Overview-

Court System

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD. 1-22-87 1:30p.m.

Rep. Sund

ALASKA COURT SYSTEM

HOUSE JUDICIARY COMMITTEE

JANUARY 22, 1987

I. SYSTEM OVERVIEW

Judicial Officers and Employees

5 supreme court justices

3 court of appeals judges

29 superior court judges

16 district court judges

57 magistrate posts

59 court locations statewide

505 non-judicial positions

Budget

$39.5 million; 1.5% of operating budget

Breakdown:

Personnel costs are approximately 80% of the budget ($30,968,700)

Facility rental, maintenance and insurance - $2 million

Jury fees - $1.2 million

over expended

Travel for jurors and judges to rural locations - $794,000

Commodities, phones, postage, equipment rental - $3.9 million

Revenue

All goes to general fund except fines returned to localities for local offenses.

Total revenue: $5.5 million. $1.8 in filing fees; $2.8 in fines and forfeitures; $479,500 in clerical fees; $433,900 in cost recoveries and interest.

FY 86 Caseload

Trends: Overall filings levelling off. Some areas show dramatic increases (felonies).

Appellate Courts: 631 cases filed with supreme court (up 20%), 568 with court of appeals (up 16%).

Superior court filings (felonies, domestic relations, probate, civil cases over $25,000): 21,071 statewide (down 3%). Felony filings up 49% from 1985. Other increases over FY 85: Domestic violence (8%), Children's matters (13%).

District court filings: 136,665 statewide (down 3%). Small claims up 5% from FY 85. Other small civil cases (debt, contracts) up by 14%.

II. COURT OPERATIONS

Goal is efficiency, through use of new technology and improved policies and procedures.

A. Technology

- Outlying courts are automated. Automated systems now being developed for Anchorage and Fairbanks. Computers generate routine notices, and are used to help courts track cases and manage caseload. In the second district, despite 17% filing increase, no new personnel needed as a result of automation.

- New recording equipment is being installed to replace obsolete equipment. Taped cassette is the official record of court proceedings.

- Closed circuit television arraignments. Decreases need for prisoner transport.

- Videotape advisement of rights at arraignment; frees judge time for more complex matters.

- Media courtroom; promotes greater public awareness of courts.

- Computer aided legal research in outlying courts, rather than expensive hardcopy material.

- Telephonic hearings. Saves travel costs for courts and litigants.

- Integrated automated library system. More efficient information retrieval, so additional staff not needed.

B. Policies and Procedures

- Letter size paper. Saves paper and storage costs.

- Special Procedures for Reducing Litigation Delay. Civil Rule 16.1 (fast track) implemented in Anchorage for civil trials of 1-10 days (see attached rule and order).

- Traffic bail schedule updated in January; doubled mail-in payment amounts.

III. FY 88 BUDGET

Over past five years substantial caseload increases, while minimal budget increases, especially compared with other agencies (see attached letter to Governor).

Measures already taken to meet budget crisis: suspension of merit increases; hiring freeze; training freeze; voluntary leave without pay; cost savings committee, special attention to jury management and pro tem assignments.

Court system cannot absorb major cuts without drastic impact. Courts have no discretionary programs which can be eliminated (see Forsythe memo).

FY 88 budget request: three new positions in Palmer, Juneau and Bethel. Funding for lease of land underneath Kotzebue courthouse from native corporation. In Governor's budget - money for Fairbanks sprinkler to prevent fire marshal from shutting down the courthouse.

IV. FY 88 LEGISLATION (See attached proposals.)

1. Juror discharge

2. Authority to decline to accept bail bonds

3. Cleaning up confusing language regarding judicial retirement for incapacity and disability

4. Miscellaneous

Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

December 9, 1986

Governor Steve Cowper
State of Alaska
P. O. Box A
Juneau, Alaska 99811

Dear Governor Cowper:

You may have noticed the article (copy attached) about the court's budget which appeared in the Anchorage Times on December 3.

I thought this might be a good opportunity to review with you the efforts that the court has made to save money during this period of radical budget shortages.

As you well know, the court differs from other state departments by virtue of the paucity of its discretionary functions and programs. The court must follow its constitutional mandate to accept and resolve all disputes which are properly brought before it in the form of court cases. Thus, we do not have the ability to make wholesale cuts, an approach which may be available to other state entities. As we previously discussed (and as is illustrated on the attached charts), caseload has risen steadily over the past several years. Over the same period, the court's budget has not seen corresponding increases.

As a result of the final FY 1987 budget, the court mandated cost-saving measures to absorb the then projected budget deficit of approximately $2,000,000. In June 1986, the Alaska Supreme Court notified all judicial branch employees that they will not receive merit salary increases this fiscal year, which was an unprecedented decision by the court. Each incremental merit increase constitutes approximately 3.6% of an employee's salary. These merit increases had been awarded on an annual basis in past years.

Effective July 1, 1986 an order had been issued that all vacant positions must be held open for a minimum of 30 days to recoup some personnel costs. Plans to cut costs in such areas as supplies (20% cut), leasehold improvements (75% cut), equipment (30% cut), office space (10% cut) and jury costs (3% cut) had already been put into place. Restrictions on the use of pro tem judges were enacted. Acting district court judges were appointed to fill judicial positions in Palmer and Kenai/Homer. (Acting district court judge salaries and benefits are considerably less expensive than are those of regularly appointed judges.)

Then, as you know, in July 1986 revenue projections showed a further critical downturn in state revenues. The court responded by enacting additional measures to further curtail court expenditures. These measures included:

1. Instituting a complete hiring freeze. If hiring is required on an emergency basis, temporary employees rather than permanent employees are selected, thus saving on the cost of state benefits for permanent employees, and allowing the court flexibility if further personnel adjustments must be made in the future.

2. Virtually all training programs were cancelled immediately. Cancelled programs include all judicial training at the National Judicial College, the statewide clerks' conference, the deputy magistrate conference and the annual judicial conference.

3. The court instituted a voluntary leave without pay program, which allows employees to take up to 10 days leave without pay within one year. (As of December 9, 1986, court employees had taken or been scheduled for 4,275 hours of leave without pay.)

4. All travel requests are intensely scrutinized. As a general rule, travel is only approved for purposes directly related to a case in litigation, such as a judge travelling to a one-judge location to hear a case in which the resident judge has been disqualified.

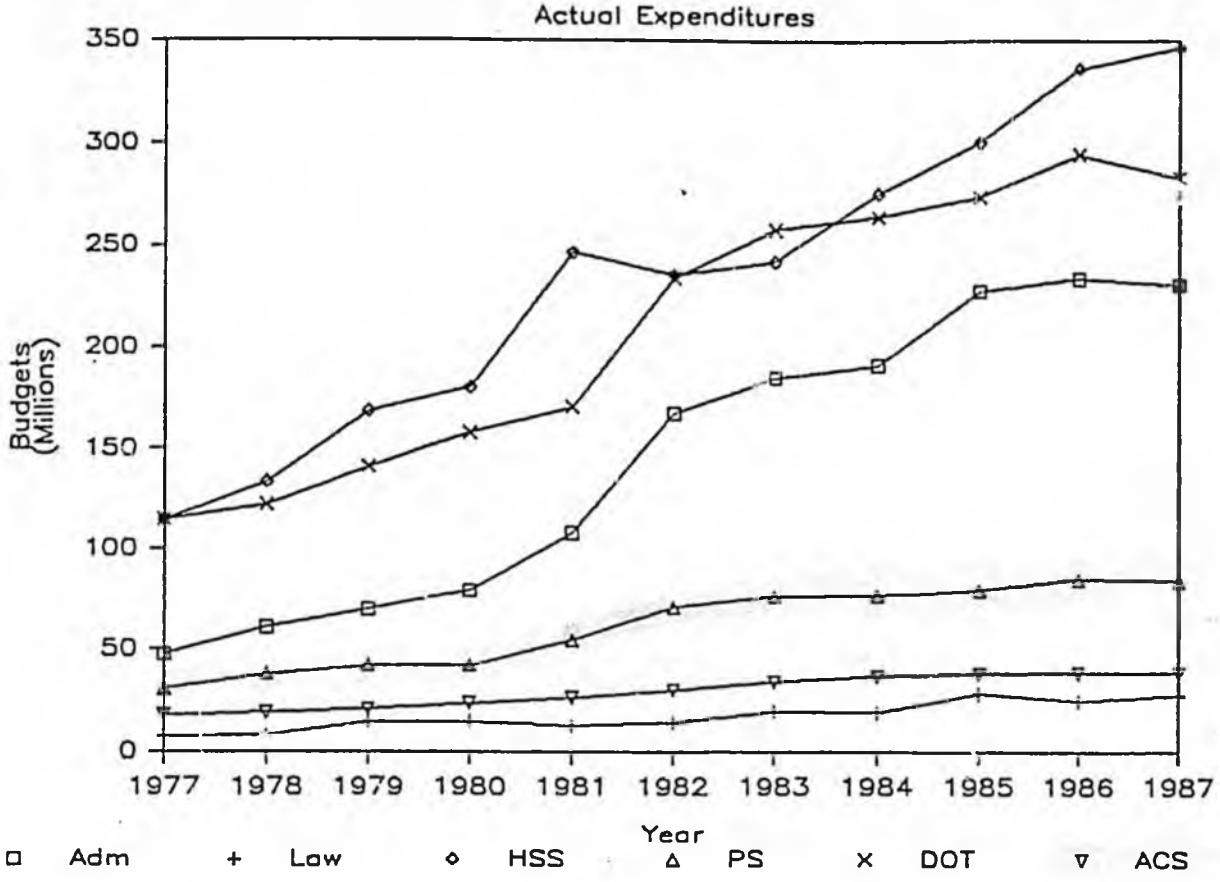
5. My staff has been examining all policies and procedures relating to juror utilization and compensation.

