

HB

268

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
HB 268

Commission on Judicial Conduct

Received April 5, 1989
by The Judiciary Committee

Heard April 12, 1989
Heard May 2, 1989
Heard May 3, 1989
Heard February 6, 1990
Heard February 7, 1990

CSHB 268 (SA) Adopted February 7, 1990

Passed Out of Committee February 7, 1990
3 Do Pass
1 Do Not Pass
1 No Recommendation

TABLE OF CONTENTS

HB 268: Commission on Judicial Conduct

- Item 1:** HB 268 by The Judiciary Committee
CSHB 268 (SA)
- Item 2:** Fiscal Note by Commission on Judicial Conduct
- Item 3:** Sectional Analysis from Rep. Gruenberg, April 11, 1989
- Item 4:** Memorandum from Commission on Judicial Conduct, April 3, 1989
- Item 5:** Memorandum from Alaska Judicial Council, April 3, 1989

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 5, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 268

HOUSE BILL NO. 268

[COMMISSION ON JUDICIAL CONDUCT]

"An Act relating to the Commission on Judicial Conduct."

RECOMMENDATIONS:

- be replaced with CSHB 2108(SA) the same title
 have attached amendment(s) a new title
 do pass
 do not pass
 no recommendation
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____ fiscal note(s) _____
 zero fiscal note AK Common Jud. Conduct zero fiscal note(s) _____
 zero with analysis _____ zero fn/analysis _____

SIGNING DO PASS:

Do not pass as amended
[Signature]
[Signature]
[Signature]

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>[Signature]</u>	<input checked="" type="checkbox"/>		
<u>[Signature]</u>		<input checked="" type="checkbox"/>	

[Signature]
Chairman's Signature

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 HOUSE BILL NO. 268

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Commission on Judicial Con-
7 duct."

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

9 * Section 1. AS 22.30.011(a) is amended to read:

10 (a) The commission shall on its own motion or on receipt of a
11 written complaint inquire into an allegation that a judge

12 (1) has been convicted of a crime punishable as a felony
13 under state or federal law or convicted of a crime that involves moral
14 turpitude under state or federal law;

15 (2) suffers from a disability that seriously interferes
16 with the performance of judicial duties and that is or may become
17 permanent;

18 (3) within a period of not more than six years before the
19 filing of the complaint or before the beginning of the commission's
20 inquiry based on its own motion [START OF THE CURRENT TERM], committed
21 an act or acts that constitute

22 (A) wilful misconduct in office;

23 (B) wilful and persistent failure to perform judicial
24 duties;

25 (C) conduct prejudicial to the administration of
26 justice;

27 (D) conduct that brings the judicial office into
28 disrepute; or

29 (E) conduct in violation of the code of judicial

1 conduct; or

2 (4) is habitually intemperate.

3 * Sec. 2. AS 22.30.011(b) is amended to read:

4 (b) After preliminary informal consideration of an allegation,
5 the commission may exonerate the judge, informally and privately
6 admonish the judge or recommend counseling, or [THE COMMISSION MAY]
7 hold a formal hearing on the [AN] allegation [UNDER (a) OF THIS SEC-
8 TION]. A hearing under this subsection [SECTION] is public. Proceed-
9 ings and records pertaining to proceedings that occur before the
10 commission holds a public hearing on an allegation are confidential [A
11 HEARING UNDER AS 44.62.310(d) AND IS PRIVATE UNLESS A PUBLIC HEARING

12 IS REQUESTED BY THE JUDGE].

13 * Sec. 3. AS 22.30.011(d) is amended to read:

14 (d) The commission may, after a hearing held under (b) of this
15 section,

16 (1) exonerate the judge of the charges;

17 (2) [INFORMALLY AND PRIVATELY ADMONISH THE JUDGE OR RECOM-
18 MEND COUNSELING;

19 (3)] reprimand the judge publicly or privately;

20 (3) [(4)] refer the matter to the supreme court with a
21 recommendation that the judge be suspended, removed, or retired from
22 office or publicly or privately censured by the supreme court.

23 * Sec. 4. AS 22.30.060(b) is amended to read:

24 (b) All proceedings, records, files, and reports of the commis-
25 sion are confidential and disclosure may not be made except

26 (1) upon waiver in writing by the judge at any stage of the
27 proceedings;

28 (2) if the subject matter or the fact of the filing of
29 charges has become public, in which case the commission may issue a

1 statement in order to confirm the pendency of the investigation, to
2 clarify the procedural aspects of the proceedings, to explain the
3 right of the judge to a fair hearing, or to state that the judge
4 denies the allegations; or

5 (3) upon filing of formal charges, in which case only the
6 charges, the subsequent formal hearing, and the commission's ultimate
7 decision are [SHALL BECOME] public; even after formal charges are
8 filed, the deliberations of the commission concerning the case are
9 confidential.

10 * Sec. 5. AS 22.30.080(2) is amended to read:

11 (2) "judge" means a justice of the supreme court, a judge
12 of the court of appeals, a judge of the superior court, or a judge of
13 the district court who is the subject of an investigation or proceed-
14 ing under sec. 10, art. IV, Constitution of the State of Alaska and
15 this chapter, including a justice or judge who is serving in a full-
16 time, part-time, permanent, or temporary position, or who is retired.

Minority Report - page 3 500 7.

ADD MINORITY REPORT, IF ANY.

→ THE REPORT SHALL BE SUBMITTED TO ...
FORM CHANGE AND FILED.

