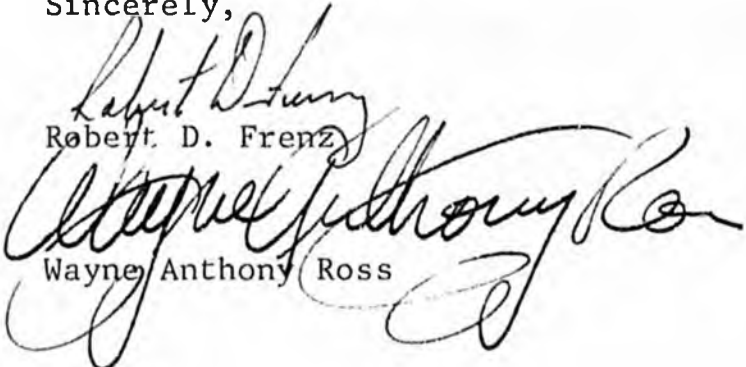
apparent in this state as in all other states that jurors can be challenged for cause and in fact may be excused without cause. Why cannot we have the right to change one judge as well?

Apart from a judge's actual bias on issues of law, there are times when attorneys do suffer from personality conflicts with a judge. For this reason, the attorney should be allowed to preempt the judge and not make the client suffer.

The system has worked well in the past, and now only in the one judge area is it having a problem. In essence the baby should not be thrown out with the bath water for that one problem. We are certain that there are other ways of resolving the problem rather than repealing Alaska Statute 22.20.022.

We urge you to defeat House Bill 79.

Sincerely,


Robert D. Frenz

Wayne Anthony Ross

RDF/jm

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. Box 4-1325
ANCHORAGE, ALASKA 99509
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CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

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Regards,


Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

MCG 83-00010215 PRTY-1 01/24/83 12:15-24 ORIG LMOO IN=0014 OUT=0102
FROM: MARTIE/MATSU TO: JUNEAN INFORMATION
TARGET: LJHL SUBJ: PCM

TO: ALL LEGISLATORS

FROM: LEONARD MOFFETT
PO BOX 712
PALMER 99645

PRE-EMPTION SHOULD BE ELIMINATED WHEN USE A CONDENSE CASE BY CASE DISCLOSURE STATEMENT FILED WITH THE COURT BY PERTINENT JUDGES AND ATTORNEYS AFTER LEARNING THE NAMES OF PEOPLE INVOLVED AND THE NATURE OF THE CASE. THE LEGISLATURE COULD DEFINE THE TYPES OF CONFLICT AND STAP THAT WOULD REQUIRE AN OFFICER OF THE COMPT TO WITHDRAW FROM A CASE. THIS CRIMINALS AND PETITANTS COULD EXPECT TRIALS WITH MINIMUM PREJUDICES OR CONFLICTS OF INTEREST.

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. Box 4-1325
ANCHORAGE, ALASKA 99509
248-1515



CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 21, 1983

Mr. Mark Andrews
P. O. Box No. 521
Bethel, Alaska 99559

SUBJECT: House Bill 79, Pre-emptory Disqualification

Dear Mr. Andrews:

Thank you for taking the time to write expressing your thoughts on alternative proposals to improve HB 79.

After a great deal of deliberation on the bill and having taken several hours of teleconference, the Committee moved the bill out favoring its passage as written. It will require a 2/3's vote as it deals with a court rule and I believe it is scheduled for floor action some time this week.

Thank you again for becoming a part of the legislative process.

Regards,

A handwritten signature in cursive script, appearing to read "C. Bussell".

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

P.O. Box 521
Bethel, Alaska 99559
February 15, 1983



Representative Charlie Bussell
State Capitol
Pouch V
Juneau, Alaska 99811

Dear Rep. Bussell;

These are my comments concerning House Bill No. 79, which would repeal peremptory disqualifications of judges.

I listened to all of the testimony on January 31, and to much of the testimony on February 3. Without going into the pros and cons again, I believe that the alternative proposal for temporary reassignments should be adopted. Specifically, I believe that there should be a limit on the first reassignment to 90 days. This temporary reassignment would provide a "cooling off" period for all parties involved. The costs to the judicial system would be reduced by temporarily halting the continual reshuffling of judges, and relations between bench and bar would have the opportunity to improve.

If the peremptory disqualifications continued with the same frequency after this first reassignment, then the solution to the problem would be left to the discretion of the chief judge of the district, including the possibility of permanent reassignment.

I believe that a second alternative, that of limiting peremptory challenges to multijudge courts, is unconstitutional.

The Homer incident has illuminated a part of a larger problem with the practice of peremptory disqualifications. Perhaps the House Judiciary Committee could vote to provide funding to the Alaska Court System for a study of (1) the dollar costs of the present practice, specifically focusing on the differences between single judge and multijudge courts, and (2) the effects of the current practice on sentencing.

Thank you for your kind attention.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Mark Andrews'.

Mark Andrews

Holta
2-16-83

A M E N D M E N T

Failed 2/13

Offered in the HOUSE

By Wendte

TO: House Bill No. 79

Page 1, line 6, following "An Act" delete "repealing" and insert "relating to"

Page 1, line 11, following "AS 22.20.022" delete "is repealed." and insert "(a) is amended to read.

Sec. 22.20.022. PEREMPTORY DISQUALIFICATION OF A SUPERIOR OR DISTRICT COURT JUDGE. (a) If a party [OR A PARTY'S ATTORNEY] in a district court action or a superior court action, civil or criminal, files an affidavit alleging under oath a statement of facts and reasons for the belief that a fair and impartial trial cannot be obtained, the presiding district court or superior court judge, respectively, shall at once, and without requiring proof, assign the action to another judge of the appropriate court in that district, or if there is none, the chief justice of the supreme court shall assign a judge for the hearing or trial of the action. The affidavit shall contain a statement that it is made in good faith and not for the purpose of delay.

* Sec. 2. AS 22.20.022(d) is amended to read:

(d) A party [OR A PARTY'S ATTORNEY] may not file more than one affidavit under this section in an action and no more than two affidavits in an action."

Page 1, line 12, change "Sec. 2" to "Sec. 3"

Page 1, line 12, following "AS 22.20.022" delete "repealed" and insert
"amended"

Page 1, line 14, delete "eliminating" and insert "modifying"

Page 1, lines 16 - 18, delete all material.

MSG 83-00006057 PRTY 1 02/03/83 14:00:44 ORIG: LR00 IN= 0013 OUT= 0011
FROM: FLORENCE IN BARROW TO: TIM/JUNEAU
TARGET: LJH1 SUBJ: (H) JUD ON HB 79 2/3/83

OMNI # 2

PARTICIPANT WHO WOULD LIKE TO TESTIFY:

✓
HAROLD CURRAN
BOX 69
BARROW, AK

2:55 - 3 FEB 83

852-2611

MSG 83-00006059 PRTY 1 02/03/83 14:09:46 ORIG: LA08 IN= 0009 OUT= 0012
FROM: BARBARA IN ANCORAGE TO: JNU T/C
TARGET: LJH1 SUBJ: H JUDICIARY T/C, 2/3

OMNI #3

TO TESTIFY:

8. TERESA CARNS, AK JUDICAL COUNCIL, 1031 W. 4TH, SUITE#301, ANC., 279-2526

WE HAVE 5 PEOPLE TO TESTIFY WHO WERE ALSO AT MONDAY'S H. JUDICIARY T/C....

ERIC SANDERS
RON DRATHMAN
HENRY CAMAROT
MICHAEL SCHNEIDER
JOHN LOHFF

THANKS FOR YOUR HELP.....

MSG 83-00006055 PRTY 1 02/03/83 14:00:33 ORIG: LA08 IN= 0008 OUT= 0010
FROM: BARBARA IN (ANC) TO: JNU T/C
TARGET: LJH1 SUBJ: H. JUDICIARY T/C, 2/3

OMNI #2

TO TESTIFY:

7. JOHN B. LOHFF, 308 G ST., #303, ANCHORAGE 99501 276-8514

TO OBSERVE:

5. ELIZABETH MICHERSON, 1024 W. 6TH, ANCHORAGE, 99501 274-1426
6. STEPHEN J. VAN GROOT, 308 G ST., #303, ANCHORAGE, 276-8514

MSG 83-00006074 PRTY 1 02/03/83 14:29:52 ORIG: LA08 IN= 0011 OUT= 0016
FROM: BARBARA IN ~~ANC~~ TO: GAIL/TIM IN JNC
TARGET: LJH1 SUBJ: H. JUDICIARY T/C, 2/3

OMNI #4

TO TESTIFY

9. PHILLIP WEIDER, 444 H STREET, ANCHORAGE 276-7000

MSG 83-00006060 PRTY 1 02/03/83 14:10:44 ORIG: LV00 IN= 0003 OUT= 0014
FROM: PAT, VALDEZ TO: JND T/C
TARGET: LJH SUBJ: HB79, HOUSE JUDICIARY/PRE-EMPTION

PARTICIPANT... TESTIFY 3:25 3 Feb 83 PDS
1. ? WILLIAM BIXBY, BOX 1229, VALDEZ 99686 835-4775 ATTORNEY; COWAN, GILLESPIE
& JEFFERSON

private practice, formerly FBI

HB 79

Seward

Testify

3 Feb 83

1. George Peck 2 PM
2. Lt. Donald Earl 3:30

1 - observer - has had
to leave

Jan

Hom
testify

1. John Rate 3:55 3 FEB 83
2. Calvin Hand 4:15 3 FEB 83
3. Ed Bailey 4:10 3 FEB 83

≡

MSG 83-00006034 PRTY 1 02/03/83 13:35:18 ORIG: LA08 IN= 0005 OUT= 0006
FROM: CANDY/ANCHORAGE TO: GAIL
TARGET: LJH1 SUBJ: **** HOUSE JUDICIARY T/C 2/3 *****

HAVE BEEN ASKED TO ALERT YOU THAT KBBI RADIO/HOMER WILL BE TAPING
JUDGE HORNADAY.

ALSO, BARBARA WANTED ME TO MAKE SURE THAT YOU HAD RECIEVED HER OMNI
EARLIER ABOUT HENRY CAMAROT'S TIME CONSTRAINT. HE MADE THIS REQUEST A
DAY OR TWO AGO, AND IF AT ALL POSSIBLE WOULD LIKE TO SPEAK AT 12:15 AST,
2:15 PST.

THANKS

MSG 83-00006033 PRTY 1 02/03/83 13:30:14 ORIG: LL00 IN= 0003 OUT= 0004
FROM: DEE,SOLDOTNA TO: TIM/JUNEAU
TARGET: LJH1 SUBJ: H. JUD. DISQUALIFICATION JUDGES 2/3/83

OMNI # 1

PARTICIPANTS

150 - 3 Feb 83

1. ALLAN BEISWENGER BOX 3519 SOLDOTNA, AK. 2629164

E.O.M.

MSG 83-00006031 PRTY 1 02/03/83 13:30:18 ORIG: LF20 IN= 0004 OUT= 0005
FROM: LYNDA/FBX TO: ALL
TARGET: LJH1 SUBJ: HSE JUD T/C 2/3

FAIRBANKS HAS ONE PARTICIPANT TO TESTIFY:

135 - 3 Feb 83

1. ART ROBSON, R.V.B.A., 3568 GERAGHTY ST, FBX. 99701 PH 479-6281

HE WAS ONE OF THE FOLKS WHO WAS NOT ABLE TO TESTIFY AT THE LAST HEARING AND IS UNDER A TIME CONSTRAINT TODAY. WOULD IT BE POSSIBLE FOR HIM TO GIVE HIS TESTIMONY AS SOON AS POSSIBLE? THANK YOU.