6. The court continues to review administrative recommendations on an ongoing basis for even deeper cuts in such areas as travel, equipment, leasehold, supplies and pro tem appointments.

7. Employee committees have been formed to recommend further cost-savings ideas and programs.

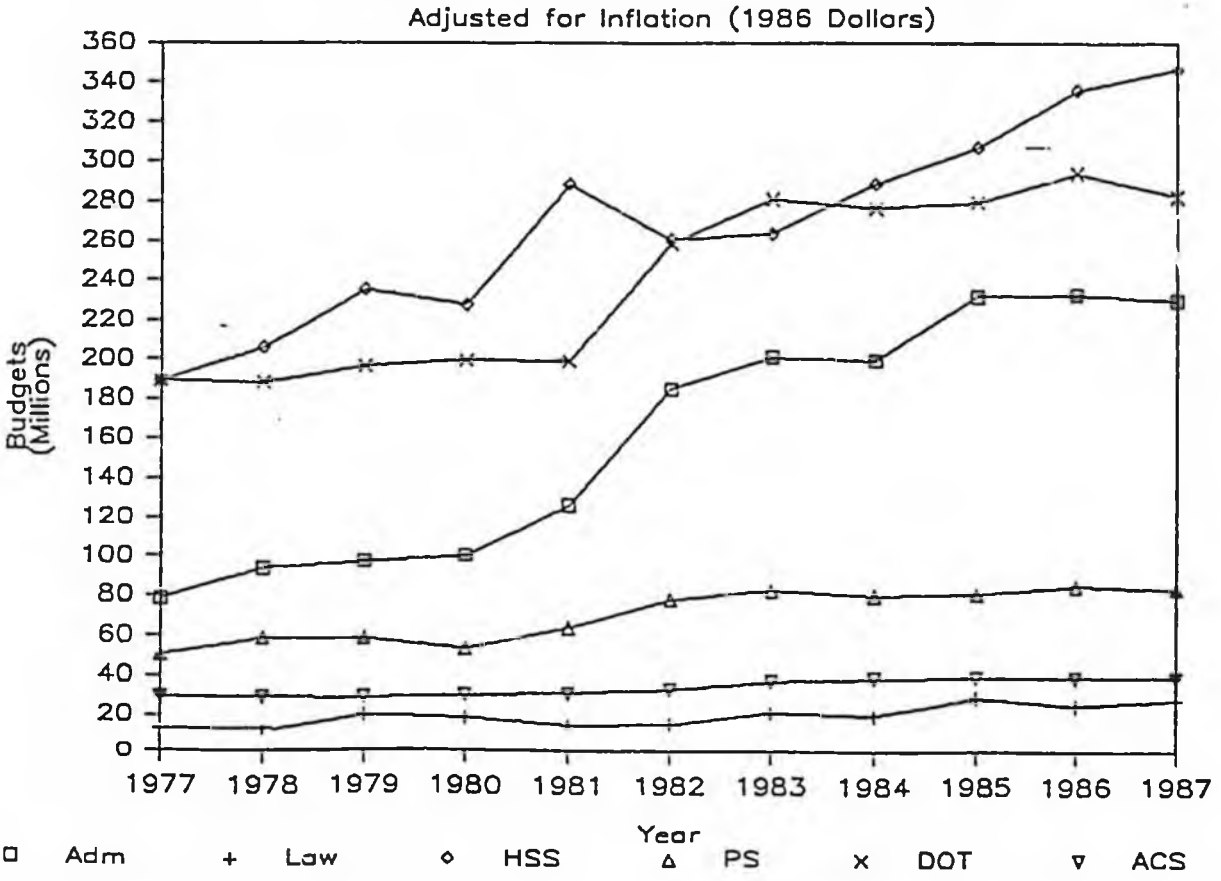
Comparison of Budgets

Actual Expenditures



Comparison of Budgets

Adjusted for Inflation (1986 Dollars)



The press has focused attention on the fact that the court has not decreased any employee salaries, although selected executive branch positions have received interim salary cuts. As I am sure you are aware, Article IV, section 13 of the Alaska Constitution provides that: "Compensation of justices and judges shall not be diminished during their terms of office, unless by general law applying to all salaried officers of the State." Approximately 30% of the court's personnel costs are attributable to judicial compensation. Of the court's non-judicial workforce, approximately 70% is salaried at range 12 or below. In light of these figures, it appeared to be unfair and unconscionable to impose a salary cut which would primarily impact lower-level clerical employees, and would not affect the group of our highest paid employees. Thus, to date, the supreme court has not mandated an employee pay cut.

I look forward to discussing these and other budget matters with you at your convenience.