Item 2

STATE OF ALASKA
1990 LEGISLATIVE SESSION

Bill Version: HB 268
Publish Date: 2-5-90

FISCAL NOTE

REQUEST:

Revision Date:	Agency Affected:	<u>Alaska Commission</u>
Title: <u>Act relating to the</u>	BRU:	<u>on Judicial Conduct</u>
<u>Commission on Judicial</u>		
<u>Conduct</u>		
Sponsor: <u>Judiciary</u>	Components:	
Requestor: <u>State Affairs</u>		

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

General Funds	-0-	-0-	-0-	-0-	-0-	-0-
Federal Funds	-0-	-0-	-0-	-0-	-0-	-0-
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Marla N. Greenstein, Executive Director
 Division: Alaska Comm'n on Judicial Conduct
 Approved by: Marla N. Greenstein, Executive Director
 Agency: Alaska Comm'n on Judicial Conduct

Phone: 272-1033
 Date: 2-5-90
 Date: 2-5-90

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management & Budget
 Impacted Agency(ies)

Item 3

State of Alaska

Committees

CO-CHAIR, HOUSE JUDICIARY
VICE-CHAIR, HOUSE LABOR AND COMMERCE
HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES



P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4712
465-4968/4986
(SESSION)
914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

April 11, 1989

MEMORANDUM

TO: Representative Red Boucher
Chairman, House State Affairs Committee

FROM: Representative Max Gruenberg *Max*

RE: Analysis of HB 268

House Bill 268 makes several minor technical changes to the statutes governing the Commission on Judicial Conduct; Sections 2 and 4 make substantive changes intended to make Commission proceedings more open to the public:

Section 1: A technical change, clarifying that the Commission is not authorized to investigate allegations more than six years old.

Section 2: Provides clear authority for the Commission to make preliminary inquiries into a complaint against a judge before holding a formal public hearing. Proceedings prior to a public hearing remain confidential, as they are under current AS 22.30.060(b)(3). (In addition, under the Open Meetings Act, AS 44.67.310(c)(7), agencies may discuss "subjects that tend to prejudice the reputation and character of any person" in executive session.) The bill also removes the judge's ability under current law to keep a hearing closed to the public.

Section 3: A technical change -- language removed in this section of the bill is now contained in Section 2 (page 2, lines 4 - 6).

Section 4: Requires that a Commission decision made after a public hearing also be made public. However, the deliberations of the Commission (like the deliberations of other quasi-judicial agencies, pursuant to AS 44.62.310(d)(1)) are expressly made confidential.

Section 5: A technical amendment, clarifying the term "judge" as including part-time or retired judges.



Commission on Judicial
Conduct

303 K STREET
ANCHORAGE, ALASKA 99501
264-0528

April 3, 1989

M E M O R A N D U M

TO: Members of House Judiciary Committee
FROM: Marla N. Greenstein, Executive Director *MNG*
RE: Commission Confidentiality and Independent Purpose

(1) Confidentiality of Commission Proceedings

Unlike other state agencies, Alaska's Commission on Judicial Conduct exists solely as an investigatory and adjudicatory body. The Commission's sole purpose is to investigate allegations of misconduct against judges. After a full investigation, if there is proof of misconduct in office, the Commission will issue formal charges and transform into a court-like body. After formal charges, the Commission will hear arguments and issue a recommendation for a sanction to the Alaska Supreme Court.

Throughout the investigatory stages the process is confidential. Purposes of confidentiality include:

- (a) protection of the judge's constitutional due process rights
- (b) encouragement of candor by witnesses
- (c) maintenance of public confidence in the judiciary
- (d) encouragement of retirement as an alternative to costly formal proceedings
- (e) protection of commissioners from outside pressures.

These purposes are achieved by the statutory requirements of AS 22.30.011 and 22.30.060 and Commission Rule 5 (attached). Any change to the constitution, statutes, or rules pertaining to the Commission must be consistent with the purposes stated above.

MEMORANDUM

House Judiciary Committee

RE: Commission Confidentiality and Purpose

April 3, 1989

Page 2 of 2

(2) Need for Commission Independence

The amendment to our state constitution that created the Commission on Judicial Conduct in 1968 was an outgrowth of a national movement to create independent judicial disciplinary commissions. The principle behind the creation of an independent commission was to provide a body that would "protect the public, preserve the integrity of the judicial process, maintain public confidence in the judiciary, and create a greater awareness of proper judicial behavior of the part of judges themselves." (ABA Standards Relating to Judicial Discipline and Disability Retirement, 1977)

At the time the amendment was formulated by the Alaska State Legislature, the Judicial Council had been in existence for almost a decade. The Judiciary Committees of both houses knew that they could merely expand the functions of the Judicial Council to include the discipline of judges but chose not to. Reasons for creating a separate body with separate rules governing it, included an implicit recognition of the very different function of the Conduct Commission. As an investigatory body, the Commission on Judicial Conduct necessarily required stringent rules of confidentiality and procedures that would guarantee the constitutional rights of both complainants and judges. As an adjudicatory body, the Commission required a need of independence from outside pressures in its decision making and special subpoena powers. Any combination of functions with the Judicial Council appeared to have the potential of diluting these essential concerns.