-----EOM

MSG 83-00006045 PRTY 1 02/03/83 13:46:30 ORIG: LF02 IN= 0001 OUT= 0008
FROM: ANNIE IN FAIRBANKS TO: JUNEAU T/C
TARGET: LJH1 SUBJ: JUDICIARY T/C 2/3/83

HERE TO TESTIFY IN FAIRBANKS:

JUDGE HUGH H. CONNELLY, 604 BARNETTE, ROOM 341, FAIRBANKS 99701 452-9251

2:35 3 FEB 83

MSG 83-00006040 PRTY 1 02/03/83 13:48:03 ORIG: LA08 IN= 0007 OUT= 0009
FROM: BARBARA IN ANC TO: JNU T/C
TARGET: LJH1 SUBJ: H. JUDICIARY T/C, 2/3

IN ANCHORAGE TO TESTIFY:

- well have links to this list suggested*
1. ^{ps} ERIC SANDER, 500 C STREET, ANC, 272-3538 *3 PM - 3 FEB 83*
 2. ^{pi} RON DRATHMAN, 444 H ST., ANC 276-7000 *3:05 - 3 FEB 83*
 3. MICHAEL, SCHNEIDER, 880 N ST., #200, ANC, 99501 277-4551
 4. ^{plw} HENRY CAMAROT, 310 K STREET, SUITE 500, ANC 276-6363 - *2:15 3 FEB*
 5. MARYANNE E. FOLEY, 227 E. 12TH AVE., #2, ANC 274-2890
 6. JULIE SIMON, 3812 SPENARD RD., ANC., 276-3125

TO OBSERVE:

1. PETER MYESING, 444 H STREET, ANC., 276-700
2. W. JOHN LOIN, 2531 NORTHRUP PLACE, ANC., 277-4194
3. JEFF BERLINER, ANCHORAGE TIMES, 820 W. 4TH, ANC., 278-5622
4. ELAINE ANDREW, 2131 BELAIR, ANC 272-7709 *3:30 3 FEB 83*

TELETYPE UNIT 0000 11 002218710 10000 100
12 0000 11 002218710 10000 10000 11 002218710 10000 10000 11 002218710 10000 10000
HE HAS ONE OF THE LOGS AND HAS NOT YET TO BE DELIVERED TO THE FBI HEADQUARTERS

11 0000 11 002218710 10000 10000 11 002218710 10000 10000 11 002218710 10000 10000
ENTERBANKS HAS ONE EMPLOYEES IN 10000

MSG 83-00006023 PRTY 1 02/03/83 13:23:45 ORIG: LJ03 IN= 0001 OUT= 0002
FROM: GAIL TO: TEST
TARGET: LJH1 SUBJ: TEST

TEST

MSG 83-00006027 PRTY 1 02/03/83 13:25:15 ORIG: LJ03 IN= 0003 OUT= 0003
FROM: GAIL TO: TEST
TARGET: LJH1 SUBJ: TEST 2

TEST 2

1-26-83
 Friday
 No Meeting
 Scheduled

HOUSE JUDICIARY COMMITTEE
FIRST COMMITTEE OF REFERRAL

			<u>HEARING</u> <u>DATE</u>	<u>REFERRED</u> <u>TO</u>
HB 2	An Act relating to penalties for the use of restricted ammunition in the commission of a crime.	Hayes <i>Perce</i>	1-25	<i>Thurs</i>
HB 8	An Act relating to judicial retention elections; and providing for an effective date.	Grussendorf		
<i>two</i> HB 10	An Act relating to imitation controlled substances.	Abood	1-26 2/1	<i>wed</i> HJR1
HB 17	An Act relating to age limits under Title 4, Alcoholic Beverages.	Martin	1-27	
HB 38	An Act relating to age limits under Title 4, Alcoholic Beverages.	MM Miller		
HB 52	An Act relating to government interests in intellectual work products developed at the expense of the state.	Rules		
SSHB 58	An Act requiring certain prisoners to serve a full sentence.	Lindauer Barnes	1-28	
HB 60	An Act providing for conditional pardon.	Lindauer		
HJR 1	Proposing an amendment to the Constitution of the State of Alaska providing that a legislator who is convicted of a felony forfeits legislative office.	Phillips	1-26	<i>wed</i>
HJR 2	Proposing an amendment to the Constitution of the State of Alaska limiting the length of regular sessions of the legislature.	Hayes	1-24	Rules 1-24
HJR 3	Proposing an amendment to the Constitution of the State of Alaska limiting the length of regular sessions of the legislature.	Phillips		

		<u>HEARING</u> <u>DATE</u>	<u>REFERRED</u> <u>TO</u>
HJR 4	Relating to the ratification of an amendment to the Constitution of the United States defining Congressional representation and voting rights for residents of the District of Columbia.	MM Miller	
HJR 5	Proposing an amendment to the Constitution of the State of Alaska relating to annulment of regulations be the legislature.	Szymanski	
HJR 6	Relating to the proposal of Congress of an Equal Rights Amendment.	MM Miller	
HJR 7	Proposing amendments to the Constitution of the State of Alaska relating to the election of attorney general and to procedures governing the election and term for state offices to be elected under the constitution.	Uehling Ward Barnes	
HJR 8	Proposing an amendment to the Constitution of the State of Alaska relating to elections for candidates for the offices of governor and lieutenant governor.	Flood	
HJR 9	Proposing an amendment to the Constitution of the State of Alaska relating to elections for candidates for the offices of governor and lieutenant governor.	Bussell	
HJR 11	Proposing an amendment to the Constitution of the State of Alaska limiting the length of regular sessions of the legislature.	Lacher	
HJR 12	Proposing and amendment to the Constitution of the State of Alaska relating to the terms of legislators.	Lacher Tischer Lindauer	

HEARING
DATE

REFERRED
TO

HB 75 An Act relating to the Pestinger
exclusionary rule; changing Furnace
Rule 37(c), Rules of Criminal Uehling
Procedure, and Rule 412, Alaska Barnes
Rules of Evidence, by limiting
application of the exclusionary
rule when a good faith search only
results in technical violations of
the constitutional guarantee
against unlawful search and seizure.

HB 79

An Act repealing peremptory
disqualification of a judge and
changing Rule 10(c) and Rule
25(d), Rules of Criminal Procedure
and Rule 42(c), Rules of Civil
Procedure; and providing for an
effective date.

Fritz

3/31

- to continue

to Thursday

Request
Vincent Vitale
274-3538
request file

HB 87

An Act prohibiting publication
of the identity of persons
charged with certain sexual offenses;
and changing Rule 6(1), Rules of
Criminal Procedure.

Bettisworth

1:30

HB 100

An Act relating to assaulting
a peace officer, fire fighter,
or emergency responder.

Lacher

HB 104

An Act relating to compensation
for victims of violent crimes; and
providing for an effective date.

Clocksinn

HJR 13

Urging the United States Congress
to propose to the people of the
United States an amendment to
the Constitution of the United
States, or to call a convention
for the purpose of adopting the
"Liberty Amendment".

Bettisworth

HJR 14

Proposing amendments to the
Constitution of the State of
Alaska providing for the ratification
of appropriations by the qualified
voters of the state.

Bettisworth

HCR 11

Relating to the use of petit
juries of earphones.

Fritz

		<u>HEARING</u> <u>DATE</u>	<u>REFERRED</u> <u>TO</u>
HB 109	An Act relating to criminal prosecution of minors.	Pestinger Furnace	
HJR 24	Proposing an amendment to the Constitution of the State of Alaska relating to the rights of states.	Rules	
HB 124	An Act requiring an advisory vote by the qualified voters of the state on amendments to the Alaska Statehood Act.	Rules	

17 L.L.E.
55 S. 1st Ave. Anchorage

1976 Judges Conference
on Record Against
Ch 116
1971

1967
SB 66

3 Feb 82 - HB 79

- 1:35 Art Robson Fairbanks (Judge)
- 1:50 Allan Beiswenger Soldotna (Attorney)
- 2:00 Geo Peck Seward - (City Attorney) (Judge)
- 2:15 Henry Cameron (Attorney) Anchorage
- 2:35 Hugh Connelly Fairbanks (Judge)
- 2:55 Harold Curran Barrow - (USB) Attorney
- 3:00 Eric Sanders Anchorage Attorney
- 3:05 Ron D Rothman Anchorage Attorney
- 3:10 James Hornaday Homer Judge
- 3:25 William Bixby Valdez Attorney
- 3:30 Elaine Andrews Anchorage Judge
- 3:45 Phillip Weidner Anchorage Attorney
- 3:55 John Rate Homer Attorney
- 4:10 Ed Bailey Homer Lay person
(NEED his statement) (Good ideas)
- 4:15 Calvin Hard 16 years Homer (Anchor Point Res.)
(NEED his statement) for ~~trial~~ future use
- 4:30 Gerald Williams Juneau (Judge)

(Don't Judges Give Warning regarding a 2nd ??)
Rule 45 — impedes timely trial

MSG 83-00006074 PRTY 1 02/03/83 14:29:52 ORIG: LA08 IN= 0011 OUT= 0016
FROM: BARBARA IN ANC TO: GAIL/TIM IN JNU
TARGET: LJH1 SUBJ: H. JUDICIARY T/C, 2/3

OMNI #4

TO TESTIFY

9. PHILLIP WEIDER, 444 H STREET, ANCHORAGE 276-7000

MSG 83-00006055 PRTY 1 02/03/83 14:00:33 ORIG: LA08 IN= 0008 OUT= 0010
FROM: BARBARA IN ANC TO: JNU T/C
TARGET: LJH1 SUBJ: H. JUDICIARY T/C, 2/3

OMNI #2

TO TESTIFY:

7. JOHN B. LOHFF, 308 G ST., #303, ANCHORAGE 99501 276-8514

TO OBSERVE:

5. ELIZABETH MICHERSON, 1024 W. 6TH, ANCHORAGE, 99501 274-1426

6. STEPHEN J. VAN GROOT, 308 G ST., #303, ANCHORAGE, 276-8514

MSG 83-00006059 PRTY 1 02/03/83 14:09:46 ORIG: LA08 IN= 0009 OUT= 0012
FROM: BARBARA IN ANCORAGE TO: JNU T/C
TARGET: LJH1 SUBJ: H JUDICIARY T/C, 2/3

OMNI #3

TO TESTIFY:

8. TERESA CARNS, AK JUDICAL COUNCIL, 1031 W. 4TH, SUITE #301, ANC., 279-2526

WE HAVE 5 PEOPLE TO TESTIFY WHO WERE ALSO AT MONDAY'S H. JUDICIARY T/C....

ERIC SANDERS
RON DRATHMAN
HENRY CAMAROT
MICHAEL SCHNEIDER
JOHN LOHFF

THANKS FOR YOUR HELP.....