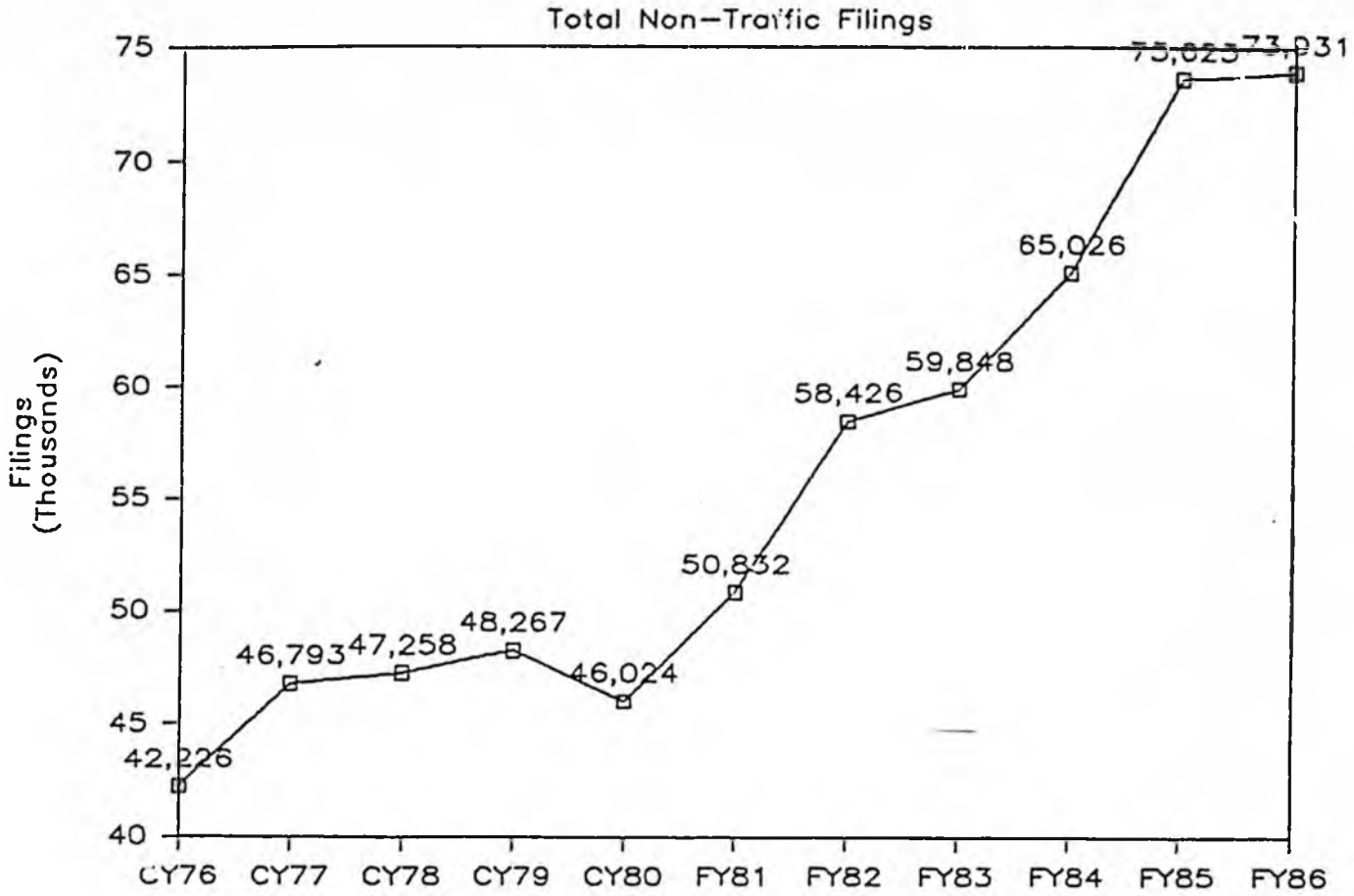
Sincerely,

Arthur H. Snowden, II
Administrative Director

AHS:bs

Encl.

ALASKA COURT SYSTEM



Rule 16.1. Special Procedures for Reducing Litigation Delay.

(a) General.

This rule has been adopted by the Alaska Supreme Court on a provisional basis for the purpose of enabling trial courts in designated locations to adopt special procedures for the reduction of delay in civil litigation. More specifically, it is the intent of this rule to resolve more swiftly and in a less costly manner the majority of civil case.

(b) Cases to Which Rule Applies.

(1) Civil cases to which this rule shall presumptively apply shall be those civil cases identified in an appropriate administrative order issued by the presiding judge of the judicial district in which this rule has been invoked.

(2) Cases filed after the adoption and implementation of this rule will be assigned to appropriate calendars promptly after they are filed. For this purpose, plaintiffs and/or their counsel shall file and serve with their complaints a "case-characterization form," to be provided by the clerk's office. Such form shall indicate the type of case, number of parties, estimated trial time and other pertinent information.

Any party objecting to the plaintiff's characterization of the case may file and serve an opposition to plaintiff's case characterization, along with the answer or responsive pleading. Such opposition shall specifically set forth defendant's characterization of the case, estimate of trial time and number of parties and other related information.

(3) Contested case characterizations and/or calendaring assignments shall be promptly resolved by the presiding judge of the judicial district in which this rule has been invoked. The presiding judge may request a recommendation from the trial judge to whom the case was initially assigned. The decision of the presiding judge on the issue shall be final.

(c) Motion to Set Trial and Certificate. A motion to set trial may not be filed until 105 days after service of the summons and complaint. A party seeking to obtain a trial date must serve and file a motion to set trial together with a certificate, signed by counsel, stating:

(1) That the issues in the case have actually been joined;

(2) That all parties have completed discovery or will have a reasonable opportunity to do so within the next 60 days;

(3) That the procedure for listing witnesses and exhibits and providing exhibit copies, as set forth in paragraph (d) of this rule has been completed;

(4) Whether trial by jury has been timely demanded;

(5) The estimated number of days for the trial, including estimates for each party's case and for jury selection;

(6) The names, addresses and telephone numbers of all attorneys and pro se parties who are responsible for the conduct of the litigation;

(7) Which, if any, statutue or rule entitles the case to preference on the trial calendar;

(8) That the parties have complied with paragraph (k) of this rule.

(d) Witness and Exhibit List and Exhibit Copies. A party desiring to file a Motion to Set Trial must first serve on all other parties and file with the court a list of witnesses and exhibits expected to be used at trial. Exhibit copies must be served on all other parties, but not filed with the court. Evidence to be used solely for impeachment is excepted. This service and filing may not occur until 90 days after service of the summons and complaint. Within 15 days after service of the witness and exhibit list and exhibit copies all other parties shall file and serve their lists of witnesses and exhibits, and serve their exhibit copies. For good cause shown, the trial court may extend the foregoing time period. After all necessary filings and service under this section are made or the time for such filings has expired, any party may serve and file a motion to set trial and certificate under paragraph (c) of this rule.

(e) Opposition Certificate. Within 10 days after a motion to set trial and certificate have been served any other party may file an opposition certificate. It shall not exceed two pages in length. The opposition certificate shall identify the specific statements in the certificate which are objected to and provide a concise statement of reasons for the objection.

(f) Active Calendar. If an opposition certificate has been timely filed, the court shall decide without oral argument the motion and opposition. Where the opposition is without good cause, the assigned judge shall immediately set a trial setting conference date on the earliest calendar opening within at least 60 days. A later date may be set only where good cause therefor

is found in the opposition certificate. If an opposition certificate has not been filed, the court shall proceed as if the opposition is without good cause.

(g) **Inactive Calendar and Dismissal.** Where a motion to set trial and certificate have not been filed within 270 days after the service of the summons and complaint, the case shall be transferred to the inactive calendar by the clerk of the court. The clerk shall promptly notify counsel in writing of the transfer. All cases which remain on the inactive calendar for more than 60 days shall be dismissed, unless within that period: (1) A proper motion to set trial and certificate is filed; or (2) the court on motion for good cause orders a case continued on the inactive calendar for a specified additional period of time. Notwithstanding Civil Rule 41(b), the dismissal does not operate as an adjudication upon the merits unless a previous dismissal has been entered by the court under this rule, or by the plaintiff or parties under Civil Rule 41(a)(1). If a case dismissed under this rule is filed again, the court may make such order for the payment of costs of the case previously dismissed as it may deem proper, and may stay the proceedings in the case until the party has complied with the order.

(h) **Setting for Trial.** The trial shall be calendared for the first available date within at least 120 days following the trial setting conference held pursuant to paragraph (f) of this rule. Preference shall be accorded cases entitled by law to priority on the trial calendar and cases estimated to require not more than two hours of trial. Counsel and pro se parties shall be provided not less than 60 days advance written notice of the trial date.

(i) **Continuances.** When a case has been set for trial no continuance of the trial may be granted except on motion and for extraordinary good cause.

(j) **Amendments to Pleadings.** Motions to amend pleadings shall be made as provided in Civil Rule 15.

(k) **Discovery.** Each party shall furnish to the other parties, without formal request or motion or court order therefor, the following items or information otherwise discoverable under Civil Rule 34, and shall do so not later than 75 days after service of the summons and complaint.

(1) All relevant contracts and all written and recorded communications, memoranda and notes which contain evidence

relevant to the interpretation of such contracts and any claimed breaches thereof;

(2) All written documents evidencing any general, special, and consequential damages being claimed;

(3) All written and recorded statements from parties and witnesses;

(4) All investigative reports;

(5) All photographs of persons, objects, scenes and occurrences in issue;

(6) All diagrams prepared by parties, witnesses and investigators, which portray objects, scenes and occurrences in issue;

(7) Federal income tax returns for the preceding five years from all parties claiming past or future damages for lost income or income producing ability;

(8) Insurance policies and binders.

All other discovery shall be governed by the provisions of the Alaska Civil Rules, and shall have been completed by the deadline set forth in the pretrial order issued in each case.

(l) Conflict with other Civil Rules. In cases in which this rule has been invoked, the provisions of this rule shall supersede the provisions of any other civil rule in those instances in which a provision of this rule conflicts with a provision of another civil rule. In all other instances, however, the provisions of all other civil rules shall remain in full force and effect.

(m) Forms. The clerk's office shall develop and disseminate all appropriate forms for the implementation of this rule. Such forms shall include the case characterization form, notice of transfer to inactive calendar and of intent to dismiss, order of dismissal with prejudice, motion to set trial, certificate of readiness, order invoking Civil Rule 16.1, and modified pretrial order. (Supreme Court Order 669 effective February 24, 1986; amended by Supreme Court Order 709 effective September 15, 1986; and by Supreme Court Order 742 effective December 15, 1986)

Memorandum

Alaska Court System

TO: Arthur H. Snowden, II
Administrative Director

DATE : November 21, 1986

FROM: Karla L. Forsythe KLF
Staff Counsel

SUBJECT: Constitutional and statutory basis for court functions

You asked me to review provisions of the Alaska constitution and statutes to determine the extent to which court functions are discretionary rather than mandatory, so that any discretionary programs can be reviewed for possible program reductions.