ATTACHMENTS

1. Constitutional Provision
2. Relevant Statutory Provisions
3. Commission Confidentiality Rule
4. Commission Procedures Flow Chart

Section 10. Commission on Judicial Conduct. The Commission on Judicial Conduct shall consist of nine members, as follows: three persons who are justices or judges of state courts, elected by the justices and judges of state courts; three members who have practiced law in this state for ten years, appointed by the governor from nominations made by the governing body of the organized bar and subject to confirmation by a majority of the members of the legislature in joint session; and three persons who are not judges, retired judges, or members of the state bar, appointed by the governor and subject to confirmation by a majority of the members of the legislature in joint session. In addition to being subject to impeachment under Section 12 of this article, a justice or judge may be disqualified from acting as such and may be suspended, removed from office, retired, or censured by the supreme court upon the recommendation of the commission. The powers and duties of the commission and the bases for judicial disqualification shall be established by law.

Chapter 30. Judicial Conduct.

Section	Section
10. Commission on Judicial Conduct	66. Inquiry
11. Powers and duties of the commission	70. Disqualification, suspension, removal, retirement and censure of judges
40. Preparation of budget	80. Definitions
50. Validity of acts of the commission	
60. Rules and confidentiality	

Sec. 22.30.010. Commission on judicial conduct. The Commission on Judicial Conduct shall consist of nine members as follows: three persons who are justices or judges of state courts, elected by the justices and judges of the state courts; three members who have practiced law in this state for 10 years, appointed by the governor from nominations made by the governing body of the organized bar and subject to confirmation by a majority of the members of the legislature in joint session; and three citizens who are not judges, retired judges, or members of the state bar, appointed by the governor and subject to confirmation by a majority of the members of the legislature in joint session. Commission membership terminates if a member ceases to hold the position that qualified that person for appointment. A person may not serve on the commission and on the Judicial Council simultaneously. The commission shall elect one of its members to serve as chairman for a term prescribed by the commission. A vacancy shall be filled by the appointing power for the remainder of the term. (§ 1 ch 213 SLA 1968; am § 23 ch 71 SLA 1972; am § 1 ch 160 SLA 1984)

Sec. 22.30.011. Powers and duties of the commission. (a) The commission shall on its own motion or on receipt of a written complaint inquire into an allegation that a judge

(1) has been convicted of a crime punishable as a felony under state or federal law or convicted of a crime that involves moral turpitude under state or federal law;

(2) suffers from a disability that seriously interferes with the performance of judicial duties and that is or may become permanent;

(3) within a period of not more than six years before the start of the current term, committed an act or acts that constitute

(A) wilful misconduct in office,

(B) wilful and persistent failure to perform judicial duties,

(C) conduct prejudicial to the administration of justice,

(D) conduct that brings the judicial office into disrepute, or

(E) conduct in violation of the code of judicial conduct; or

(4) is habitually intemperate.

(b) The commission may hold a hearing on an allegation under (a) of this section. A hearing under this section is a hearing under AS 44.62.310(d) and is private unless a public hearing is requested by the judge.

(c) A judge appearing before the commission at the hearing is entitled to counsel, may present evidence, and may cross-examine witnesses.

(d) The commission may, after a hearing held under (b) of this section,

(1) exonerate the judge of the charges;

(2) informally and privately admonish the judge or recommend counseling;

(3) reprimand the judge publicly or privately;

(4) refer the matter to the supreme court with a recommendation that the judge be suspended, removed, or retired from office or publicly or privately censured by the supreme court.

(e) A decision by the commission to reprimand a judge publicly or privately may be appealed by the judge to the supreme court.

(f) If the commission decides to reprimand a judge privately, the commission shall forward the reprimand to the judge. A copy of the reprimand shall be sent to the chief justice of the supreme court. A private reprimand is confidential.

(g) If the commission exonerates a judge, a copy of the proceedings and report of the commission may be made public on the request of the judge.

(h) If a judge has been publicly reprimanded, suspended, or publicly censured under this section and the judge has filed a declaration of candidacy for retention in office, the commission shall report to the Judicial Council for inclusion in the statement filed by the judicial council under AS 15.58.050 each public reprimand, suspension, or public censure received by the judge

(1) since appointment; or

(2) if the judge has been retained by election, since the last retention election of the judge. (§ 1 ch 58 SLA 1981; am §§ 2 — 4 ch 160 BLA 1984; am § 13 ch 38 SLA 1987)

Sec. 22.30.060. Rules and confidentiality. (a) The commission shall make rules implementing this chapter and providing for confidentiality of proceedings.

(b) All proceedings, records, files, and reports of the commission are confidential and disclosure may not be made except

(1) upon waiver in writing by the judge at any stage of the proceedings;

(2) if the subject matter or the fact of the filing of charges has become public, in which case the commission may issue a statement in order to confirm the pendency of the investigation, to clarify the procedural aspects of the proceedings, to explain the right of the judge to a fair hearing, or to state that the judge denies the allegations; or

(3) upon filing of formal charges, in which case only the charges shall become public. (§ 1 ch 213 SLA 1968; am § 7 ch 160 SLA 1984)

Sec. 22.30.066. Inquiry. (a) The commission may subpoena witnesses, administer oaths, take the testimony of any person under oath, and require the production for examination of documents or records relating to its inquiry under AS 22.30.011.

(b) In the course of an inquiry under AS 22.30.011 into judicial misconduct or the disability of a judge, the commission may request the judge to submit to a physical or mental examination. If the judge refuses to submit to the examination, the commission must determine the issue for which the examination was required adversely to the judge. (§ 2 ch 58 SLA 1981; am § 8 ch 160 SLA 1984)

RULE 5 CONFIDENTIALITY

A. Confidentiality. All investigative and disciplinary proceedings, records, files, and reports of the Commission shall be confidential and no disclosure shall be made except as permitted by A.S.22.30.060.