MSG 83-00006045 PRTY 1 02/03/83 13:46:30 ORIG: LF02 IN= 0001 OUT= 0008
FROM: ANNIE IN FAIRBANKS TO: JUNEAU T/C
TARGET: LJH1 SUBJ: JUDICIARY T/C 2/3/83

HERE TO TESTIFY IN FAIRBANKS:

JUDGE HUGH H. CONNELLY, 604 BARNETTE, ROOM 341, FAIRBANKS 99701 452-19251

2:35 3 FEB 83

MSG 83-00006040 PRTY 1 02/03/83 13:48:03 ORIG: LA08 IN= 0007 OUT= 0009
FROM: BARBARA IN ANC TO: JNU T/C
TARGET: LJH1 SUBJ: H. JUDICIARY T/C, 2/3

IN ANCHORAGE TO TESTIFY:

- will have written notes right suggested*
1. ^{PO} ERIC SANDER, 500 C STREET, ANC, 272-3538 *3 PM - 3 FEB 83*
 2. ^{PO} RON DRATHMAN, 444 H ST., ANC 276-7000 *3:05 - 3 FEB 83*
 3. MICHAEL, SCHNEIDER, 880 N ST., #200, ANC, 99501 277-4551
 4. ^{plus} HENRY CAMAROT, 310 K STREET, SUITE 500, ANC 276-6363 - *2:15 3 FEB*
 5. MARYANNE E. FOLEY, 227 E. 12TH AVE., #2, ANC 274-2890
 6. JULIE SIMON, 3812 SPENARD RD., ANC., 276-3125

TO OBSERVE:

1. PETER MYSING, 444 H STREET, ANC., 276-700
2. W. JOHN LOIN, 2531 NORTHRUP PLACE, ANC., 277-4194
3. JEFF BERLINER, ANCHORAGE TIMES, 820 W. 4TH, ANC., 278-5622
4. ELAINE ANDREW, 2131 BELAIR, ANC 272-7709 *3:30 3 FEB 83*

MSG 83-00006060 PRTY 1 02/03/83 14:10:44 ORIG: LV00 IN= 0003 OUT= 0014
FROM: FAT VALDEZ TO: JNO T/C
TARGET: LJH1 SUBJ: HB79, HOUSE JUDICIARY/PRE-EMPTION

PARTICIPANT... Testify

3:25 3 FEB 83

PDS

1. [?] WILLIAM BIXBY, BOX 1229, VALDEZ 99686 835-4775 ATTORNEY; COWAN, GILLESPIE & JEFFERSON

Private Practice, formerly FBI

MSG 83-00006057 PRTY 1 02/03/83 14:00:44 ORIG: LR00 IN= 0013 OUT= 0011
FROM: FLORENCE IN BARROW TO: TIM/JUNEAU
TARGET: LJH1 SUBJ: (H) JUD ON HB 79 2/3/83

OMNI # 2

PARTICIPANT WHO WOULD LIKE TO TESTIFY:

[✓] HAROLD CURRAN
BOX 69
BARROW, AK

2:55 - 3 FEB 83

852-2611

MSG 83-00006033 PRTY 1 02/03/83 13:30:14 ORIG: LL00 IN= 0003 OUT= 0004
FROM: DEE, SOLDOTNA TO: TIM/JUNEAU
TARGET: LJH1 SUBJ: H. JUD. DISQUALIFICATION JUDGES 2/3/83

OMNI ÷ 1

PARTICIPANTS

150 - 3 Feb 83

1. ALLAN BEISWENGER BOX 3519 SOLDOTNA, AK.. 2629164

E.O.M.

MSG 83-00006031 PRTY 1 02/03/83 13:30:18 ORIG: LF20 IN= 0004 OUT= 0005
FROM: LYNDA/FBX TO: ALL
TARGET: LJH1 SUBJ: HSE JUD T/C 2/3

FAIRBANKS HAS ONE PARTICIPANT TO TESTIFY:

135 - 3 Feb 83

1. ART ROBSON, R.V.B.A., 3568 GERAGHTY ST, FBX. 99701 PH 479-6281

HE WAS ONE OF THE FOLKS WHO WAS NOT ABLE TO TESTIFY AT THE LAST HEARING AND IS UNDER A TIME CONSTRAINT TODAY. WOULD IT BE POSSIBLE FOR HIM TO GIVE HIS TESTIMONY AS SOON AS POSSIBLE? THANK YOU.

-----EOM

MSG 83-00006034 PRTY 1 02/03/83 13:35:18 ORIG: LA08 IN= 0005 OUT= 0006
FROM: CANDY/ANCHORAGE TO: GAIL
TARGET: LJH1 SUBJ: **** HOUSE JUDICIARY T/C 2/3 *****

HAVE BEEN ASKED TO ALERT YOU THAT KBRI RADIO/HOMER WILL BE TAPING JUDGE HORNADAY.

ALSO, BARBARA WANTED ME TO MAKE SURE THAT YOU HAD RECIEVED HER OMNI EARLIER ABOUT HENRY CAMAROT'S TIME CONSTRAINT. HE MADE THIS REQUEST A DAY OR TWO AGO, AND IF AT ALL POSSIBLE WOULD LIKE TO SPEAK AT 12:15 AST, 2:15 PST.

THANKS

MSG 83-00004956 PRTY 1 01/31/83 13:48:19 ORIG: LA08 IN= 0008 OUT= 0009
FROM: INEZ/ANCH TO: JNU/TC
TARGET: LJHT SUBJ: HOUSE JUDICIARY TC

ANOTHER OBSERVER:
JOHN LOHFF

ANC

MSG 83-00004954 PRTY 1 01/31/83 13:42:40 ORIG: LA08 IN= 0007 OUT= 0008
FROM: INEZ/ANCH TO: JNU/TC
TARGET: LJHT SUBJ: HOUSE JUDICIARY

RON DRAFFMAN
P. WEIDER
RANDALL M. BURNS
BENNY CASAROT
WAYNE A. ROSS
ROBERT E. FOLEY
MICHAEL J. SCHNEIDER
JOEY POMERLEAU
LIGNE F. VALLENTINE
ELIZABETH PAGE KENNEDY

ANC

John Lohff

MS/6 S LAXXA

MSG 83-00004774 PRTY 1 01/31/83 14:18:54 ORIG: LR00 IN= 0006 OUT= 0012
FROM: FLORENCE IN BARROW TO: LAXTC
TARGET: LJHI SUBJ: (H) JUD T/C ON HB 79 1/31/83

HERE TO OBSERVE:

MICHAEL I. JEFFERY
SUPERIOR COURT JUDGE
BOX 270
BARROW, ALASKA 99723

852-4800

83-00004942 PRTY 1 01/31/83 13:23:51 ORIG: LF02 IN= 0002 OUT= 0003
FM: DEBBIE (FB) TO: TIM/JUNO
RGET: LJHI SUBJ: HB 79 T/C

SERVER:

DGE STEPHEN R. CLINE, BOX 73454, FAIRBANKS, AK 452-9249

ARE EXPECTING ~~THESE PERSONS~~ AT NOON. 2:00

83-00004945 PRTY 1 01/31/83 13:27:05 ORIG: LR00 IN= 0005 OUT= 0004
FM: HELEN/PTHEL TO: HONORATOR
RGET: LJHI SUBJ: PARTICIPANT

THE ~~DATE AND TIME~~

~~FROM BARROW, ALASKA TO: DETAIL, ANCHORAGE, AK 852-4800~~

83-00004252 PRTY 1 01/31/83 13:34:04 ORIG: L100 IN= 0005 OUT= 0007
DE: JUNEAD T/C TO: JUNEAD T/C
ET: LORT SUBJ: ON GOING T/C 1/31/83 11:20 AM AST

CHAPPELL ANCH. DAILY NEWS BOX 4196 KENAI, AK. 283-3094

K.

83-00004950 PRTY 1 01/31/83 13:30:41 ORIG: L100 IN= 0005 OUT= 0006
: DOROTHY IN DILLINGHAM TO: JUNEAD TC
ET: LJM1 SUBJ: PARTICIPANT

WE HAVE ONE OBSERVER AT THE PRESENT TIME, AND AM EXPECTING ONE MORE POSSIBLY.

ETER AZHMAN, ALASKA COURT SYSTEM, BOX 200, DILLINGHAM, ALASKA 99576
TELEPHONE NUMBER IS 842-5215

83-00004986 PRTY 1 01/31/83 14:28:56 ORIG: L500 IN= 0009 OUT= 0013
FALEENE, SITKA TO: ALL SITES
ET: LJM1 SUBJ: 1/31/ H. JUD T/C

SERVE IS SITKA:

OTTE SWANBERG, TRIAL COURTS AT SITKA, BOX 910, SITKA, AK 99835,
PH. NO. 747-3291

OBSERVING, "MAY" WISH TO TESTIFY LATER:

CRASKE, JUDGE, BOX 910, SITKA, AK 99835, PH. NO. 747-6714

MSG 83-00005007 PRTY 1 01/31/83 15:07:19 ORIG LL00 IN= 0008 OUT= 0017
FROM: DEE,SOLDOTNA TO: JUNEAU T/C
TARGET: LJH1 SUBJ: HOUSE JUD. COMM. T/C 1/31/83 11:30 AST

ALLAN REISMENGER BOX 3519 SOLDOTNA, AK. 99669

ALLAN WOULD LIKE TO PARTICIPATE

E.O.M.

MSG 83-00004942 PRTY 1 01/31/83 13:52:54 ORIG: LF02 IN= 0003 OUT= 0010
FROM: DEBBIE FEY TO: TIM/JUNG
TARGET: LJH1 SUBJ: HB 79 T/C

JUDGE JANE KAUVAR HAS ARRIVED. SHE MAY WISH TO TESTIFY.
604 BARNETTE, FAIRBANKS, AK 99701 452-9248

MSG 83-00005024 PRTY 1 01/31/83 15:24:03 ORIG: LK00 IN= 0005 OUT= 0020
FROM: JUNE/JRECHIKAN TO: ALL SITES
TARGET: LJH1 SUBJ: 1/31 HOUSE JUD. T/C

ALTHOUGH INTERESTED WAS EXPRESSED DURING MY CONTACTS, NO ONE HAS
ARRIVED TO PARTICIPATE.

EDM/JR

MSG 83-00005026 PRTY 1 01/31/83 15:27:19 ORIG: LF02 IN= 0005 OUT= 0021
FROM: DEBBIE (FBX) TO: TIM/JUNO
TARGET: LJH1 SUBJ: HB 79 T/C

ADDITIONAL PARTICIPANT:

ART ROBSON, TANANA VALLEY BAR ASS., 3568 GERAGHTY ST., FBX, 99701 479-6281

MR. ROBSON IS OUR LAST WITNESS.

MSG 83-00005027 PRTY 1 01/31/83 15:42:03 ORIG: LV00 IN= 0007 OUT= 0018
FROM: VAL DEZ TO: JNO T/C
TARGET: LJH1 SUBJ: HB 79 T/C

TO PARTICIPATE...

WILLIAM O. BY

VAL DEZ, of 99050 825-4775

MSG 83-00005022 PRTY 1 01/31/83 15:21:00 ORIG: LS00 IN= 0012 OUT= 0019
FROM: FALEENE, SITKA TO: TIM, JUNEAU, ALL
TARGET: LJH1 SUBJ: 1/31 H. JUD T/C

SITKA'S OBSERVER, JUDGE DUANE CRASKE, DOES NOT WISH TO TESTIFY.