Constitutional Provisions

The Alaska Constitution establishes the judiciary as a separate branch of government, coequal in stature to the legislature and to the executive branch and its component agencies. The broad mandate of Article IV vests the judicial power of the state in its courts. Because the constitutional framers recognized that administration of the courts must lie with the branch to which judicial duties are assigned, the constitution grants to the supreme court broad rule making authority over judicial practices and procedures.

The statement of inherent rights contained in Article I makes clear that Alaskans are constitutionally entitled to a system of criminal and civil trials and appeals. The Constitution also requires speedy and public jury trials in criminal cases. The right to trial by jury in all civil cases is preserved to the same extent as it existed at common law. Delay in scheduling trials of any type seriously impairs the court's ability to find the truth and do justice, since witnesses' memory of events diminishes over time.

Statutes

The constitutional framework is implemented through the Alaska Statutes, in which all of the court's operations are based. There are no discretionary programs. These statutorily required functions include: maintaining a system of justices, judges, and magistrates who primarily serve rural Alaska; juror selection procedures accompanied by stringent penalties if courts fail to comply; mandatory processing of citations; quasi-criminal adjudication systems for minor traffic, parks, alcohol possession, smoking and fish and game offenses; and coroner and public administrator functions.

The statutes also specify a range of civil actions which courts must handle: real property, probate, adoption, juvenile proceedings, procedures to protect the rights of minors, the incapacitated and the mentally ill, and domestic relations (including legislation enacted during the past decade to permit dissolution of marriage, domestic violence petitions, and income assignment orders). Clerks' offices not only support the court's trial work, but are required by statute to administer the system of exemptions from civil judgment, which is a procedure of vital importance to the business community in Alaska. These offices also process mail-in fine payments from defendants charged with minor offenses; clerical errors can result in costly lawsuits.

Alaska statutes specifically provide that the courts must always be open to handle these matters. The courts must accept all cases, and have no discretion to suspend processing of some types of cases in favor of others. For example, when the administrative office of the U.S. courts attempted to save costs as part of federal deficit reduction efforts by suspending civil jury trials for three and one-half months, the Ninth Circuit Court of Appeals emphatically restored citizens' rights of access. The court stated that:

> ....the availability of constitutional rights does not vary with the rise and fall of account balances in the Treasury. Basic liberties cannot be offered and withdrawn ; "budget crunches" come and go, nor may they be made contingent on transitory political judgments regarding the advisability of raising or lowering taxes or on pragmatic or tactical decisions about how to deal with the perennial problem of the national debt. In short, constitutional rights do not turn on the political mood of the moment, the outcome of cost/benefit analyses or the rules of economic or fiscal calculations. The constitutional mandate that federal courts provide civil litigants with the system of civil jury trial is clear... Armster v. U.S. District Court for the Central District of California, 792 F.2d 1423 (1986).

Statutory changes could reduce the court's workload. For example, AS 28.22.230 enacted in 1984 has the effect of requiring clerk's offices to monitor proof of motor vehicle liability insurance for defendants charged with serious traffic violations. Significant clerical time is devoted to this non-judicial task, which the courts would not undertake but for the statute.

Conclusion

Despite the increase in state revenue over the past decade, the Alaska Court System historically has requested only those funds necessary to carry out its obligations under the Alaska constitution and statutes. No discretionary programs are authorized and none are funded. Because the courts are fundamental to our system of government, declining revenues

cannot justify reductions in court operations. However, alternative approaches to a limited number of functions could reduce costs. For example, transcription of trial proceedings for use on appeal could be contracted to the private sector, eliminating the need for an in-house transcript department. But the underlying functions of the court are grounded in the constitution and the statutes, and cannot be eliminated.

KLF:bs

Att.

IN THE TRIAL COURTS FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of:	)	
	)	
INVOKING PROVISIONAL CIVIL RULE 16.1 FOR CERTAIN CIVIL (NON-DOMESTIC) CASES PENDING AND TO BE FILED IN THE SUPERIOR COURT OF THE THIRD JUDICIAL DISTRICT AT ANCHORAGE.	)	3AN-AO-86-01

ORDER

1. Pursuant to ¶(b)(1) of Civil Rule 16.1, the terms of such Rule are hereby invoked for the following civil (non-domestic) cases pending and to be filed in the Superior Court for the Third Judicial District, at Anchorage:

(a) All cases requiring 10 days of trial time or less, except those listed in ¶(2) of this Order.

2. Civil cases to which Rule 16.1 shall presumptively not apply include those cases requiring more than 10 days of trial time and/or complex or complicated civil cases which do not lend themselves to expeditious calendaring procedures, such as the following types of actions:

(a) Professional malpractice actions.

(b) Class actions.

(c) Derivative shareholder suits and security law actions.

(d) Products liability actions.

(e) Cases challenging the constitutionality of rules and/or statutes.

(f) Civil cases involving unusually active pretrial discovery and/or motion work.

(g) Reapportionment and election-challenge cases.

(h) Labor disputes.

(i) Condemnation actions.

(j) Other cases as determined by the Presiding Judge to be unsuitable for expedited resolution.

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ter of Darrel L. Nielson, Securities Exchange Act Release No. 16479 (Jan. 16, 1980); *In the Matter of Bernard J. Coven*, Securities Exchange Act Release No. 16448 (Dec. 21, 1979); *In the Matter of Richard D. Hodgin*, Securities Exchange Act Release No. 16225 (Sep. 27, 1979).

No court has adopted the view espoused in this literature. The cases that Davy relies on are inapposite, involving actions against accountants under substantive provisions of the securities laws rather than under the disciplinary provisions of Rule 2(e). Our opinion, for example, in *SEC v. Arthur Young & Co.*, 590 F.2d 785 (9th Cir.1979), relied on by Davy in his brief and at argument, discusses an enforcement action brought against an accounting firm for violations of the securities law; the case was not a disciplinary action under Rule 2(e).

[3] Davy also makes the argument that because the SEC cannot regulate unenumerated persons under § 14(b) of the 1934 Act, it therefore cannot regulate accountants under § 23(a) of the same Act. We reject the argument. Section 14(b) specifically enumerates the persons to which it applies, so the SEC is properly without the power to regulate unemunerated persons under that section. Section 23(a), under which Rule 2(e) was promulgated, is not so limited.

2. SEC jurisdiction over Davy.

[4] The SEC has jurisdiction over Davy for two reasons. First, Davy's audit reports were used in an SEC filing and to market and sell securities to the public. Second, Davy was shown the due diligence file before (or at the time) public trading began. As an experienced accountant, he cannot, and does not, deny that he knew the purpose of a due diligence file. Davy acquiesced in the use of his misleading reports in an SEC filing.

Davy contends that he did not know at the time of his audit that the reports were for anything other than internal use by the privately held SNG. Yet when Allison showed him the due diligence file and he verified the inclusion of his audit reports, Davy had clear evidence that his reports were being put to public use and were being prepared for SEC filing.

We do not consider whether cases *can* arise in which the SEC in Rule 2(e) matters exceeds its proper jurisdictional boundaries. The precise reach of the SEC in these situations has not been defined and we leave that task for a future case which implicates that question directly.

3. Substantial evidence supporting the SEC's findings.

a) Improper professional conduct.

[5] Davy does not dispute that his audit breached the standards of his profession. Such a breach constitutes improper professional conduct. As with the jurisdictional question, there may be cases where the SEC should not be empowered to determine the standards by which accountants, or attorneys for that matter, are to be judged. Davy's breach of Generally Accepted Auditing Standards and Generally Accepted Accounting Principles, however, are so clear and so uncontroverted that any vagueness in the Rule is not at issue here. We pretermit any discussion of the SEC's power to determine standards for discipline under Rule 2(e) until we have the issue squarely before us.

b) Willful violation of the federal securities laws.

The SEC found as an additional ground that Davy "knowingly participated in the fraud practiced by SNG on the investing public" and that he was at the least "recklessly indifferent to the consequences of his actions for public investors who could be expected to rely on his report," thus violating § 17(a) of the 1933 Act (15 U.S.C. § 77q(a)) and § 10(b) and Rule 10b–5 of the 1934 Act (15 U.S.C. 78j(b) and 17 C.F.R. 240.106–5).

[6] There is substantial evidence to support this finding. Davy knew that his audit report was misleading; he received additional evidence that SNG did not own the assets he certified; he knew that the securities of two other companies that he had audited for Allison had been registered and offered to the public; he saw the due diligence file; he took no action at any time to correct his report or to prevent its use.[2]

AFFIRMED.