B. Disclosure - Generally. In order to preserve public confidence in the administration of justice the Commission, in its discretion, may issue one or more announcements confirming or denying the existence of accusations before it, clarifying the procedural aspects, or explaining the right of a judge to a fair hearing when: 1) a judge has been charged pursuant to Rule 9c(4) of these Rules, or 2) the subject matter of a proceeding is generally known to the public.

C. Disclosure - Dismissal. In any instance where accusations against a judge have been considered by the Commission and it has been determined that there is no basis for the filing of the charges or for further proceedings before the Commission, the Commission may, at the request, or with the approval of the judge, issue an explanatory statement.

D. Nondiscoverable Matters.

(1) The following matters and materials are not discoverable:

a. Commission deliberations concerning alleged acts of judicial misconduct or disability, and

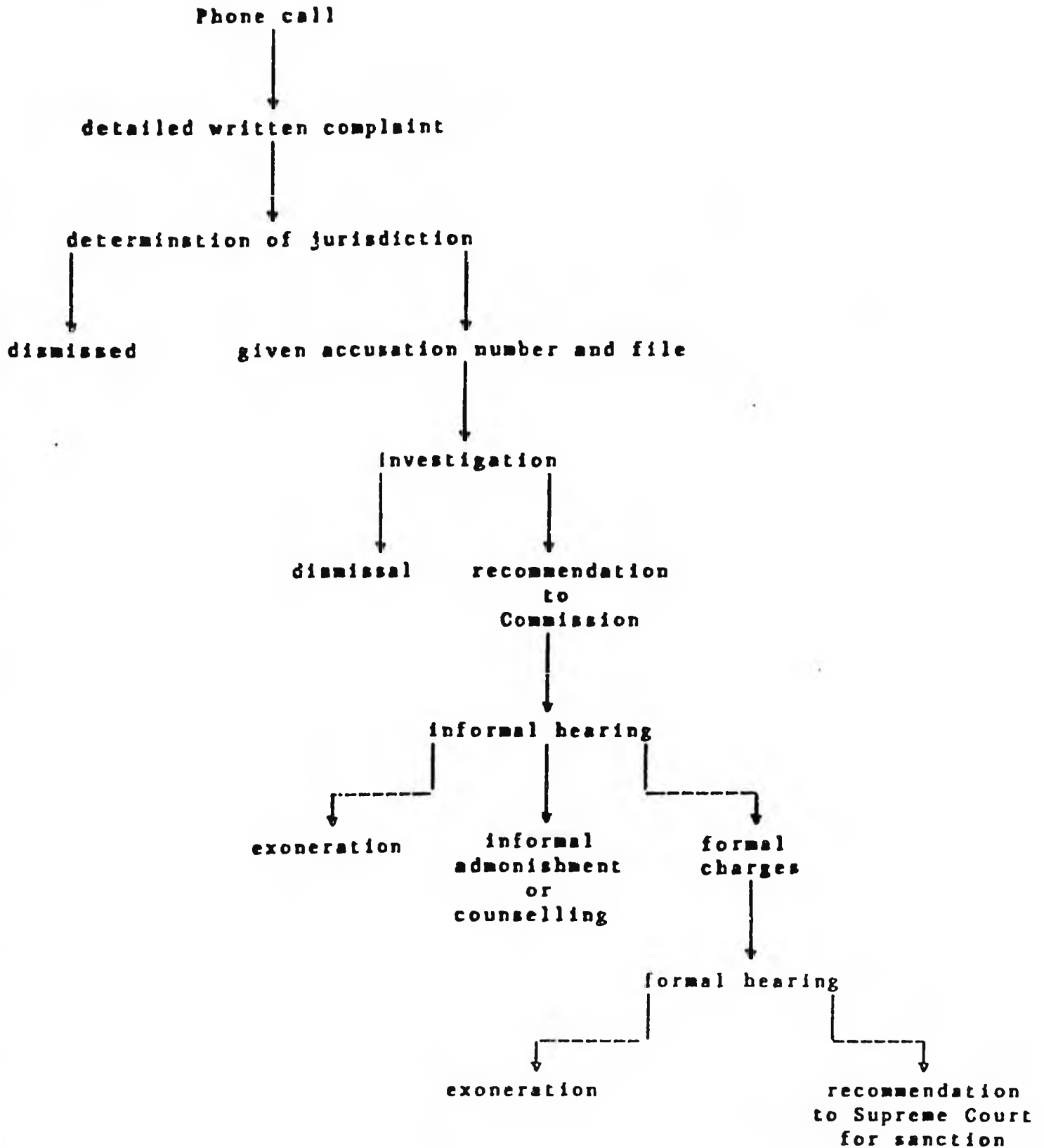
b. Commission staff memoranda, notes and attorney work product.

(2) Except as provided in Rule 8A, the identity and statements of witnesses are not discoverable prior to a probable cause determination.

E. Determination Disclosure - Determination. Upon completion of an investigation or proceeding, the Commission shall disclose to the person filing an accusation against the judge that after an investigation of the charges the Commission (i) has found no basis for action against the judge, (ii) has taken an appropriate corrective action, the nature of which, pursuant to statute, cannot be disclosed, or (iii) has filed a recommendation with the Supreme Court.