MSG 83-00004999 PRTY 1 01/31/83 14:57:02 ORIG: LA08 IN= 0016 OUT= 0016
FROM: BARBARA IN ANC TO: TIM IN JNU
TARGET: LJM1 SUBJ: HOUSE JUDICIARY T/C , JAN . 31

NAMES AND ADDRESSES OF OUR PARTICIPANTS AND OBSERVERS:

1. T DAVID H. THORSNESS, 509 W. 3RD AVE., ANCHORAGE 99501 274-7522
2. T ALLEN N. BAILEY, 310 K ST., SUITE 508, ANCHORAGE 99501 279-6546
3. T TIM LYNCH, 601 W. 5TH AVE., ANCHORAGE, 99501
4. T KAREN L. HUNT, 1007 W. 3RD, SUITE #400, ANCHORAGE, 99501 279-3581
5. ERIC SANDERS, 500 C STREET, #400, ANCHORAGE 99501 272-3538
6. RON DRATHMAN, 444 H STREET, ANCHORAGE 278-7000
7. P. WEIDEL, 444 F STREET, ANCHORAGE 276-7000
8. RANDALL P. BURNS, 360 K STREET, # 105, ANCHORAGE, 272-7469
9. HENRY CAMAROT, SUITE 500, 310 K STREET, ANCHORAGE, 276-6363
10. WAYNE A ROSS, 1007 W. 3RD, SUITE 304, ANCHORAGE, 276-5307
11. ROBERT D. FRENS,
12. MICHAEL SCHNEIDER, 880 N STREET, # 202, ANCHORAGE, 99501 277-4551
13. JODY W. SUTHERLAND
14. DIAHE F. VALLENTINE, 255 W. FIREWEED, ANCHORAGE 99503 277-1604
15. ELIZETH PAGE KENNEDY, 1031 W. 4TH, SUITE 200, ANCHORAGE, 99504 276-3550
16. JOHN R. LOHFF, 308 G STREET, #303, ANCHORAGE, 99501 276-8514

MSG 83-00004994 PRTY 1 01/31/83 14:37:04 ORIG: LA08 IN= 0009 OUT= 0014
FROM: BARBARA IN ANC TO: TIM IN JNU
TARGET: LJM1 SUBJ: HOUSE JUDICIARY T/C JAN 31

JUST RECEIVED YOUR MESSAGE.

OPENED BY
MICHAEL SCHNEIDER

QUESTION-

- ERIC SANDERS
- RON DRATHMAN
- WEIDEL
- HENRY CAMAROT
- WAYNE A ROSS
- DIAHE F. VALLENTINE

MSG 83-00004997 PRTY 1 01/31/83 14:42:40 ORIG: LF02 IN= 0004 OUT= 0015
FROM: DEBBIE/EBY TO: TIM/JUD
TARGET: LJM1 SUBJ: HR 79

~~WHERE ELSE YOU WOULD TESTIFY WHEN YOU COME BACK TO FAIRBANKS~~

ADDITIONAL OBSERVERS:

- JUDGE CONNELLY, 604 BARBETTE RM 341, FAIRBANKS 452-9251
(HE MAY WISH TO MAKE COMMENTS LATER)
- JUDGE H. E. CRUTCHFIELD, 1811 CROSSON AVE., FAIRBANKS, 99701 456-5630
- FARL SLATER, ALASKA COURT SYSTEM, SR BOX 70746, FBX 99701

HB 79

JR

peremptory

Judicial challenge bill stands

Senate next to consider Fritz bill on challenges

A House bill to eliminate the right of attorneys to disqualify a judge without stating a cause will move to the Senate after its sponsor abandoned efforts to convince more representatives to support the legislation.

Rep. Milo Fritz, R-Anchor Point, sponsored the bill to repeal peremptory challenges (the legal term for removing a judge from a case without stating a cause). In addition to a state statute allowing those challenges, the state court system has a rule implementing the law. While the statute may be repealed with a simple majority vote, eliminating the court rule requires a two-thirds majority.

Fritz's bill passed the House by a 24-13 margin last week. With that margin, the portion of the bill repealing the statute could take effect if passed by the Senate and signed by the governor. The portion of the bill repealing the court rule would not be effective, because 27 votes, or a two-thirds

margin, was not reached.

On Thursday, Fritz said he would ask for reconsideration in hopes of picking up the additional votes. Fritz's aide, David Schade, said Monday that reconsideration was not asked for because support from some representatives was wavering. "If you have a sure thing, keep it," he said.

Schade also reiterated Supreme Court Chief Justice Edmond Burke's comment that the court would change its rules voluntarily if the statute was changed.

The peremptory challenge law came under fire last fall after the court system announced that Homer District Court Judge James Hornaday would be transferred to Anchorage on June 1. The reason for the transfer, court officials said, was that in more than 80 percent of the criminal cases to come before Hornaday, attorneys were disqualifying him without cause.

Clarion

PENINSULA CLARION

Complimentary Copy
For

MEMBERS OF THE LEGISLATURE
flown to Anchorage courtesy of
ALASKA AERONAUTICAL INDUSTRIES
flown to Juneau courtesy of
ALASKA AIRLINES

The Peninsula Clarion / U.S.P.S. 438-410.

Kenai, Alaska 25 cents

House passes repeal of judicial challenge law

Reconsideration asked in try for larger margin

A House bill to repeal the right of attorneys to disqualify a judge from a case without cause passed by a 25-13 margin Wednesday, but the bill's author still asked legislators to reconsider their vote.

Rep. Milo Fritz, R-Anchorage, said he is asking for reconsideration in hopes of getting 27 votes, a two-thirds majority. He expected that vote to come today or Monday.

Rep. Hugh Malone, D-Kenai, voted against the bill.

A two-thirds majority is required to repeal a court system rule which implements the challenge without cause (legally called a peremptory challenge) statute. If the 27-vote mark is not reached, the bill repealing the statute only would still

pass and go to the Senate. If passed there and signed into law, the court rule could still stand, although many judges would like to see the law done away with.

"The only indication we've had on the court rule is the 17 judges that were interviewed. They all agreed, along with the Supreme Court Chief Justice, that they would welcome any opportunity to change the law," Fritz said Thursday.

Supreme Court Chief Justice Edmond Burke said in a public hearing in Homer that the court rule would not be maintained if the Legislature repealed the peremptory challenge statute.

See AREA, Page 24

...Area legislation

Continued from Page 1

The issue of peremptory challenges arose because Homer District Court Judge James Hornaday was being challenged in more than 80 percent of the criminal cases to come before him.

Third Judicial District Presiding Judge Mark Rowland transferred Hornaday to Anchorage but delayed the move to June 1.

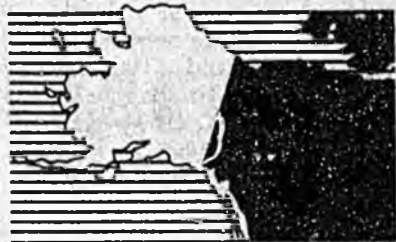
Bill would stop peremptory challenge of judges

The Associated Press

JUNEAU — The Alaska House by a 24-13 vote has passed a bill to eliminate the peremptory challenge of judges, but it rejected a change in court rules that take precedence over legislative mandates.

Another attempt to change court rules was expected today on a notice of reconsideration filed by the bill's sponsor, Rep. Milo Fritz, R-Anchorage Point.

A change in court rules would have required a two-thirds vote in the House, or 27 votes, but the court rule



amendment mustered only 23.

The peremptory challenge has come under fire because of the highly publicized case of District Court Judge James Hornaday of Homer. He has been disqualified by challenges in 80 percent of his recent cases, after he said he

automatically would sentence first-time drunken drivers to 15 days in jail.

The vote on the bill (HB79) came after nearly two hours of debate on the measure and an amendment proposed by Rep. Ron Wendte, D-Ketchikan. Wendte's amendment would have made all challenges qualified, but it was defeated.

Describing the bill as overkill, Wendte said his change was an attempt to "strike middle ground and provide that peremptory challenges be maintained but put the burden on the client and his

attorney."

Calling the middle ground unobtainable, Judiciary Chairman Charlie Bussell, R-Anchorage, said the amendment would allow clerks in attorneys' offices to offer superfluous reasoning on challenges.

Rep. Don Clocksin, D-Anchorage, said that Wendte's amendment would not allow the challenges to be eliminated.

Rep. Niilo Koponen, D-Fairbanks, said the bill is an issue over the right to a fair trial, which was the reason for the peremptory challenge

becoming a part of court procedures.

The amendment would "at least make the right (of a fair trial) accountable," said Rep. Hugh Malone, D-Kenai.

But Rep. Tony Vaska, D-Bethel, said the elimination of the peremptory challenge would allow prejudice to remain in the court system.

"Prejudice means to me stiffer sentences for blacks, Chicanos and Alaska Natives," he said. "The public should have a fair hearing at all times, not with a judge who is prejudiced."

TIMES 2-24-83

House passes judge challenge bill

Associated Press

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"Prejudice means to me stiffer sentences for blacks, Chicanos and Alaska natives," he said. "The public should have a fair hearing at all times, not with a judge who is prejudiced. A fair hearing in every case; that's what justice is all about."

Koponen said the bill "will be known as the Lawyers' Full Em-

ployment Act of 1983."

In other action, the House rejected a change in court rules that take precedence over legislative mandates.

Another attempt to change court rules was expected Friday on a notice of reconsideration filed by the its sponsor, Rep. Milo Fritz, R-Anchor Point.

Malone questioned on judicial challenge stand

To the editor:

Clavion
2-25-83

An open letter to Rep. Hugh Malone:

I understand you are a surveyor. I hope you get your transit out and take a good look at where you're going, as I understand you opposed the Milo Fritz bill which would repeal the law of peremptory challenge. By letting this law stay in running Judge Hornaday out of Homer, do you for one think this will solve the problem?

When there is a new judge assigned, regardless of his attitude toward drunken driving and other crimes, this will only tell lawyers who use this law to load their pockets with taxpayers' money. Apparently Chief Justice Burke and Judge Rowland want to keep this law on the books, perhaps for the day when they topple and have to take defending drunken drivers. I am told when Judge Rowland was a visiting judge in

Homer, he apparently wasn't interested in saving taxpayers money, as he flew his own plane, landing on Lake Beluga. Another visiting judge recently, along with a district attorney and a game warden, were seen as they ran aground on the bar and he was so hard aground, he didn't show up to court till 2 p.m. the next afternoon. Judge Hornaday is a skilled navigator and keeps his ship off the bar.

If this peremptory law is so all-fired necessary, why not put our courts on a paying basis and let them pay for visiting judges, instead of having people who are able to survive the drunken drivers, as in most states one found guilty or the loser in a civil action is required to pay the cost of court. As of now, we the taxpayers are not only paying the cost, we're also paying for a public defender who apparently uses excess time with this peremptory or other laws, stalling to feather his own nest, telling

people who want to plead guilty to plead not guilty so they can run up expense. Also, I know of one case where a man had a quite steady job on the Slope and a public defender, defending him on a criminal trespass case.

WHO is paying?

I'm almost to the point of advocating a repeat of history, as was in Colonial Williamsburg, Virginia, in 1658.

I hope you'll see the light.

Some questions for anyone interested in such subjects:

1. Why not breath-test equipment in all bars and places liquor is sold?
2. Why not let the people vote for all

judgeships as long as we are paying their salaries?

3. Why couldn't we send other perempted judges for a Homer visiting judge?

4. Why, as heard on a teleconference before a committee, are three Anchorage judges not sent as visiting judges to Homer — maybe too tough or lawyers can't dictate to?

5. I am told you are against the bill, Rep. Malone. Why?

I and many of the voters are watching see if our representatives are satisfying will of the people.

Calvin H. Hand
Anchor Point

Bill would stop peremptory challenge of judges

The Associated Press

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Peninsula Clarion
2/10/83

Judge ban repeal law advances

JUNEAU — A bill repealing the right of attorneys to disqualify judges without stating a reason was given a "do pass" recommendation Wednesday by the House Judiciary Committee.