2. Even though there is substantial evidence to support the SEC's findings as to Davy under Rule 2(e)(1)(iii), this provision of the rule is not without problems. It permits the SEC to discipline accountants who willfully violate or willfully aid and abet the violation of any federal security law. Yet it is open to many questions. Must the SEC first obtain a conviction before it can bring a disciplinary proceeding under this section (this is clearly not the practice of the SEC)? Must the SEC prove every element of the underlying violation before it can discipline the offender? What is the standard of proof for establishing a violation under Rule 2(e)? What does the term "willfully" in Rule 2(e) add to the underlying securities violations: is it a requirement beyond the scienter element of most antifraud violations or is it identical with the scienter element?

Maurice ARMSTER, Josefina Cabrales, Clarence Carnes, William Clark, Nina Gorio, Patricia McCoy, Michael Romberg, Maverick Veasey, Joseph Walters, Petitioners,

v.

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, Respondent,

and

City of Riverside, Los Angeles, Rialto, Ford, Block, Launi, Gates, Evans, Real Parties in Interest.

Celine ROLERSON, Dr. Mark Rolerson, M.D., individually Dr. Mark Rolerson, M.D., as the natural father of Elizabeth Rolerson, a minor, Petitioners,

v.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA, and the Clerk of the United States District Court for the District of Alaska, Respondents,

Volkswagenwerk A.G., a/k/a Volkswagenwerk Aktiengesellschaft, a foreign corporation and Volkswagen of America, Inc., a New Jersey corporation, Real Parties in Interest.

Nos. 86–7354, 86–7362.

United States Court of Appeals, Ninth Circuit.

Argued and Submitted June 19, 1986 (No. 86–7354).

Submitted June 19, 1986 (No. 86–7362).

Decided June 26, 1986.

Petitioners, plaintiffs in civil cases pending before the District Courts for the

Central District of California and the District of Alaska, sought emergency writs of mandamus against those two district courts prohibiting them from suspending civil jury trials because of an alleged insufficiency of funds appropriated for the payment of juror fees. The Court of Appeals, Reinhardt, Circuit Judge, held that wholesale nondiscretionary suspension of civil jury trial system and a blanket moratorium on all civil jury trials for a three and one-half-month period due to a lack of funds violated the petitioners' Seventh Amendment rights.

Petition is denied without prejudice.

1. Jury ⇐9

Civil jury system may not be suspended for lack of funds.

2. Jury ⇐31(1)

Seventh Amendment right to a civil jury trial is violated when, because of a suspension of the civil jury system, an individual is not afforded, for any significant period of time, a jury trial he would otherwise receive. U.S.C.A. Const.Amend. 7.

3. Jury ⇐31(1)

Wholesale nondiscretionary suspension of civil jury trial system and a blanket moratorium on all civil jury trials for a three and one-half-month period due to a lack of funds violated the petitioners' Seventh Amendment rights. U.S.C.A. Const. Amend. 7.

4. Constitutional Law ⇐42.1(3)

Petitioners, who were all scheduled to have civil jury trials before October 1, 1986, had standing to challenge the constitutionality of the suspension of the civil jury trial system until that date. U.S.C.A. Const.Amend. 7.

Stephen Yagman, Yagman & Yagman, Los Angeles, Cal., for petitioners.

Douglas Letter, Dept. of Justice, Washington, D.C., for respondent.

Petition for Writ of Mandamus to the United States District Court for the Central District of California.

Petition for Writ of Mandamus to the United States District Court for the District of Alaska.

OPINION

Before KOELSCH, Senior Circuit Judge, FERGUSON and REINHARDT, Circuit Judges.

REINHARDT, Circuit Judge:

Petitioners, plaintiffs in civil cases pending before the District Court for the Central District of California and the District Court for the District of Alaska, seek emergency writs of mandamus against those two district courts [1] prohibiting them from suspending civil jury trials because of an alleged insufficiency of funds appropriated for the payment of juror fees. The threatened suspensions were based on advice from the Administrative Office of the United States Courts and the Executive Committee of the Judicial Conference that, as a result of a budgetary crisis, a nationwide suspension of the civil jury trial system was required from June 16, 1986 to October 1, the commencement of the next fiscal year. We have jurisdiction under 28 U.S.C. § 1651 (1982). *See Radio and Television News Ass'n of Southern Cal. v. United States District Court for the Cent. Dist. of Cal.*, 781 F.2d 1443, 1444 (9th Cir.1986). Because of the urgency of the issue presented we held oral argument on the first petition, the one relating to the California cases, three days after it was filed. The Alaska petition was not filed until the day before that oral argument. We now consolidate the two petitions and set forth our decision.

1. Because the petitioners in No. 86-7354 are parties with cases pending before seven different judges of the Central District of California, because they allege that there is an order of the district court as a whole suspending civil jury trials, and because it is necessary at times to discuss the actions taken by specific district judges, we will refer to each district court as a whole as "the district court" and to the individual district judges as "the district judge."

We hold that the nationwide suspension of the civil jury trial system is unconstitutional and that the threatened suspensions of petitioners' jury trials violate their rights under the seventh amendment. We believe, however, that because we explicitly set forth in this opinion the constitutional obligation of district courts to continue, in accordance with their normal and customary practices and procedures, to afford civil jury trials for the remainder of the current fiscal year, it is not necessary, at the present time, for us to issue a writ of mandamus in order to implement our decision.

I

The Central District of California Cases

Joseph Walters, one of the petitioners, is the plaintiff in a civil suit pending in the Central District of California. Walters made a timely jury trial demand and his case was scheduled to go to trial earlier this Spring. As of Friday, June 13, his case was trailing, pending completion of an ongoing trial before the district judge to whom the case was assigned. Late Friday afternoon, Walters' counsel was informed by the district judge's clerk that because insufficient funds had been appropriated to pay jurors during the current fiscal year, neither the district judge nor any other judge of the Central District would start any new jury trials until after October 1, 1986, the date on which the next fiscal year commences. The other petitioners, all represented by Walters' counsel, also are plaintiffs in cases with civil jury trials scheduled to commence prior to October 1, including one scheduled for Tuesday, June 17. All the cases are civil rights actions brought under 42 U.S.C. § 1983.

On Sunday afternoon, June 15, Walters and his fellow plaintiffs submitted to the lead judge of the motions panel an emergency petition for a writ of mandamus and a request for a stay of the "district court ... that no new jury trials be started until October 1, 1986. The petition and request for stay were formally filed on Monday, June 16, and on that day we granted a stay. We held oral argument on the mandamus petition on Thursday, June 19. A response and brief were filed on behalf of the district court on the preceding day and were prepared by the Department of Justice in Washington, D.C. An attorney from the Department represented the district court at the oral argument. Chief Judge Manuel Real also made a brief presentation.

The Justice Department included in its response a copy of a memorandum sent on June 12 to all district court judges by the Administrative Office of the United States Courts at the direction of the Executive Committee of the Judicial Conference of the United States.[2] The memorandum states that, because Congress failed to appropriate sufficient fund for juror payment, "civil jury trials will have to be suspended on June 16 through the end of the fiscal year (September 30).... [T]he Judicial Conference has directed that you empanel no new civil juries from June 16 forward.... [T]his suspension [of civil jury trials] must continue in effect until we inform you that sufficient funds have been made available ..." [3] According to an affi-

2. The Judicial Conference of the United States is composed of the Chief Justice of the United States, the chief judge of each judicial circuit, and a district judge from each circuit. *See* 28 U.S.C. § 331 (1982). Among its duties is to "submit suggestions and recommendations to the various [federal] courts to promote uniformity of management procedures and the expeditious conduct of court business." *Id.*

3. According to the Administrative Office, the budget shortfall in this case was caused by Congress' initial decision to appropriate only $43.4 million of the $46.2 million requested for juror expenses. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, Pub.L. No. 99-180, 99 Stat. 1136, 1154 (1985). Additionally, according to the Administrative Office, the appointment of new judges has increased the rate of spending for juror fees beyond what was originally projected. While this sum was subsequently further reduced by $1.8 million pursuant to the Gramm-Rudman-Hollings Balanced Budget and Emergency Deficit Control Act, Pub.L. No. 99-177, 99 Stat. 1037, the Administrative Office

davit from the Director of the Administrative Office, juror expense funds are not yet exhausted, and the suspension of civil jury trials should ensure that sufficient funds will be available to pay criminal trial jurors and grand jurors the statutorily required juror fees through the end of the fiscal year.