F. Public Information. The Commission may, from time to time, issue press releases and other public statements explaining the nature of its jurisdiction, procedure for institution of accusations, limitations upon its powers and authority, and reports on the conduct of the affairs of the Commission, providing that such releases and reports shall not identify by name, position, or address the identity of any judge or other person involved in any inquiry before the Commission unless such disclosure is otherwise provided for in A.S.22.30.060 and these Rules.

JUDICIAL CONDUCT COMPLAINT PROCESS



Items



alaska judicial council

1031 W. Fourth Avenue, Suite 301, Anchorage, Alaska 99501 (907) 279-2526
FAX (907) 276-5046

EXECUTIVE DIRECTOR
Harold M. Brown

April 3, 1989

NON ATTORNEY MEMBERS
Hubert J. Henrickson, M.D.
Renee Murray
Leona Okamoto

ATTORNEY MEMBERS
Daniel L. Callahan
William T. Council
James D. Gilmore

CHAIRMAN, EX OFFICIO
Warren W. Matthews
Chief Justice
Supreme Court

M E M O R A N D U M

To: House Judiciary

From: HMB, Alaska Judicial Council *HB*

Re: Alaska Judicial Council/Commission on Judicial Conduct

The House Judiciary Committee has requested that the following issues be addressed in writing for the purpose of discussion at the April 3rd meeting of the committee.

1. What is the status of the communication of information between the Alaska Judicial Council (hereinafter COUNCIL) and the Commission on Judicial Conduct (hereinafter COMMISSION).

The sharing of information between the two agencies is not and has not been a problem, insofar as that exchange is not prohibited by law. AS 22.30.060 prohibits the COMMISSION from releasing information concerning evidence or allegations against a judge until and unless formal charges have been filed, in which event only the charges will be made public. A judge can waive the confidentiality provisions of the statute and, of course, if the allegations result in discipline serious enough to reach the level of public sanction or more, the information to the extent reflected in the opinion of the Supreme Court becomes available to the public.

Twice, the COUNCIL requested the legislature to modify the statute so that otherwise confidential information in the possession of the COMMISSION could be shared with the COUNCIL. Most recently, in 1986, the COUNCIL, without objection by the COMMISSION, urged the legislature to amend AS 22.30.011(f) so as to read:

(f) If the commission decides to reprimand a judge privately, the commission shall forward the reprimand to the judge. A copy of the reprimand shall be sent to the chief justice of the supreme court and to the judicial council. A private reprimand is confidential.

When the COUNCIL independently develops information reflecting adversely on the qualifications of a judge, it will be forwarded to the COMMISSION if the COUNCIL votes to do so. This requires an affirmative vote by four or more members of the COUNCIL. See Article IV, Sec. 8 of the Constitution of the State of Alaska.

2. When is information confidential?

The confidentiality of complaints to and evidence developed by the COMMISSION is governed by AS 22.30.060 and the rules adopted pursuant thereto. The confidentiality of information provided to or developed by the COUNCIL depends on the circumstances. Initially, it should be noted that all records of the COUNCIL, unless confidential or privileged, are public as provided in AS 09.25.110. See Article XI of the bylaws, (tab B). Article 1, Sec. 22 of the State Constitution provides for the right of privacy. While the parameters of this "right" have not yet been fully articulated, it is a principle that must be examined and balanced with other principles or rules of law on a case by case basis. This "right" is incorporated in Article XI, Sec. 2 of the COUNCIL'S bylaws which, in turn, provides for the confidentiality of certain communications including solicited information or communications concerning a judicial candidate or judge standing for retention where there is a promise or a reasonable expectation of confidentiality. See Doe v. Alaska Superior Court 721 P.2d 617 (AK. 1986). See also, page two of the October 1984 opinion of the Attorney General (tab D, p.I:17.31) endorsing the adoption of rules by the COUNCIL governing confidentiality that are consistent with state law.



alaska judicial council

1031 W. Fourth Avenue, Suite 301, Anchorage, Alaska 99501 (907) 279-2526
FAX (907) 276-5046

EXECUTIVE DIRECTOR
Harold M. Brown

NON ATTORNEY MEMBERS
Hilbert J. Henrickson, M.D.
Renee Murray
Leona Orakok

ATTORNEY MEMBERS
Daniel L. Callahan
William T. Council
James D. Gilmore

A G E N D A

Judiciary Committee Presentation
Juneau, Alaska
March, 1989

CHAIRMAN, EX OFFICIO
Warren W. Matthews
Chief Justice
Supreme Court

Introductions:

Teri Carns, Senior Staff Associate, Alaska Judicial Council
Marla N. Greenstein, Senior Staff Attorney, Alaska Judicial Council

	<u>TAB</u>
- Selection Activities	A
- Retention of Judges	B
- Evaluation of Judges	
- Update on Past Work	
- Access to Rural Justice	C
- Fast Track Evaluation	
- Survey of Bar Membership	
- Three-Judge Panel	
- Plea Bargaining and Presumptive Sentencing Project	D



alaska judicial council

1031 W. Fourth Avenue, Suite 301, Anchorage, Alaska 99501 (907) 279 2526
FAX (907) 276 5046

EXECUTIVE DIRECTOR
Harold M. Brown

NON-ATTORNEY MEMBERS
Hilbert J. Hennick, M.D.
Renee Murray
Leona Okalik

PRESS RELEASE

March 13, 1989

ATTORNEY MEMBERS
Daniel L. Callahan
William T. Council
James D. Gilmore

ANCHORAGE SUPERIOR AND JUNEAU DISTRICT COURTS

CHAIRMAN, EX OFFICIO
Warren W. Matthews
Chief Justice
Supreme Court

Fourteen attorneys have applied to the Alaska Judicial Council for the position of Anchorage Superior Court Judge and seven attorneys have applied for the position of Juneau District Court Judge.