Also on Wednesday, the Senate Finance Committee passed to the full Senate the supplemental appropriations bill for school districts.

Rep. Hugh Malone, D-Kenai, voted against passing the judicial bill, sponsored by Rep. Milo Fritz, R-Anchor Point.

Malone said Wednesday he supports changing the current method of allowing attorneys to disqualify one judge in a case without stating a reason. The law allowing disqualification for cause should stay, he said. Under that law, a hearing to determine whether changing judges is appropriate is held in each case.

A law taking the middle ground, where attorneys would have to state a cause under oath, but no hearing would held, should be passed, he said. Malone said when the bill reaches the floor, he would propose amendments to accomplish his preferred procedure.

"I'd like to know the reasons why judges are being challenged," he said. "I also loathe to take away a right without a clear showing that the right is unnecessary or that it is being used in such a way that it is causing a hardship."

Sen. Don Gilman, R-Kenai, Wednesday reported that the Senate Finance Committee has voted to pass the supplemental appropriation bill for school districts to the Senate floor. The bill passed the House last week and Gilman said he expected it to pass the Senate within a few days. The bill appropriates \$23.5 million for schools.

"It was refreshing to see the bill go through. It was straightforward, and no one tried to tack on anything," he said.

Gilman also reported that two other bills that he introduced are moving through the Senate committee structure. A bill providing a supplemental appropriation for the Department of Environmental Conservation for water and sewer projects and to municipalities for Municipal Assistance will be heard by the Finance Committee Tuesday and Wednesday next week. The bills received "do pass" recommendations by the Senate Community and Regional Affairs Committee.

Judge blames lawyers for

Lawyers counter that challenges are needed to guarantee fairness

By CHRIS JARVIS
Empire Staff Reporter

Lawyers, not judges, are to blame for the high frequency with which some judges are disqualified from cases, Juneau District Court Judge Gerald O. Williams

said today.

Williams is frequently disqualified from hearing cases because, in his opinion, "Alaska is the most lawyer-whipped state in a lawyer-whipped country."

Williams and Juneau Superior Court

Judge Rodger Pegues have been named as two of six Alaska trial judges most frequently disqualified from cases. Pegues is on vacation and was unavailable for comment.

Alaska Court Administrator Art Snowden said the peremptory challenges, which allow lawyers to ask for a different judge without stating a reason, are an "administrative nightmare," noting it costs the state an estimated \$30,000 a year to fly judges into a jurisdiction to hear a case.

high disqualification rate

Williams, a former Alaska State Trooper, said members of the bench should not be blamed.

Williams said it is his responsibility to make sure a person accused of a crime is brought to trial within 120 days of his arrest, he said. He thinks peremptory challenges are often used to prolong the time before trial.

Lawyers generally disagree.

"I don't know of any attorney" who uses peremptory challenges only to prolong

cases, said lawyer Richard Burnham.

According to current rules, an attorney on either side of a case can request a judge be disqualified without giving a reason.

Requiring attorneys to say why a judge should be disqualified would present problems if a judge is not disqualified and the attorney must then argue a case before him, Burnham said.

Although acknowledging it costs money to fly a judge to hear the cases of a disqualified judge, Burnham said there are

other solutions to the problem. For example, he said, a superior court judge could hear district court cases or, if that is not possible, another district judge could be hired.

"It doesn't seem to me the goal of the judicial system is to run cheaply. It's to give people their day in court," Burnham said.

Williams, however, said if a case is prolonged long enough, eventually a case

Continued on Page 2

Judge...

Continued from Page 1

could be dismissed because the time limit for trial has been passed.

Admitting he is sometimes curt when on the bench, Williams said he finds it difficult to "put someone in jail in a nice way."

He defended his record, saying he treats everyone who is convicted in his court in the same way.

"I've still got friends who are mad at me (for sentencing them to jail), but it goes with the turf," he said.

"I admit I'm old fashioned," Williams said. He seldom likes to grant delays in

court proceedings because cases often end up dismissed when delayed too long, he said.

Peremptory challenges are often used by attorneys in a "tactical and strategic" manner, Williams said.

Of defense attorneys, Williams said, "it is in their interest to prolong to avoid a trial."

However, it is not always in the best interest of the defendant, Williams said. Peremptory challenges and continuances might result in an attorney's client staying in jail, if not able to make bail, he said.

It is the court's responsibility to assure efficiency in the system especially with criminal case loads in Juneau almost

doubling in four years, he said.

Sometimes 30 to 60 days will have elapsed days since a person's arrest before making the first court appearance. That leaves as few as 60 days before the case may go to trial, Williams said, noting motions for continuances, if granted, could extend beyond the 120 day limit.

Although some people who see Williams on the bench for the first time might see him as "a combination of Atilla the Hun and Genghis Kahn," he said it is because his experience has taught him he must be absolute when passing judgment.

"I may appear curt in court but I've learned through experience that you've got to do it," he said.

Pre-emption of judges 'disruptive'

by Jeff Berliner
Times Writer

TIMES
2-6-83

A handful of state judges are "disrupting" the state court system because they are removed from cases so frequently, says state court administrator Art Snowden.

Court records show that one Anchorage judge and five other judges from around the state are excused from cases far more than their colleagues.

Although the current debate over pre-emptions has focused on Homer District Court Judge James Hornaday, he is not the only judge regularly excused from cases by lawyers. There are 42 trial judges in the state, (the eight appellate judges may not be pre-empted), and lawyers routinely excuse six of them.

According to court records, in addition to Hornaday, the judges being regularly bumped from
See Judges, page A-4

A-4 The Anchorage Times, Sunday, February 6, 1983

Judges

(Continued from page A-1)
cases are Juneau District Court Judge Gerald Williams, Fairbanks District Court Judge Stephen Cline, Anchorage Superior Court Judge Karl Johnstone, Juneau Superior Court Judge Roger Pegues, and Wrangell Superior Court Judge Henry Keene.

By law, attorneys have a right of pre-emption, called peremptory challenge, which means that each side in a case may excuse the judge assigned to that case one time. The parties involved do not have to state the reason. Lawyers have five days from the initiation of a case to file a notice for a change of judge. The legislature is now considering a bill to repeal lawyers' right to pre-empt a judge.

Court officials have called the pre-emption an "administrative nightmare" because of the problems in reassigning judges.

"It is more efficient without it,"

Snowden said, adding that the court system has not taken a policy on the peremptory challenge and is probably split on the issue.

Snowden called it "a disruption" that costs the state court system an average of \$30,000 yearly in extra costs of reassigning cases to other judges.

The biggest expense, Snowden said, is paying travel and expense money to have judges journey to one-judge areas to fill in where the only judge in town has been legally removed from a case.

That has happened so much in Homer that Hornaday has been ordered to pack up, leave town, and don his judicial robes in Anchorage. Even if lawyers pre-empt him there, the reasoning is, there are other judges to fill in. Presiding Judge Mark Rowland ordered Hornaday to move to Anchorage by June 1 to fill a judicial vacancy here.

Hornaday has been pre-empted from about 84 percent of the criminal cases assigned to him. His law-

yer, Henry Camarot, claims that Hornaday is pre-empted 8 percent of the time when all his cases are considered.

Cline, Williams and Johnstone are taken off cases up to half the time. All four of the most pre-empted judges have been retained in office by voters in recent elections.

Johnstone, the only Anchorage judge regularly excused, is also the only judge who hears civil cases almost exclusively. The others regularly hear criminal cases, too. Johnstone is pre-empted three times more than all the other Anchorage Superior Court civil judges put together, and his pre-emptions climbed to a high of 20 in December. Judges are assigned between 30 and 40 new cases monthly. Johnstone was pre-empted 153 times in 1982, up from 71 in 1981. And although Johnstone said last summer that his pre-emp-

tions were going down, court records show they are on the rise.

But in Anchorage, the state's biggest judicial district, Johnstone's cases are simply reassigned to another Anchorage judge. That can't be done in Homer, where Hornaday is the only judge. His removal means that court administrators have to send in another judge to hear Hornaday's cases.

Last week the House Judiciary Committee held two days of hearings on the bill to abolish the pre-emption. Lawyers argued against the bill, claiming the pre-emption is used to excuse a judge who may not give their client a "fair shake."

Both defense attorneys and Anchorage municipal prosecutor Allen Bailey argued for keeping pre-emptions around so they have a tool to excuse a judge they think is either too lenient or too harsh when it comes to sentencing.

2-2-83 Anch M260

Homer residents still trying to keep judge

By **RONNIE CHAPPELL**
Daily News correspondent

HOMER — The residents of this Kachemak Bay community apparently are willing to give up their right to pre-empt judges without legal cause in order to keep District Court Judge James C. Hornaday in Homer.

Opponents of Hornaday's pending transfer to Anchorage took their fight to the halls of the State Capitol Monday and urged the House Judiciary Committee to support a proposed bill that would bar lawyers from disqualifying judges without cause.

The bill is sponsored by Rep. Milo Fritz, R-Anchor Point, who told the committee that lawyers in Homer were abusing the right of peremptory chal-

lenge for the sake of "indulging in a vendetta against Hornaday."

A past president of the Alaska Bar Association, a judge, an Anchorage prosecutor and the Alaska Department of Law all testified against passage.

Early last year Hornaday announced plans to begin sentencing first time drunken drivers to 15 days in jail. The stance earned Hornaday the respect of the community at large, but incurred the wrath of defendants and local lawyers, who began asking that their cases be tried by other judges.

"Attorneys have usurped and abused the system," testified Wayne Kessler, chairman of an ad hoc committee that is fighting Hornaday's transfer. Speaking through the state teleconference system,

Kessler charged that often lawyers use peremptory challenges for personal and political reasons. "The idea that the clients are the ones preempting the judges is totally assinine," Kessler said.

Homer City Councilwoman Gail Phillips and Homer High School teacher Wayne Lee joined Kessler in urging passage of the bill.

However, Fairbanks District Court Judge Jane Kauver advised the committee that changing the law would do little to remedy the existing problem. "Judges getting challenged peremptorily will be challenged for cause," Kauver said. The result, she said, will be damaging hearings that tie up court time, drive up the cost of litigation and result in hard feelings.

What others say

Times - 1-25-83

From The Peninsula Clarion, Kenal

HORNADAY'S transfer is only the battle — the war is the larger question of whether attorneys should be armed with the right to disqualify without cause a judge assigned to hear a case. There is no suggestion that attorneys

be limited in their right to challenge for cause. Indeed, it is a vital right for those accused of crime. However, it is suggested that they should not be able to use peremptory disqualification.

Kenai C of C:

Stiffer DWI sentences but keep pre-emption

C/N 1/4/83

The Kenai Chamber of Commerce Board has come out for stiffer drunk driving sentences but chose not to support the house bill pre-filed by Rep. Milo Fritz which would eliminate pre-emption of judges by defendants without stated cause.

But the subject will be in for more discussion when the Chamber Board meets again Friday noon, said Chamber secretary Peggy Arness. Some of the Board members are not satisfied that the Chamber took a strong enough stand, and Board members are getting phone calls, said Mrs. Arness.

About 12 of the 16 Board members attended Friday's meeting. At that time all "went along" with the Board's stand on stiffer sentencing and non-support of the proposed pre-emptory bill.

Influencing the Board's decision was attorney Ed Garnett, a Chamber Board member, who defended preemptions which have taken Judge James Hornaday off the Homer Superior Court bench so often he may be transferred.