Despite the seemingly mandatory language of the Administrative Office memorandum, we were informed at oral argument by the Justice Department and by Chief Judge Real, that neither the Department nor the district court considers the Administrative Office memorandum to be a mandate from the Executive Committee of the Judicial Conference or the Administrative Office, or to constitute an order from any entity that district judges take or refrain from taking any action. Rather, the Justice Department considers the memorandum to be essentially informational in nature. We were also informed by Chief Judge Real that there is no order of the district court prohibiting individual judges from empanelling civil juries. The Chief Judge advised us that jurors were present each day at the courthouse for criminal cases and that any judge who wished to do so could utilize any left-over jurors for civil cases, as is the usual practice in the Central District. He said that one judge had in fact empanelled a civil jury after the June 16 deadline. (It appears, on the other hand, that none of the 20 other active judges of the district court did so.)

The Justice Department unequivocally denies that individual district judges are presently free to empanel civil juries. It argues strongly that, because there are currently insufficient funds appropriated to pay the anticipated total amount of statutory fees [4] for all jurors for the remainder of the fiscal year, the Anti-Deficiency Act [5] prohibits district judges from empanelling any new civil juries. The Justice Department contends that the purpose of the Administrative Office memorandum is to inform district courts of the status of juror fee spending and of their obligations under the Anti-Deficiency Act.[6] In response, Walters argues that the Act does not prohibit judges from empanelling jurors regardless of whether there is a shortage of appropriated funds and that, if it does, it violates his seventh amendment right to a jury trial.

Because the Justice Department denies that either the Administrative Office memorandum itself or the Judicial Conference "directive" it refers to imposes any mandatory duty on district judges, we need not decide the nature or extent of the Administrative Office's authority, or the Judicial Conference's, to issue mandatory orders to district judges regarding the empanelling of juries or the conduct of trials. It is obvious, however, that no entity acting in an administrative capacity has the authority to issue orders in derogation of the Constitution.

It is clear from the record before us that, at the direction of the Executive Committee of the Judicial Conference, the Administrative Office informed all district judges that the Anti-Deficiency Act requires the nationwide suspension of all new civil jury trials, and that on the basis of the Administrative Office memorandum the district judge, through his clerk, notified Walters that, because of the ordered suspension, his trial would not be held until the next fiscal year. The issue before us is whether district judges are legally obligated to empanel civil juries during the remainder of the current fiscal year, notwithstanding the Anti-Deficiency Act and the anticipated shortage in appropriated funds.

The proceeding before us raises both statutory and constitutional questions. For prudential reasons we avoid deciding constitutional questions unnecessarily. *Hospital and Service Employees Union, Local 399 v. NLRB*, 743 F.2d 1417, 1427 (9th Cir.1984). Ordinarily, if a case presents a potentially dispositive statutory question we decide that question before turning to the constitutional issue. In this case, however, the Justice Department has urged us to decide the constitutional question first, and we agree that it is necessary to do so. The petition was presented to us as an emergency motion. It raises a most serious issue regarding a continuing deprivation of a fundamental constitutional right, a deprivation that may well be occurring in every district throughout the circuit —and, in fact, the nation. The speediest possible decision is required. The constitutional question has been fully briefed and argued, and is relatively straightforward. The statutory questions are considerably more complicated; the legal issues involved have not been adequately briefed or argued by either party,[7] and the record lacks certain facts that might be necessary to a proper resolution of those questions.[8] Thus, this is not a case in which "the record presents some other ground upon which the case may be disposed of," *Rescue Army v. Municipal Court of Los Angeles*, 331 U.S. 549, 569, 67 S.Ct. 1409, 1419, 91 L.Ed. 1666 (1947). Because of the need to decide this case at the earliest possible time, it is unavoidable that we reach the constitutional question now.[9]

memorandum and an affidavit submitted to this court by the Director of the Administrative Office show that restoration of this amount would not be sufficient to fund juror expenses for the rest of the fiscal year. At oral argument, government counsel agreed that the precipitating cause for the suspension of civil jury trials was the initial funding shortfall and not the subsequent Gramm-Rudman reduction, and that the challenged actions involved here would have occurred whether or not Gramm-Rudman had been adopted. Thus, we assume that the Supreme Court's forthcoming decision on the constitutionality of Gramm-Rudman in *Bowsher v. Synar*, No. 85-1377 (argued April 23, 1986), will not directly affect the outcome of this case.

4. Title 28 U.S.C. § 1871 (1982) provides that federal jurors shall be paid a fee and establishes the amount at $30 per day.

5. Title 31 U.S.C. § 1341(a)(1), the relevant part of the Anti-Deficiency Act, reads as follows:

An officer or employee of the United States Government or of the District of Columbia government may not—

(A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation; or

(B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law.

6. The oral argument included the following exchange:

Q: JUDGE FERGUSON: "Therefore, you would advise the district court judges that they have to obey the mandate in that [*i.e.*, the AO] memorandum?"

A: JUSTICE DEPARTMENT COUNSEL: "That's what I'm trying to say. There is no mandate in that memorandum. They have to obey the mandate of the Anti-Deficiency Act and the Constitution. This memorandum tells them what the situation is. I do not believe that this should be characterized as a mandate from the Executive Committee of the Judicial Conference."

7. The petitioners do not address the Anti-Deficiency Act at all in their brief. The Justice Department states its conclusion that the Act bars the empanelling of jurors once funds run out without citing any support for its interpretation of the Act. Among the complex statutory questions that neither party has addressed and that would have to be fully briefed before we could decide them are the following:

(1) whether judges are "officers or employees of the United States Government" within the meaning of section 1341(a)(1);

(2) whether, by empanelling jurors, judges "make or authorize an expenditure or obligation" within the meaning of that section;

(3) whether, if judges do "make ... an ... obligation" to pay jurors by empanelling them, the obligation is exempt from section 1341(a)(1) as an obligation the making of which is authorized by law, in this case 28 U.S.C. § 1871, *see New York Airways, Inc. v. United States*, 369 F.2d 743, 752, 177 Ct.Cl. 800 (1966) (construing former 31 U.S.C. § 665(a), the predecessor to section 1341(a)(1)); *United States v. Langston*, 118 U.S. 389, 393–94, 6 S.Ct. 1185, 1186–87, 30 L.Ed. 164 (1886) (where Congress has fixed a salary amount, right to payment is not abrogated by the failure to appropriate sufficient money to pay that amount);

(4) whether it is legal to transfer money from any other judicial account to pay jurors; and

(5) whether a violation of the Act can occur while there are still funds in the account appropriated but uncommitted.

8. For example, it is unclear whether other appropriations to the courts, such as the Chief Justice's discretionary fund, are still unexpended and could be used to pay juror expenses. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, Pub.L. No. 99-180, 99 Stat. 1136, 1153 (1985).

9. Moreover, even if the Anti-Deficiency Act does not constitute a statutory bar to the empanelling

Walters [10] claims that the suspension of civil jury trials following receipt of the memorandum from the Administrative Office violates the seventh amendment and, specifically, his right to a civil jury trial.[11] The Justice Department contends that the seventh amendment does not guarantee that a civil jury trial must take place at a particular time and that, therefore, a three and one-half month suspension of jury trials does not violate the seventh amendment in general, or Walters' right in particular. In support of its argument, the Justice Department notes that, while the sixth amendment guarantees a speedy *criminal* jury trial, the seventh amendment does not guarantee a speedy *civil* jury trial. It also notes that district courts frequently postpone scheduled civil jury trials for reasons other than the lack of funds to pay jurors. These reasons include calendar congestion, lack of a sufficient number of judges, and the priority accorded to trying criminal cases before civil actions.

The petition before us does not involve a judge's determination, after exercising his discretion in good faith, that the number of cases that are ready for trial exceeds the inherent limitations on his ability to try them immediately, and that he must therefore schedule future trial dates for some of those cases. Nor does it involve a judge's attempts to balance the competing demands of the sixth and seventh amendments. We recognize that calendar delays resulting from the current high volume of litigation are all too common, and we have frequently said that the district courts must have wide discretion to handle such matters. In such circumstances, the proper exercise of discretion by district judges implicates no seventh amendment right.