The applicants will be evaluated by the Council's seven members (the Chief Justice, three public and three attorney members), who will then transmit a list of two or more persons for each position to the Governor. The Governor, in turn, will appoint the new judge from that list.

Background investigations, a survey of Alaska Bar members, and personal interviews with the candidates are all part of the Council's evaluations, according to the Council's Executive Director, Harold M. Brown. The evaluations are designed to result in the nomination of those persons deemed best qualified to serve as judges.

The bar survey will be mailed to all active members of the Alaska Bar on March 17, 1989. The survey results will be made public in late April, 1989. Interviews with selected candidates are tentatively scheduled to be held in Anchorage on May 8 and in Juneau on May 9, 1988. The Governor will then have 45 days to make an appointment from the Council's list of nominees.

Candidates for the seats are:

ANCHORAGE SUPERIOR COURT

TERRY C. AGLIETTI: Mr. Aglietti is 43 years old, a resident of Alaska for 18 years and engaged in the practice of law for 17 years. He is a 1970 graduate of George Washington University Law School. He is in private practice as a partner in the Anchorage law firm of Aglietti, Pennington, Rodey & Offret.

JACOB H. ALLMARAS: Mr. Allmaras is 42 years old, a resident of Alaska for 13 years and engaged in the practice of law for 13 years. He is a 1973 graduate of Creighton University School of Law. He is in private practice as a partner the Anchorage law firm of Artus, Choquette, Williams & Allmaras, P.C.

GLEN C. ANDERSON: Judge Anderson is 44 years old, a resident of Alaska for 14 years and engaged in the practice of law for 14 years. He is a 1974 graduate of Willamette University College of Law. He is currently employed as an Anchorage District Court Judge.

DON C. BAUERMEISTER: Mr. Bauermeister is 37 years old, a resident of Alaska for 7 years and engaged in the practice of law for 10 years. He is a 1978 graduate of the University of Nebraska School of Law. He is engaged in the solo private practice of law in Anchorage.

DAN E. DENNIS: Mr. Dennis is 45 years old, a resident of Alaska for 11 years and engaged in the practice of law for 19 years. He is a 1969 graduate of the University of Idaho School of Law. He is in private practice as a partner in the Anchorage law firm of Dennis & Moss.

WILLIAM J. DONOHUE: Mr. Donohue is 43 years old, a resident of Alaska for 17 years and engaged in the practice of law for 16 years. He is a 1971 graduate of Cornell Law School. He is engaged in solo private practice in Anchorage.

PHILLIP J. EIDE: Mr. Eide is 43 years old, a resident of Alaska for 14 years and engaged in the practice of law for 14 years. He is a 1974 graduate of the University of Minnesota School of Law. He is a partner in the Anchorage law firm of Guess & Rudd.

WILLIAM H. FULD: Judge Fuld is 50 years old, a resident of Alaska for 24 years and engaged in the practice of law for 24 years. He is a 1963 graduate of Columbia Law School. He is currently an Anchorage District Court Judge.

DAVID MANNHEIMER: Mr. Mannheimer is 40 years old, a resident of Alaska for 14 years and engaged in the practice of law for 14 years. He is a 1974 graduate of the University of California at Berkeley (Boalt Hall) School of Law. He is currently the chief of the Office of Special Prosecutions for the Attorney General.

NELSON G. PAGE: Mr. Page is 35 years old, a resident of Alaska for 10 years and engaged in the practice of law for 9 years. He is a 1978 graduate of Georgetown University School of Law. He is a partner in the Anchorage law firm of Burr, Pease and Kurtz.

JOHN E. REESE: Mr. Reese is 45 years old, a resident of Alaska for 20 years and engaged in the practice of law for 20 years. He is a 1968 graduate of the University of Oklahoma School of Law. He is a partner in the Anchorage law firm of Reese, Rice and Volland, P.C.

DAVID C. STEWART: Judge Stewart is 40 years old, a resident of Alaska for 14 years and engaged in the practice of law for 9 years. He is a 1974 graduate of Boston University School of Law. He is an Anchorage District Court Judge.

BENJAMIN O. WALTERS, JR.: Mr. Walters is 54 years old, a resident of Alaska for 39 years and engaged in the practice of law for 23 years. He is a 1965 graduate of the University of California at Berkeley (Boalt Hall) Law School. He is a solo practitioner in Anchorage.

LARRY D. WOOD: Mr. Wood is 38 years old, a resident of Alaska for 13 years and engaged in the practice of law for 13 years. He is a 1975 graduate of Willamette University College of Law. He is currently general counsel for the Alaska Railroad Corporation.

JUNEAU DISTRICT COURT

MARGARET W. BERCK: Ms. Berck is 40 years old, a resident of Alaska for 13 years and engaged in the practice of law for 16 years. She is a 1972 graduate of Tulane University School of Law. She is currently the supervising attorney for the Alaska Public Defender Agency in Juneau.

MONTE L. BRICE: Mr. Brice is 44 years old, a resident of Alaska for 44 years and engaged in the practice of law for 11 years. He is a 1976 graduate of the University of Tulsa College of Law. He is in private practice as a partner in the Juneau law firm of Brice & Steinmann.