Judge Mark Rowland has said Hornaday could remain in Homer if the legislature made changes in the pre-emptory bill. Hornaday has been preempted on 80 percent of his cases, at least partially because of his announced tough sentences for drunk drivers.

But Garnett stated Hornaday had more than his share of preemptions even before his stand on drunk driving.

An earlier letter from the Chamber to the Homer task force to retain Hornaday in Homer, expressed Chamber support of the group's efforts.

Assembly balks at backing Homer judge retention

Gene McBride hopefully suggested a "unanimous consent" for a Borough Assembly resolution asking that the transferring of District Judge James C. Hornaday from Homer be set aside, but differing opinions greeted the resolution which went down to defeat on a six to nine vote.

Brentley Keene of Homer, despite his community's strong show of sentiment favoring Hornaday's retention, stated he believed the resolution was "not the type of thing the Assembly should be dealing with."

Marilyn Dimmick also thought it an area the Assembly shouldn't be delving into, confusing the good feeling for Hornaday

by expanding the resolution to proposing mandatory sentences for drunk drivers and limiting pre-emptory disqualification of judges which has plagued Hornaday and brought his transfer orders.

But Tommy Corr of Kalifonsky Beach thought the resolution was the type of thing the Assembly should be doing.

Corr also supported the right of Raymond Gillespie, Seward attorney, to vote on the issue. Attorneys have been solidly opposed to weakening the pre-emptory rights, a prospect which has arisen with support of Hornaday. Gillespie's voting had been questioned by Chuck Crapuchettes.

Support for the resolution

came from Betty Glick, Onis King, Corr, Crapuchettes, McBride, and Mrs. McGahan. Opposed were John Crawford, Dave Carey, Don McCloud, Joe Arness, John Douglas, Kenn Stephens, Keene, Gillespie, and Mrs. Dimmick. Sharon Jean was absent.

Mrs. McGahan earlier offered a resolution deleting the section calling for a review of the pre-emption without cause and expressed personal feelings. "I know one judge I would like to preempt. No cause; it's just that we don't agree on anything." But her motion went down 5 to 10.

Corr's motion to delete the section asking for mandatory drunk driving sentences also was beaten, 5 to 10.

Around the Peninsula...

C-N 11/4/83
Homer drunk driving arrests in 1982 more than doubled over 1981 (171 compared to 84), according to the *Homer News*. Early in 1982, alarmed about a 30 percent increase in drunk driving over the previous year, Judge James Hornaday stiffened sentences. But preemptory challenges have prevented him from hearing 80 percent of the criminal cases, including DWI cases.

The trend does not appear to have changed for 1983. Two were brought to court on drunk driving charges the second day of the new year. One had almost made it home, within 50 feet despite a .23 breathalyzer test result. According to law, a driver testing at .15 is drunk.

POUCH V
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CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

Mark Andrews
Supervising Attorney
Alaska Legal Services
Bethel, Alaska

RE: HB 79, Legislation Pertaining to Peremptory
Disqualification

Dear Mr. Andrews:

Thank you for taking the time to give the Committee your comments via Teleconference during our hearing process on HB 79.

On Wednesday, February 25, 1983, HB 79 was brought before the House for second reading and debate. After nearly two hours of debate and one attempt at having the bill amended, HB 79 was advanced to third reading and voted on by the body.

A copy of the House Journal covering action by the House for its thirty-eighth day is enclosed and shows the voting and progress of HB 79 as it passed the House. At the close of the floor action for the day on HB 79, Representative Fritz gave notice of reconsideration of his vote, which carries the bill to the next legislative day for another vote if brought up at that time.

On the next legislative day, HB 79 was not again brought up, so it has passed the House as shown in the Journal for the thirty-eighth day.

Thank you again for taking the time to become involved with the legislative process.

Regards,

A handwritten signature in cursive script, appearing to read "Charlie Bussell".

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:cmz

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ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

Wayne Lee
Sterling Highway
Homer, Alaska

RE: HB 79 Legislation Pertaining to Peremptory
Disqualification

Dear Mr. Lee:

Thank you for taking the time to give the Committee your comments via Teleconference during our hearing process on HB 79.

On Wednesday, February 25, 1983, HB 79 was brought before the House for second reading and debate. After nearly two hours of debate and one attempt at having the bill amended, HB 79 was advanced to third reading and voted on by the body.

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Chairman, Committee on Judiciary

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MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

Judge Stephen Cline
Box 73454
Fairbanks, Alaska

RE: HB 79, Legislation Pertaining to Peremptory
Disqualification

Dear Judge Cline:

Thank you for taking the time to give the Committee your comments via Teleconference during our hearing process on HB 79.


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Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:cmz

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MEMBER
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Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

Henry Camarot
310 K Street, Suite 500
Anchorage, Alaska 99501

RE: HB 79, Legislation Pertaining to Peremptory
Disqualification

Dear Mr. Camarot:

Thank you for taking the time to give the Committee your comments via Teleconference during our hearing process on HB 79.

On Wednesday, February 25, 1983, HB 79 was brought before the House for second reading and debate. After nearly two hours of debate and one attempt at having the bill amended, HB 79 was advanced to third reading and voted on by the body.

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Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:cmz

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Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

Harold Curran
Box 69
Barrow, Alaska 99723

RE: HB 79, Legislation Pertaining to Peremptory
Disqualification

Dear Mr. Curran:

Thank you for taking the time to give the Committee your comments via Teleconference during our hearing process on HB 79.

On Wednesday, February 25, 1983, HB 79 was brought before the House for second reading and debate. After nearly two hours of debate and one attempt at having the bill amended, HB 79 was advanced to third reading and voted on by the body.

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Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:cmz

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Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

Judge James D. Hornaday
Box 134
Homer, Alaska 99603

RE: HB 79, Legislation Pertaining to Peremptory
Disqualification

Dear Judge Hornaday:

Thank you for taking the time to give the Committee your comments via Teleconference during our hearing process on HB 79.

On Wednesday, February 25, 1983, HB 79 was brought before the House for second reading and debate. After nearly two hours of debate and one attempt at having the bill amended, HB 79 was advanced to third reading and voted on by the body.

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Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:cmz

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Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

George Peck
Box 596
Seward, Alaska 99664

RE: HB 79, Legislation Pertaining to Peremptory
Disqualification

Dear Mr. Peck:

Thank you for taking the time to give the Committee your comments via Teleconference during our hearing process on HB 79.

On Wednesday, February 25, 1983, HB 79 was brought before the House for second reading and debate. After nearly two hours of debate and one attempt at having the bill amended, HB 79 was advanced to third reading and voted on by the body.

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Regards,

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Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:cmz

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HOUSE JUDICIARY COMMITTEE
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HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

John Rate
Box 2169
Homer, Alaska 99603

RE: HB 79, Legislation Pertaining to Peremptory
Disqualification

Dear Mr. Rate:

Thank you for taking the time to give the Committee your comments via Teleconference during our hearing process on HB 79.

On Wednesday, February 25, 1983, HB 79 was brought before the House for second reading and debate. After nearly two hours of debate and one attempt at having the bill amended, HB 79 was advanced to third reading and voted on by the body.

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Thank you again for taking the time to become involved with the legislative process.

Regards,

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Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:cmz

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Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

Ed Bailey
PO Box 2994
Homer, Alaska 99603

RE: HB 79, Legislation Pertaining to Peremptory
Disqualification

Dear Mr. Bailey:

Thank you for taking the time to give the Committee your comments via Teleconference during our hearing process on HB 79.

On Wednesday, February 25, 1983, HB 79 was brought before the House for second reading and debate. After nearly two hours of debate and one attempt at having the bill amended, HB 79 was advanced to third reading and voted on by the body.

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Thank you again for taking the time to become involved with the legislative process.

Regards,

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Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:cmz

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HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

Calvin Hand
Str 490
Anchor Point, Alaska 99556

RE: HB 79, Legislation Pertaining to Peremptory
Disqualification

Dear Mr. Hand:

Thank you for taking the time to give the Committee your comments via Teleconference during our hearing process on HB 79.

On Wednesday, February 25, 1983, HB 79 was brought before the House for second reading and debate. After nearly two hours of debate and one attempt at having the bill amended, HB 79 was advanced to third reading and voted on by the body.

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Thank you again for taking the time to become involved with the legislative process.

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Representative Charlie Bussell
Chairman, Committee on Judiciary.

CB:cmz

POUCH V
JUNEAU, ALASKA 98111
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CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 28, 1983

Wayne Kessler
Box 1243
Homer, Alaska

RE: HB 79, Legislation Pertaining to Peremptory
Disqualification

Dear Mr. Kessler:

Thank you for taking the time to give the Committee your comments via Teleconference during our hearing process on HB 79.

On Wednesday, February 25, 1983, HB 79 was brought before the House for second reading and debate. After nearly two hours of debate and one attempt at having the bill amended, HB 79 was advanced to third reading and voted on by the body.

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Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:cmz

TESTIMONY OF JUDGE JAMES D. HORNADAY, HOMER
February 2, 1983

Mr. Chairman and ladies and gentlemen of the Committee, thank you for holding this hearing and inviting me to address the Committee. I hope I am not the monster judge that everyone has been talking about. My name is James D. Hornaday and from a perspective of nearly 20 years in Alaska I am speaking to you today as a judge. The judicial cannons permit and even require that judges speak out for the improvement of the administration of justice. And with all of the comments by many of my lawyer friends I feel a little like David when he went up against Goliath. The men and women of good will can and do differ in their opinions, and it does remind a little of the old Alaska adage that if the lawyers are against something it must be worthwhile. I wish it were someone else who was on the line rather than me, frankly I would rather be playing basketball or working on a legal history project. But the question of the peremptory challenge is involved with the independence of the judiciary and the decreasing respect for the judiciary. First of all, the peremptory challenge is not a fundamental constitutional right; it does not even exist anywhere in the Federal system, and there are Federal judges in every state and territory. Apparently it does not even exist in the vast majority, about two-thirds of the states. Alaska is in the extreme minority. It did not exist in Alaska until a few years ago when some lawyers pushed it through the Legislature. The Federal system and the majority of states get along just fine without it. Now as one example, drunk driving cases are the most serious problem facing the Alaska Court System. Over half of all the jury trials in the entire Court System are drunk driving cases. Drinking was involved in over 80% of the traffic fatalities; over 200 thousand are killed or injured annually on our nation's highways. Let's make clear what the Legislature has already done; the Legislature has passed legislation providing for up to one year in jail and \$5,000 fine, revocation of licenses and community work. Now the statutes specifically states that for the first offense a defendant is to receive not less than 72 consecutive hours. It is too serious a problem to leave in the hands of the attorneys and that is the none effect of the peremptory challenge without cause. Judges are concerned about the peremptory challenge; it is affecting sentences. The Chief Justice has stated publicly that the peremptory challenge moderates sentences and that a judge has to walk a fine line and if they get too far over they will be removed by the peremption. I was told by the presiding judge that I had to take peremptions into consideration when I sentence. It is the most frequent topic of conversation at the Annual Judicial Conference. The leading authority on court delay called the Alaska peremptory challenge an absolute abomination, those were his words. Representatives of the National Center of State Courts were amazed at the existence of the removal without cause. I have heard judges tell the Chief Justice they are concerned about the peremption. It is a problem state-wide, not just in Homer. You have heard the lawyer in Bethel and the problems there. You've heard the judges in Fairbanks. It exists in Kodiak, Ketchikan, Juneau and all over the state, even in multi-judge areas. Now we announced a pattern of sentencing in drunk driving cases in Homer about a year ago which was effective, but sentences were clearly within the sentences permitted by the Legislature. Fifteen days is less than 5% of the maximum penalty. Although the announced pattern is no longer in effect and was rescinded when the higher court ruled that it could not be applied. There are sentencing patterns in Alaska, attorneys keep records of the sentences of judges. So there are patterns but known only to the judges and the lawyers. The public, including the potential defenders, do not know the patterns. It is time to open up the System and bring it out from behind the closed doors of the