Here, as the Administrative Office memorandum makes clear, what is proposed is not any exercise of judicial discretion by individual district judges. Rather, we are confronted with the wholesale non-discretionary suspension of the civil jury trial system and a blanket moratorium on all civil jury trials for a three and one-half month period. The Director of the Administrative Office, in his affidavit, acknowledges that the Constitution would prohibit a similar suspension of criminal jury trials not only "because [of] the constitutional and statutory mandates for speedy trials of criminal cases, [but also because of] the constitutional right to a criminal jury trial." However, the Director contends that there is no constitutional bar to the suspension of civil jury trials, at least where financial considerations require such action. The Justice Department agrees with this contention. We disagree, most emphatically.

The Supreme Court has emphasized, in no uncertain terms, the importance of the right to a civil jury trial and the need for the courts to be vigilant in guarding against the erosion of that right:

> The right of jury trial in civil cases at common law is a basic and fundamental feature of our system of federal jurisprudence which is protected by the Seventh Amendment. A right so fundamental and sacred to the citizen ... should be jealously guarded by the courts.

Jacob v. New York City, 315 U.S. 752, 752-53, 62 S.Ct. 854, 854, 86 L.Ed. 1166 (1942).

The Supreme Court has adopted a most rigorous standard for reviewing any potential infringement of the right to a civil trial. The Court has said more than once that "'[m]aintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care.'" *Beacon Theatres v. Westover*, 359 U.S. 500, 501, 79 S.Ct. 948, 951, 3 L.Ed.2d 988 (1959) (quoting *Dimick v. Schiedt*, 293 U.S. 474, 486, 55 S.Ct. 296, 301 (1935)).

Thus, our duty is clear. We must vigilantly protect the right to civil jury trials, and we must scrutinize in the most rigorous manner possible any action that appears to limit in any way the availability of that right.

We begin by repeating some past observations. We have previously noted that the cost of the civil jury system nationwide is "minimal at best," that in 1979 the cost was about equal to that of "two jet fighters," and that the cost factor is not a justification for restricting the use of civil juries. These observations, set forth in *In re U.S. Financial Securities Litigation*, 609 F.2d 411, 430 & n. 71 (9th Cir.1979), *cert. denied, sub nom Gant v. Union Bank*, 446 U.S. 929, 100 S.Ct. 1866, 64 L.Ed.2d 281 (1980), are equally relevant today. We would only add that in 1986 the total cost of providing both the civil and criminal jury system nationwide, (including the three and one-half month period at issue here) is but *one-sixtieth* the cost of building one new space shuttle.[12]

Next, we proceed directly to the heart of the issue, the relationship between constitutional rights and the public fisc. The answer to the fundamental question before us is, as the Justice Department has suggested, simple. It is not, however, the one the Department has proffered. We conclude that the availability of constitutional rights does not vary with the rise and fall of account balances in the Treasury. Our basic liberties cannot be offered and withdrawn as "budget crunches" come and go, nor may they be made contingent on transitory political judgments regarding the advisability of raising or lowering taxes, or on pragmatic or tactical decisions about how to deal with the perennial problem of the national debt. In short, constitutional rights do not turn on the political mood of the moment, the outcome of cost/benefit analyses or the results of economic or fiscal calculations. Rather, our constitutional rights are fixed and immutable, subject to change only in the manner our forefathers established for the making of constitutional amendments. The constitutional mandate that federal courts provide civil litigants with a system of civil jury trials is clear. There is no price tag on the continued existence of that system, or on any other constitutionally-provided right.

The decision to maintain a system of civil jury trials was made long ago at the time our Constitution was adopted. It is not within our power or that of any other branch of government to create exceptions for budgetary reasons. *See Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1547 (Fed.Cir.1983) ("So long as the Seventh Amendment stands, the right to a jury trial should not be rationed ..."); *Raytheon Co. v. RCA*, 76 F.2d 943, 947 (1st Cir.), *aff'd* 296 U.S. 459, 56 S.Ct. 297, 80 L.Ed. 327 (1935) ("Neither the Congress nor the courts can deprive a litigant of [the] right [to a civil jury trial]"); *cf. Ex Parte Milligan*, 71 U.S. (4 Wall) 2, 125, 18 L.Ed. 281 (1866) (Rejecting the argument that criminal jury trials could be suspended during wartime, the Court said that our founders "secured the inheritance they had fought to maintain, by incorporating in a written constitution the safeguards which *time* had proved were essential to its preservation.

of juries, it might well be necessary for us to reach the constitutional question. The fact that the Administrative Office has advised all district judges that no funds are available to pay juror fees might make those judges understandably reluctant to empanel a jury in the absence of an authoritative decision making it clear that they have a constitutional obligation to do so.

10. Hereafter, the use of Walters name is for illustrative purposes only. We could as easily refer to any of the other petitioners.

11. The seventh amendment guarantees that "the right of trial by jury shall be preserved" in civil cases. U.S. Const. Amend. VII.

12. *See* New York Times, May 25, 1986, at 1, J.N. Wilford, "Reagan Is Reported Near Decision To Approve a New Space Shuttle," (Cost of new space shuttle estimated to be $2.8 billion). Other estimates of the cost of a new space shuttle include improvements and range from $5 to $8 billion, *see* New York Times, May 16, 1986; *see also* n. 3 *supra* (total juror costs for fiscal year 1986 estimated to be $46.2 million; amount appropriated 43.4 million).

The total cost of operating the federal judicial system, including the salaries of judges and all other personnel, is only slightly more than a third the cost of a single space shuttle, *see* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, Pub.L. No. 99-180, 99 Stat. 1136, 1153-55 (1985). If the higher estimate of the space shuttle cost is correct, our entire federal court system costs only one-eighth as much as a single shuttle.

Not one of these safeguards can the President, or Congress, or the Judiciary disturb . . .").

[1–3] We conclude that the civil jury trial system may not be suspended for lack of funds.[13] Specifically, we conclude that the seventh amendment right to a civil jury trial is violated when, because of such a suspension, an individual is not afforded, for any significant period of time, a jury trial he would otherwise receive. We do not suggest that a suspension of any duration whatsoever would be constitutional. We need only decide here that a suspension for a significant period is barred by the seventh amendment. The suspension of civil jury trials described in the Administrative Office memorandum clearly falls within the parameters of that term. In fact, we believe three and a half months constitutes far more than a significant period, given the mandate of the seventh amendment. We recognize that the suspension in this case may be shortened if supplemental appropriations become available. However, the possibility of future changed circumstances cannot affect our decision. We take the suspension as we find it, and we apply the rigorous scrutiny that the law requires. *See Beacon Theatres v. Westover*, 359 U.S. at 501, 79 S.Ct. at 951. Nor would our view be any different if there were no specific time period set forth in connection with the suspension of civil jury trials and if, instead, a moratorium were imposed only "until further notice." Any suspension other than a most minimal one would, we believe, be for a significant period.

[4] It is no answer to say, as the Justice Department does, that Walters has no constitutional right to a jury trial on a particular day and that therefore the postponement of his trial causes no injury to his seventh amendment rights. Government counsel argues that the issue is principally one of standing. However, it is clear from the record that all the petitioners have standing. They are all scheduled to have jury trials before October 1, 1986. Thus, they are all directly and adversely affected by the suspension of the constitutionally-mandated civil jury system. A denial of a right need not be absolute before the Constitution is implicated. A temporary deprivation of a right, or a limitation on it, may violate the Constitution as well. Here, the constitutional injury to the petitioners is not that they are denied civil jury trials on particular days but that the jury trials they are scheduled to receive are being unlawfully withheld. While the particular trial date is not mandated by the seventh amendment, the trial itself may not be postponed or delayed for reasons that are violative of the Constitution.

The Justice Department also argues that if jury trials are held after the funds currently appropriated for that purpose are exhausted this court will then be required, in subsequent cases, to order the Treasury to pay out unappropriated funds or to order Congress to appropriate additional funds. It contends that we are prohibited from doing either by *Reeside v. Walker*, 52 U.S. (11 How.) 272, 286, 305–07, 13 L.Ed. 693 (1850), and *National Ass'n of Regional Councils v. Costle*, 564 F.2d 583, 588–90 (D.C.Cir.1977). However, we are not asked in this case to order Congress or the Treasury to make payments to any juror or to appropriate any funds, and we have no reason to consider the question of our power to do so. Whether jurors subsequently will be denied payment for their services is too speculative a matter to concern us here; nor do we see any reason for us to presume that such a problem will arise. There are numerous possible occurrences that would obviate all questions relating to the payment of juror fees, not the least of which is that Congress may ultimately act to provide any funds necessary to pay the costs of maintaining the civil jury system. Since the Constitution requires that the system be preserved, it would be presumptuous of us to assume that Congress would fail to do its part.[14]

Despite our conclusion that the suspension of the civil jury trial system is unconstitutional, we do not believe a writ of mandamus is required in this instance. Mandamus is a drastic remedy that should be invoked only in extraordinary circumstances. *Kerr v. United States District Court*, 426 U.S. 394, 402, 96 S.Ct. 2119, 2123, 48 L.Ed.2d 725 (1976). Considering the rapid and confused sequence of events that gave rise to this proceeding, and the seemingly mandatory language of the Administrative Office memorandum, the district judge's action is readily understandable. We are confident, however, that the judges of the Central District who are presiding over the cases that are the subject of this petition will now act in light of the principles set forth in this opinion, that they will follow their normal procedures and exercise their customary and reasonable judicial discretion in scheduling and holding civil jury trials, and that they will do so without regard to the availability or unavailability of appropriated funds for the payment of juror fees.