PATRICK W. CONHEADY: Mr. Conheady is 44 years old, a resident of Alaska for 23 years and engaged in the practice of law for 8 years. He is a 1975 graduate of Catholic University of America, Columbus School of Law. He is engaged in a solo private practice in Juneau.

PETER B. FROEHLICH: Mr. Froehlich is 41 years old, a resident of Alaska for 19 years and engaged in the practice of law for 12 years. He is a 1975 graduate of Willamette University College of Law. He is currently employed as an assistant attorney general in Juneau.

DAVID A. INGRAM: Mr. Ingram is 46 years old, a resident of Alaska for 11 years and engaged in the practice of law for 19 years. He is a 1969 graduate of the University of Iowa School of Law. He is currently employed as an administrative law judge for the Commercial Fisheries Entry Commission in Juneau.

STEPHEN J. PEARSON: Mr. Pearson is 40 years old, a resident of Alaska for 15 years and engaged in the practice of law for 15 years. He is a 1973 graduate of the University of Michigan Law School. He is engaged in a solo private practice in Juneau.

DAVID T. WALKER: Mr. Walker is 47 years old, a resident of Alaska for 14 years and engaged in the practice of law for 19 years. He is a 1969 graduate of the T. C. Williams School of Law at the University of Richmond. He is engaged in solo private practice in Juneau.

PUBLIC COMMENTARY ON THE QUALIFICATIONS OF THESE APPLICANTS IS ENCOURAGED DURING THE EVALUATION PHASE OF THE COUNCIL'S WORK IN MARCH AND APRIL. TO COMMENT, OR FOR FURTHER INFORMATION, CONTACT HAROLD M. BROWN, EXECUTIVE DIRECTOR, ALASKA JUDICIAL COUNCIL, 1031 W. 4TH AVENUE, SUITE 301, ANCHORAGE, ALASKA 99501, (907) 279-2526.

* * * * *

ALASKA JUDICIAL COUNCIL

JUDICIAL SELECTION PROCEDURES

The Alaska Judicial Council is a constitutionally created state agency that evaluates the applications of persons seeking judicial appointment and nominates at least two qualified applicants to the Governor for appointment to fill existing or impending vacancies. The following is a brief summary of the judicial selection process--the steps that an applicant must take in order to be considered for a judicial appointment and the steps that are taken by the Judicial Council to insure that applicants are qualified for appointment.

A. The Application Process

Applicants must first complete the Judicial Council's "Application for Judicial Appointment," which consists of a questionnaire and two appendices. These appendices request: (1) a physician's certification of the applicant's good health based upon the results of a complete physical examination, preferably one conducted within six months prior to the date of application; and (2) a legal writing sample of five to ten pages in length, prepared solely by the applicant within the past five years.

Applicants must submit eight copies of the completed questionnaire and writing sample to the Judicial Council on or by the date set forth in the notice of vacancy. Applicants should have the physician return the signed original medical certificate directly to the Judicial Council by March 13, 1989. The Council will make the additional copies.

Applicants are also encouraged to review the Code of Judicial Conduct (Alaska Rules of Court) during the evaluation period.

B. The Evaluation Process

Once the application deadline has passed, the Judicial Council begins its evaluation process.

1) The Bar Poll

An independent organization, Policy Analysts, Ltd. (PAL) surveys all active members of the Alaska Bar Association. The Bar Survey asks Bar members to rate each candidate on a five point scale [1 (Poor) to 5 (Excellent)] on 5 criteria: Professional competence, integrity, judicial temperament, fairness, and suitability of experience. Survey respondents indicate whether their numerical ratings are based upon direct professional experience, other personal contacts, or reputation. Respondents may also decline to evaluate any candidate due to insufficient knowledge. Respondents with direct professional experience are asked to give brief narrative answers to four additional questions regarding the applicant's legal ability, comportment, diligence, and other qualities. All respondents are invited to offer narrative comments which could assist the Council in its evaluation.

Completed survey forms are returned directly to PAL, which prepares a statistical analysis of all survey responses, including average ratings for each quality for each candidate by range (i.e., excellent, good, acceptable, deficient, poor). Although respondents do not rate candidates in comparison to each other, PAL does prepare an analysis showing relative quantitative rankings among candidates (e.g., 2nd highest average rating out of 10 candidates). Comments from the bar survey are not shared with the individual applicant. They are distributed only to Council members. Where one or two isolated comments regarding substantive concerns are received, such comments are ordinarily brought to the candidate's attention, with the statement that the Council may wish to inquire about such matters at the interview. Council staff may also be asked to investigate and obtain documentation about such comments.

After all applicants have been notified of the survey results, the survey report is released to the public. Survey results are used by the Council members in the evaluation process and each applicant interviewed has the opportunity to discuss the survey results with the Council during the interview. [See below, (4)]

2) Letters of Reference

Letters of reference are also solicited by the Council in its evaluation process. These reference letters are treated as confidential and may not be viewed by the applicants. The Council does not forward solicited letters of reference to the Governor for nominees. Letters of reference not solicited by the Council may be forwarded to the Governor.

3) Investigation of Applicants

The Council may verify applicants' educational and employment history and investigate medical, criminal, civil, credit and professional discipline history. Supreme Court Order 489, effective January 4, 1982, authorizes the Council to review bar applications and bar discipline records. During the course of its investigation, the Judicial Council may also seek information on candidate qualifications from such other public or private groups or individuals as may be deemed appropriate. Information gathered during the Council's investigation is used only for the purpose of evaluating fitness for judicial appointment.