legal profession. Now I was a lawyer for 10 years and you are never going to satisfy the lawyers on sentencing. About 6 years ago we initiated the first work program, alternate work program, for drunk drivers in Alaska. Some lawyers supported, but other complained that work was a cruel and unusual punishment. Now the program has been reinstated pursuant to the community work which the Legislature has made a sentencing tool. Now the lawyers are complaining that we are giving too much community work. Also the argument that the System would be flooded with time consuming challenges for cause is questionable, as several attorneys have indicated that they would not use challenges for cause. Further the presiding judge denied a challenge because against me on hearing a DWI case after the announced policy was rescinded. The hearing took all of 10 minutes. The Court System and the people of Alaska should not be held hostage by attorneys threatening to plug the System with challenges for cause. Further judges will disqualify themselves if for some reason they should not hear a case. There is already a procedure for this approach that is in effect. However, again note that a judge has to give a reason why they are disqualifying themselves. Related to the peremptory challenge is another deep concern which I have as a 20 year Alaskan and as a lawyer and a judge and a citizen, and that is the growing lack of respect for the Alaska Judiciary among the members of the public. Reportedly, concern over the Justice System trailed only the capitol move and subsistence in intensity in the recent election. Almost half of the voters in the Third District voted not to retain the trial judges last November. This negative vote is up nearly 10% in only 4 years. How many years will it be before all judges are defeated? Some of the longer serving judges remember when they received 85% approval ratings. For the first time in nearly 20 years in the legal profession, so many people told me they were voting against all of the judges that I lost count. And note that, at least to-date, that most of the people, most of the lay people, testifying to you are against the peremption, only the lawyers are testifying before you in favor of it. That should tell you something. We pride ourselves in Alaska on the merit selection appointment procedure for judges. The Judicial Council recommends the Governor appoints and the people vote, and yet the present situation with the peremptory challenge is worse than the most partisan political election of judges, and that a very few attorneys can remove a judge and hold the System hostage. The cost to the public and the wasted expense and time is high. The selection process of which we are so proud and the public vote means absolutely nothing. Just as an example, I was required to move to Homer to take the judgeship in Homer. The Judicial Council recommended me for Homer and the Governor specifically appointed me to Homer. The family moved here and has put down deep roots; we have children in school of all ages. I received good ratings from the lawyers and the highest rating from the Alaska Peace Officers and was retained overwhelming by the voters in the November election in my home area by a 2 to 1 margin. And although I appreciate Mrs. Barnes' invitation to Anchorage, I would prefer frankly to remain in Homer. I did live in Anchorage for a couple years and I have, we have, a lot of friends up there, however we are pretty deeply rooted in Homer at the present time. Two weeks after the election I was asked to transfer to Anchorage because of the peremptions. I have been assured that there is no other reasons for my transfer, only the peremptions. None of my sentences have ever been reversed as excessive. Now there are checks and balances that are far more appropriate than peremptions without cause and they are numerous. If a judge is doing something improper turn them over to the Judicial Qualifications Commission, or challenge the judge for cause, or test the judge in the retention elections, or appeal the judge's decision, or ask the judge to voluntarily disqualify himself. The message is going out loud and clear to the judges in Alaska, to the attorneys and to the public that inspite of the vote of thousands that vote means nothing, and a handful of attorneys can accomplish the transfer

of a judge, and threaten other judges through peremptions for which they do not even have to give a reason. All the attorneys have talked about before you are the rights of their clients, and these are important rights, no one would say that they are not. But what about the rights of the victims? What about the rights of society? The Constitution clearly requires a judge to sentence to protect society and reformation. No where in the Constitution, in the statutes or in the case law is there any indication that a judge is to sentence in order to avoid peremptions. And yet the Chief Justice of the Alaska Supreme Court has stated publicly that this is happening, and any judge who will level with you will tell you the same. The tail is wagging the dog at the present time as the attorneys are in effect controlling sentencing, and are now even controlling the transfer of judges. Thank you.

MARY/MATSU - 3/1 - 2:25 P.M.



TO: ALL LEGISLATORS

FR: LEONARD MOFFITT
P O BOX 748
PALMER 99645

PREEMPTION IS "TOOTED" AS A PROCEDURE TO PROTECT LAYMEN FROM PREJUDICIAL JUDGES HOWEVER, THAT PURPOSE SEEMS TO HAVE TAKEN SECOND PLACE AS ATTORNEYS MAY USE IT TO OBTAIN FAVORABLE JJUDGES FOR THEMSELVES. THE PAST RECORD OF RACIAL SENTENCING WOULD INDICATE THE PREEMPTION WAS AND IS INEFFECTIVE. LEGISLATIVE DETERMINATION IS WHAT CONTITUTES JUDICIAL CONFLICTS OF INTEREST AND BIAS PLUS REQUIRING JUDICIAL DISCLOSURE ARE NECESSARY JUDICIAL IMPROVEMENTS. MEANINGFUL JUDICIAL IMPROVEMENTS CANNOT BE OBTAINED UNTIL THE OFFICERS OF THE COURT ARE NOT ALLOWED TO VOTE ON CONFLICT OF INTEREST ISSUES.

EOM

ALASKA STATE LEGISLATURE

JR Rep Bussell

INTERIM OFFICE:
P.O. BOX 81435
FAIRBANKS, ALASKA 99708



IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4930/4941

CHAIRMAN
1983 INTERIOR DELEGATION

MEMBER
TRANSPORTATION
HEALTH, EDUCATION AND SOCIAL SERVICES
LABOR SUBCOMMITTEE
JOINT OIL AND GAS
RURAL EDUCATION ATTENDANCE AREAS

Representative Mike Davis
House District 19

MEMORANDUM

To: Members of the House Judiciary and State Affairs Committees
From: Rep. Mike Davis *Mike*
Date: March 21, 1983
Re: House Bill 79



Enclosed is a copy of a letter written in regard to House Bill 79, which would repeal the peremptory disqualification of judges. Mr. Parrish presents some insightful arguments which you may wish to consider when evaluating this bill.

O. NELSON PARRISH
JAMES A. PARRISH
LANCE C. PARRISH
ROBERT A. PARRISH
OF COUNSEL

PARRISH LAW OFFICE
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
536 FOURTH AVENUE
FAIRBANKS, ALASKA 99701

TELEPHONE
(907) 456-4070

March 10, 1983

Representative Mike Davis
Capitol Office Building
Pouch V
Juneau, Alaska 99811

Dear Representative Davis:

I am writing regarding House Bill 79 which has apparently been introduced in the First Session of the 13th Legislature. This bill provides that the current Alaska Statute 22.20.022 providing for peremptory disqualification of judges be repealed. I wish to express my most sincere opinion that the passage of this bill would constitute a giant leap backward in the struggle for a fair and impartial judiciary in Alaska.

I take a particular interest in this bill because my father, Robert A. Parrish, strongly supported it when it was originally passed. I have paid special attention to the effect which it has had upon the judiciary and justice in individual cases. I have consulted with numerous other lawyers whose opinions I respect. Among those, the near unanimous consensus is that the peremptory disqualification procedure has been of great benefit to the state and should not be abandoned.

The peremptory disqualification procedure operates on two independent levels. Each is basic to fair adjudication of both civil and criminal controversies in this state.

On the first level, the disqualification procedure helps insure that a party or his counsel will not be required to participate in litigation before a judge who is consciously or unconsciously biased against him. Despite its rapid growth and large size, Alaska is a small state in terms of its citizens inter-relationships and their relationship with the judiciary. Lawyers especially have the occasion to go before the same judge time and time again during the course of the average year. Trial judges wield substantial power well beyond that which can be controlled by appellate review. The potential is always present that a judge will for non-judicial reasons act in a biased manner against a given attorney or party. The availability of a peremptory challenge effectively precludes a judge from at least repeatedly acting in a biased manner against a lawyer or party.

Representative Davis
March 10, 1983
Page 2

Additionally, despite the high quality of the Alaskan judiciary, lawyers are often correct in the belief that a certain judge may not be properly suited to the trial of a certain type of case. Again, the peremptory challenge procedure helps insure that such a lawyer or his client will not be bound to accept a given judge to try any given type of case.

At the second level, the peremptory challenge procedure promotes and assures that the judiciary will in general operate in a completely unbiased manner and will strive to provide justice uniformly.

It is easy to say at this stage of the judiciary's development that we do not need a peremptory challenge law because there is no evidence that any judge has been acting in a biased manner toward any particular attorneys or any particular type of cases. But, this has not always been the case. There have in the past been strong inter-personal conflicts between lawyers and judges which have resulted in biased decisions. Likewise, before the peremptory challenge law there was much less uniformity in judicial application of the law. It is my strong belief that the peremptory challenge law has contributed substantially to the improved judicial situation in this state.

The exercise of a peremptory challenge in any given case is of little significance to a judge. However, if a pattern develops whereby a certain attorney is repeatedly challenging the same judge, it becomes apparent to the bar in general that that attorney does not believe he can get a fair trial in front of that judge. No judge wishes to be subject to such public opinion and therefore each strives to avoid bias in his attitude towards attorneys and/or parties and their cases. This office has not had occasion to peremptorily challenge a judge for many years. Nevertheless, we consider the right to a peremptory challenge a fundamental guarantee of the high quality and unbiased judiciary that we have.

Likewise, if any judge develops a pattern of bias in a given type of case, that pattern will soon become evident through the use of peremptory challenges. Again, since such a pattern is indicative of bias, no judge would want it to continue. Therefore, he will be spurred to closely evaluate his rulings in light of those of other judges and conform to them. In this way, the judiciary acts in a more uniform manner. Uniform application of laws is desirable. Aside from equality of treatment, it speeds the revision process if the people or the lawmakers disagree with the manner of application.

Representative Davis
March 10, 1983
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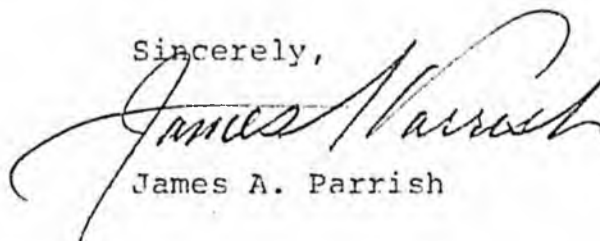
Perhaps the most important attribute of the peremptory challenge procedure is that it allows attorneys to represent their clients to the fullest extent without fear of subsequent judicial reprisal in other cases. In the absence of a peremptory challenge rule, judges can develop the attitude that they are always right and that any attorney who challenges their judgment by openly disagreeing with it or appealing it is wrong. In the absence of a peremptory challenge, a challenge to the authority of such a judge will be met with conscious or unconscious retaliatory measures in a subsequent case.

I am pleased to say that in Fairbanks, at least, there is no evidence of such attitudes. However, as they did exist before the peremptory challenge law and do exist in other states without such a law, I am constrained to believe that there is a cause and effect relationship.