II

District of Alaska

The Rolersons are plaintiffs in a civil suit scheduled for jury trial beginning June 23, 1986, in the District of Alaska. Upon receiving the Administrative Office memorandum on June 13, the district judge announced that he would continue the trial at a hearing to be held on June 18. On June 18 the Rolersons filed a petition for a writ of mandamus with this court, along with a request for a stay, to prevent the district judge from postponing the June 23 trial date. We issued the stay.

For the reasons stated in our discussion of the petition involving the cases pending in the Central District of California we also deny the Rolersons' petition for a writ of mandamus.[15] We are confident that the district judge in the Rolerson case, like all other judges concerned, will act in accordance with our holding that the right to civil jury trials may not be suspended because of insufficient appropriated funds for the payment of juror fees. Further, in *Rolerson* we assume that our stay has been observed and that the selection of a jury has already occurred.

III

We believe the guidance we give here will be of equal benefit to all district courts in the circuit and that it is not necessary for us to issue a writ in order to ensure that the civil jury trial system will continue in full force and effect throughout our circuit. Our denial of the petitions is without prejudice to the petitioners' right to renew them if there is a further infringement of their seventh amendment rights. We direct that any such further petitions or related motions in the pending proceedings be referred to this panel for disposition, along with any other petitions raising the issue whether an alleged insufficiency in the juror fee appropriation for the current fiscal year requires or permits a district court to suspend civil jury trials. The stays previously granted are vacated.

Petitions Denied Without Prejudice

13. We note again that we do not hold that the Anti-Deficiency Act requires the result suggested by the Administrative Office. If it did, its commands would, of course, have to yield to those of the Constitution.

14. We note in passing that there is no specific constitutional requirement that jurors be paid, or that they be paid at the present statutory rate. We need not consider here whether, if Congress wishes to economize, it has the alternative of reducing or eliminating the statutory jury fee it has created under 28 U.S.C. § 1871. Nor need we consider what the effect on section 1871 might be of a deliberate Congressional refusal to appropriate additional funds once it has obtained clear knowledge that jurors will be called to serve and that insufficient appropriated funds exist to cover the payment of their statutory fees.

15. Because we deny the petition, we do not order an answer from the district court or oral argument in this case. *See* Fed.R.App.P. 21(b).

Court Bill.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An act relating to retirement of a judge for incapacity or disability"

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

*Section 1. AS 22.25.010(b) is amended to read:

(b) A justice or judge may be retired for incapacity as provided by law. A justice or judge is eligible for retirement pay with two or more years of service at the time of retirement for incapacity. The effective date of retirement under this subsection is the first day of the month coinciding with or after the date upon which the governor [WITH RESPECT TO A JUSTICE, OR THE SUPREME COURT WITH RESPECT TO A JUDGE] files with the commissioner of administration a written declaration to the effect that a designated justice or judge was retired for incapacity. A duplicate copy of the declaration shall be filed with the Judicial Council.

*Section 2. AS 22.30.070(c) is amended to read:

(c) On recommendation of the commission or after an appear under AS 22.30.11(e), the supreme court may (1) retire a judge for disability that seriously interferes with the performance of duties and that is or may become permanent, and (2) publicly or privately censure or remove a judge for action occurring not more than six years before the commencement of the judge's current term which constitutes wilful misconduct in the office, wilful and persistent failure to perform duties, habitual intemperance, conduct prejudicial to the administration of justice, or conduct that brings the judicial office into disrepute. The effective date of retirement under this subsection is the first day of the month coinciding with or after the date upon which the supreme court files with the commissioner of administration a written declaration to the effect that the judge was retired for disability. A duplicate copy of the declaration shall be filed with the Judicial Council.

Allied Fidelity

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An act relating to acceptance of bail bonds executed by corporate sureties"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA

*Section 1. AS 12.30 is amended by adding a new section to read:

Sec. 12.30.021: Acceptance of bail bonds executed by corporate sureties

(a) The court may decline to accept a bail bond executed by a corporate surety if:

(1) in any other case before a court of this state the corporate surety has failed to deliver payment within 90 days of the date that notice of the forfeiture was sent by the court to the corporate surety or its registered agent, and

(2) the court has sent notice of the other delinquent forfeitures and the court's intention to decline to accept the surety's bail bonds to the Division of Insurance and the corporate surety or its registered agent. Notice must be sent at least ten days prior to the date on which the court will no longer accept the bonds.

(b) Upon proof of payment of the delinquent forfeitures and assurances acceptable to the court that forfeitures will be paid in a timely manner in the future, the court will resume accepting bail bonds from the surety.

(c) A corporate surety which disputes the factual basis for the court's decision to decline to accept bail bonds may ask the presiding judge to review the court's decision at an expedited hearing.

for court system

committee bill

pick alternative:

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An act relating to discharge of employee on jury duty"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA

*Section 1. AS 09.20 is amended by adding a new section to read:

Sec. 09.20.015. Discharge of employee on jury duty.

(a) No employer shall discharge or threaten to discharge or in any way penalize any employee who is summoned to serve as a juror if the employee gives reasonable notice to the employer of the summons prior to the commencement of the employee's service as a juror and if the employee is absent from employment because of the actual jury service.

(b) (Alternative Sanctions)

Alternative 1

Any employee who is so discharged shall have a cause of action against the employer for said discharge in any court of competent jurisdiction in this state and shall be entitled to recover both actual and punitive damages.

Alternative 2

If an employer discharges an employee under this section, the employee may bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. ~~Damages recoverable shall not exceed lost wages for six weeks~~. If an employee prevails, the employee shall be allowed reasonable attorneys' fees and costs.

Alternative 3

A person who violates any provision of this section is guilty of a misdemeanor punishable by a fine of not more than three hundred dollars for each offense, by imprisonment not to exceed thirty days, or both.

Alternative 4

Whoever violates this section shall be punished as for a contempt of court.

Alaska State Legislature
House

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

January 21, 1987

William T. Cotton
Court Rules Attorney
Office of Administrative Director
303 'K' Street
Anchorage, Alaska 99501

RE: December 22, 1986 memo on child support, proposed Alaska Civil Rule 90.3

Dear Mr. Cotton,

We have reviewed the above memorandum and object to the Alaska Supreme Court setting these guidelines by court rule. They are not within the court's rule making function under Article IV, Sec. 15 of the Alaska Constitution. These substantive changes are exclusively within the Legislature's jurisdiction.

We appreciate the Court's and the Child Support Enforcement Division's concern, but respectfully suggest that the Division submit draft legislation to the Governor for introduction. Similarly the court system could request the Chairman of the Judiciary Committee introduce a bill by request.

We are particularly concerned because of the precedent this rule would set.

Thank you very much for bringing this matter to the attention of the Alaska Supreme Court.

Cordially,

Max F. Gruenberg, Jr.
State Representative

Dave Donley
State Representative

Fritz Pettyjohn
State Representative

John Sund
State Representative

Robin Taylor
State Representative

cc: House Speaker Ben Grussendorf
Representative John Sund, Chairman, House Judiciary Committee
Holly Ploog, Director of Child Support Enforcement Division
John Reese, Esquire, Co-Chair, Alaska Bar Association Family Law Section

Judge Shultz tried 2 cases last year.

97
1/27/86.

Jury fees —

2 X → method to reduce the jury trials

Traffic cases:

collection agency

→ Municipal accounting

Target

Target

Collection of fines and imposed fees.

(need collection mechanism)

/ Palmer
/ Clarke Summers
/ Bethel
/ lease land under court in Kotzy

Capital $465,000 FAI - Health-Safety Problems

Rep. Sv

ALASKA COURT SYSTEM

1986 ANNUAL REPORT