I have not had any experience with political controversies in the courts. However, I would assume that the risk of a biased judge is as great there as it is in other types of cases. As a lawmaker, I would think that you would be especially attuned to the importance that an unbiased judge makes in a legal controversy. I am sure you can see as well as I that there is always the potential for the selection of a judge who simply should not be chosen to hear a given case. I also hope you can understand that judges, as human beings, are sensitive to their reputation as to fairness. Since the peremptory challenge rule may be the singlemost important means by which judicial reputations can be developed and communicated, their continued existence is critical.

I understand that there are concerns of expediency which would militate in favor of repealing the peremptory challenge rule. I, for one, favor taking measures which increase the efficiency and reduce the cost of the legal system. Nevertheless, the importance of the peremptory challenge procedure in terms of judicial quality and fairness offsets by far its cost in terms of efficiency and expense. Therefore, I hope that you will oppose passage of House Bill 79.

Sincerely,



James A. Parrish

JAP:mgs

PARRISH LAW OFFICE

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

536 FOURTH AVENUE

FAIRBANKS, ALASKA 99701

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OF COUNSEL

TELEPHONE
(907) 456-4070

March 10, 1983



Representative Charlie Bussell
Capitol Office Building
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

I am writing regarding House Bill 79 which has apparently been introduced in the First Session of the 13th Legislature. This bill provides that the current Alaska Statute 22.20.022 providing for peremptory disqualification of judges be repealed. I wish to express my most sincere opinion that the passage of this bill would constitute a giant leap backward in the struggle for a fair and impartial judiciary in Alaska.

I take a particular interest in this bill because my father, Robert A. Parrish, strongly supported it when it was originally passed. I have paid special attention to the effect which it has had upon the judiciary and justice in individual cases. I have consulted with numerous other lawyers whose opinions I respect. Among those, the near unanimous consensus is that the peremptory disqualification procedure has been of great benefit to the state and should not be abandoned.

The peremptory disqualification procedure operates on two independent levels. Each is basic to fair adjudication of both civil and criminal controversies in this state.

On the first level, the disqualification procedure helps insure that a party or his counsel will not be required to participate in litigation before a judge who is consciously or unconsciously biased against him. Despite its rapid growth and large size, Alaska is a small state in terms of its citizens inter-relationships and their relationship with the judiciary. Lawyers especially have the occasion to go before the same judge time and time again during the course of the average year. Trial judges wield substantial power well beyond that which can be controlled by appellate review. The potential is always present that a judge will for non-judicial reasons act in a biased manner against a given attorney or party. The availability of a peremptory challenge effectively precludes a judge from at least repeatedly acting in a biased manner against a lawyer or party.

Representative Bussell
March 10, 1983
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Additionally, despite the high quality of the Alaskan judiciary, lawyers are often correct in the belief that a certain judge may not be properly suited to the trial of a certain type of case. Again, the peremptory challenge procedure helps insure that such a lawyer or his client will not be bound to accept a given judge to try any given type of case.

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The exercise of a peremptory challenge in any given case is of little significance to a judge. However, if a pattern develops whereby a certain attorney is repeatedly challenging the same judge, it becomes apparent to the bar in general that that attorney does not believe he can get a fair trial in front of that judge. No judge wishes to be subject to such public opinion and therefore each strives to avoid bias in his attitude towards attorneys and/or parties and their cases. This office has not had occasion to peremptorily challenge a judge for many years. Nevertheless, we consider the right to a peremptory challenge a fundamental guarantee of the high quality and unbiased judiciary that we have.

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Representative Bussell

March 10, 1983

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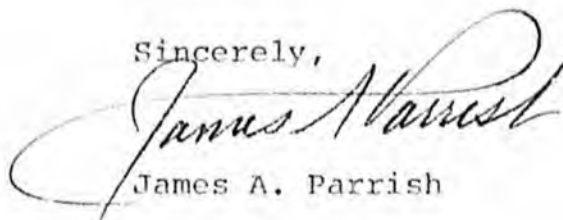
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Sincerely,

A handwritten signature in cursive script that reads "James A. Parrish". The signature is written in dark ink and is positioned above the printed name.

James A. Parrish

JAP:mgs

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Referral

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April 8, 1983



Representative Charles Bussell
Alaska House of Representatives
Pouch V, Mail Stop 3100
Juneau, AK 99811

Dear Representative Bussell:

I had hoped to attend the telephone conference with you some weeks ago concerning the deliberations by the House Judiciary Committee on whether to continue to permit the preemption of trial judges. A conflicting court appearance made it impossible for me to attend. As a result I am writing to you to express the reasons I think the right to preempt a judge should be preserved.

While preemption of judges has been a fairly longstanding practice, the situation involving Judge Hornaday in Homer has, for the first time, put the propriety of that practice in focus. I understand that Judge Hornaday is preempted in approximately 80% of the drunken driven cases which are on his calendar on the basis of his publically announced policy of automatically imposing a substantially longer sentence than the mandatory three-day provision now applicable. I do not know Judge Hornaday. I harbor no ill will toward him. I think that he is both sincere and mistaken and that his position demonstrates the need for the right to preempt any given judge if the circumstances warrant it.

People are free only to the extent they are not vulnerable to the arbitrary exercise of power. To protect freedom and to prevent disparate treatment of persons by those with power, the rule of law was established as a basic tenet of our constitutional scheme. That means nothing more nor less than a guarantee that objective standards will be established which apply to all persons whose conduct comes within the ambit of those standards. It eliminates persons being held

Representative Charles Bussell

April 8, 1983

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to a standard of which they are not aware or which is applied to some and not to others. It offends any reasonable person's sense of fairness to be treated differently than another for the same act or omission under similar circumstances. Even a child understands this basic notion of fair play.

The means by which standards are set for the conduct of Alaskans is through legislation by their elected representatives. By that means everybody participates in the process of deciding what standards will govern them. Once those standards are established, they are expected of everyone. As a result, I should not be punished for something from which you are exempt or anyone else might be exempt as a matter of some subjective or unilateral action by someone in authority.

The havoc wrought by drunken drivers in this state is a disgrace. However, that does not justify me imposing my personal standards on others. Nor does it justify a judge imposing his personal standards on others. It is the responsibility of the elective representatives of the people of this state to establish the standards by which citizens must conduct themselves. The state legislature has decided that three days is the appropriate sentence for the first drunk driving conviction under most circumstances, with the discretion to impose heavier sentences if egregious circumstances exist. If a judge decides that he will automatically impose substantially longer sentences than those established by the legislature, he is imposing his personal standards on those persons who come before him. To the extent a judge considers his subjective judgment to be superior to that mandated by the state legislature, he pre-emptes the legislative process.

Judges are sworn to uphold the law. They should therefore apply legal standards. Indulging personal standards is unfair because it puts average citizens in a position of having to guess what the personal preferences of each judge might be when conducting themselves during their daily lives. Citizens of this state are entitled to know what the consequences of their acts are by referring to the laws of this state.

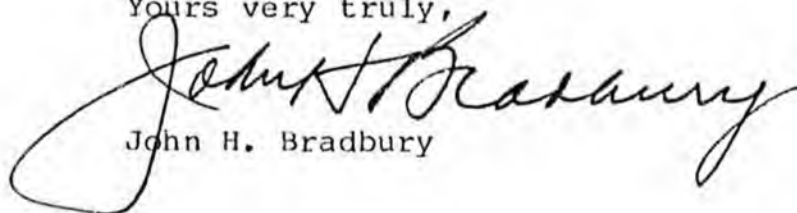
It is a very basic principle that citizens should be ruled by law, not men. A judicial system will be respected

Representative Charles Bussell
April 8, 1983
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only to the extent it not only is fair but is also preceived to be fair. There is no discernible reason for a person who comes before a judge to be treated differently than a person who comes before any other judge in this state for the same charge, particularly when the legislature has provided a guide which all judges are expected to follow absent special circumstances.

I personally would prefer better laws than those now on the books concerning drunk driving. To that extent I share Judge Hornaday's views. If you agree with Judge Hornaday's views on drunken driving, I urge you to support remedial legislation that applies to all drunken drivers in this state. I urge you not to adopt the principle that allows the people of this state to be subjected to the personal standards of every judge in this state. The rule of law is too important to be sacrificed for the expediency and the emotional appeal of the drunk driving issue. Only if persons who come before the judicial system have the right to exclude judges who are known to have personal bias in a given area can the rule of law be promoted with the sort of assurance that the people of this state deserve and are entitled to expect.

Yours very truly,



John H. Bradbury

JHB/vmd

Schaible, Staley, DeLisio & Cook, Inc.

A Professional Legal Corporation

JUDICIARY
Referral
in Senate
State Affairs

March 29, 1983

Fairbanks Office

Grace Berg Schaible
Howard Staley
Dennis E. Cook
Barbara L. Schuhmann
Robert B. Groseclose
Charles D. Silvey, Jr.
Gerard R. LaParle
Gregory W. Lessmeier

Representative Charlie Bussell
Pouch V
Juneau, Alaska 99811

Re: House Bill 79,
Repealing Peremptory Disqualification of Judges

Anchorage Office

Stephen S. DeLisio
Alan Sherry
Joseph M. Moran
Michael C. Geraghty
Patricia L. Zobel
Walter J. Sezudlo
Lynn L. Cassel

Dear Representative Bussell:

House Bill 79 would eliminate the peremptory challenge of judges. It would thus only allow challenges of judges for cause under A.S. 22.20.020. If only challenges for cause are allowed, then challenges for cause will increase. Under the present system, I do not hesitate to appear before judges that I have challenged peremptorily. There are many reasons for changing a judge.

Of Counsel:

William V. Boggess

However, if you challenge a judge for cause, it is a very serious accusation. You must state, by affidavit, that you feel the judge cannot be fair and impartial. In a way, you are stating the judge has not followed the judicial canons of ethics. S/he has failed to recuse himself or herself when that is what should have happened. If I ever had to challenge a judge for cause, I would never want to appear before that judge again. I would continue to challenge that judge for cause, particularly if that is what my client wanted or insisted upon.

Using this method of disqualification will cause an increase in legal costs and expenses for clients, and will increase the work of judges. Attorneys will have to file motions to disqualify for cause, accompanied by affidavits and memoranda. There will be hearings on the motion. If the motion is first denied, then it is assigned to another judge for hearing under A.S. 22.20.020(c). If the motion is still denied, the question can go on appeal, or at least a petition for review can be filed. The peremptory challenge system is so much more efficient, that it should be retained.

If there are problems because there are single judge districts, those are problems should be solved by ingenious

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Fairbanks, Alaska 99707
Telex No. 35-416

March 29, 1983

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use of telephone hearings, and, if necessary, assignment of a judge from a different district to handle motions and the trial. Eliminating the peremptory challenge of judges will not solve the problem.

Alaska is still a small enough state that many people know judges that they come before. If they are not comfortable, for whatever reason, they should have the right to one peremptory challenge. The times when this has become a problem for the court system are times when a judge has announced publically the sentence s/he intends to give in all drunk driving cases, for example, or cases where lawyers and litigants have consistently felt that the judge's demeanor or decisions were unacceptable.

The peremptory system works very efficiently. If a judge is challenged, another judge is very simply assigned to the case. One piece of paper needs to be filed by the attorney, and another is filed by the courts. (See Civil Rule 42.)

The peremptory challenge of judges should be retained. I urge you to defeat House Bill 79.

Sincerely,

SCHAIBLE, STALEY, DeLISIO & COOK, Inc.

By: Barbara L. Schuhmann
Barbara L. Schuhmann

BLS:skb