4) Interviews

Following its review of applications, survey data and other information, the Council schedules candidate interviews. As a general rule, the Council prefers to interview all candidates; however, the Council may decline to interview any candidate who it finds to be unqualified. The Council may also decide not to interview candidates who have been recently interviewed for other vacancies, where the Council believes it has sufficient information upon which to base its evaluations. The Council will ultimately review and vote on the qualifications of all applicants, whether or not interviewed.

The final stage of the evaluation process is a 1/2 hour applicant interview with the full Council. Applicants invited to interview are asked about their judicial philosophy and are given an opportunity to respond to or explain any information of importance gathered during the investigation.

Following these interviews, the Council submits as nominees to the Governor, the names of two or more of those candidates deemed most qualified. Thereafter, the applicants are notified and the Council's nominations are made public. The Governor then has 45 days to appoint a nominee from the list to fill the judicial vacancy.

C. Timing of Judicial Selection Procedures

From the time the Council receives notice of a vacancy to the final applicant interviews, the judicial selection process usually takes a minimum of 10 weeks. Once the names of the nominees have been submitted, the Governor has up to 45 days to appoint.

The outline below describes the timing of the major procedures followed during the judicial selection process:

- 1) Notice of the vacancy is received by the Council.
- 2) Within one week, the position is announced to all members of the Bar Association and the application process begins.
- 3) The deadline for receiving applications is approximately two to three weeks after the announcement of the position. The deadline for the current vacancies is March 13, 1989.
- 4) The names and biographies of applicants are made public immediately after the filing deadline.
- 5) The Judicial Council begins its investigation process, requesting letters of reference, disciplinary histories for each applicant, and such other records as may be deemed appropriate.
- 6) The Bar Survey is mailed out to all active members of the Alaska Bar within three days following the close of applications.

- 7) Bar members have approximately three weeks to complete and return the Bar Survey. The results are tabulated and analyzed within 14 days following the survey return deadline.
- 8) The candidates are advised of the bar survey results and the report is made public.
- 9) Applicant files are screened and applicants selected are advised of the time, date and place of their interviews.
- 10) Interviews are ordinarily held within the next 30 days. Interviews for the current judicial vacancy will be scheduled in Anchorage and Juneau in late April or early May 1989.

Council members vote following the interviews. The Governor and the candidates are immediately notified of the Council's vote and a press release is then issued.

- 11) The following day, the names of nominees are formally submitted to the Governor, along with copies of nominees' applications and a copy of the Bar Survey. Letters of reference not solicited by the Council may also be sent to the Governor. The Governor then has up to 45 days to make an appointment from the list.

ALASKA JUDICIAL COUNCIL

PROCEDURES ON THE DAY OF THE INTERVIEW

PRIOR TO THE INTERVIEW:

1. Interview times are scheduled as far in advance as possible. Candidates should advise the Council immediately if a conflict requires a change in schedule.
2. Interviews are generally conducted in Anchorage, in the Supreme Court Conference Room, Fifth Floor, 303 "K" Street, Anchorage, Alaska; interviews may, however, be conducted in other locations as deemed appropriate by the Council.
3. Candidates should plan to arrive 5-10 minutes prior to the interview time scheduled. A Council staff person will be stationed in the reception area. Please provide this staff person with a telephone number where you can be reached between 3:00 and 5:00 p.m. on the day of the interview, so that you may be personally notified of the Council's decision.

THE INTERVIEW:

1. Interviews are scheduled at thirty minute intervals.
2. Interviews are ordinarily conducted in executive session, although an applicant may request that the interview be conducted in public session.
3. During the interview, Council members may ask questions about an applicant's reputation, background, experience and judicial philosophy.

FOLLOWING THE INTERVIEW:

1. Following completion of all interviews, the Council meets in executive session to evaluate all candidates.

2. The Council votes its nominations in public session. The approximate time of the vote is published in the newspaper several days prior to the interviews. Generally, the Council returns to public session to vote within two hours after the last interview.

3. The Council telephones the Governor's office to advise of the names of candidates nominated.

4. The Council telephones all applicants to advise of its decision.

5. The Council issues a press release regarding its nominations. (Steps 3, 4, & 5 all occur within approximately one hour following the Council's vote.)

6. On the day following the interview and nomination, formal notice of Council action is sent to each applicant and the Governor. A copy of each nominee's application and the Bar Survey are included with the Council's letter of nomination. Letters of reference not solicited by the Council may also be included.

Please notify the Council if you have any further questions about the selection process.



alaska judicial council

1031 W. Fourth Avenue, Suite 301, Anchorage, Alaska 99501 (907) 279-2526

EXECUTIVE DIRECTOR
Harold M. Brown

NON-ATTORNEY MEMBERS
Herbert J. Hennickson, M.D.
Renee Murray
Leona Okakok

December 15, 1988

ATTORNEY MEMBERS
Daniel L. Callahan
William T. Council
James D. Gilmore

M E M O R A N D U M

CHAIRMAN, EX OFFICIO
Warren W. Matthews
Chief Justice
Supreme Court

TO: Judicial Council and Retention Consultant Committee

FROM: Staff *WMC*

RE: Analysis of 1988 Retention Vote Patterns

This memo serves as an addendum to the Council's earlier memos that analyzed retention voting patterns between 1976 and 1986. Sixteen of the seventeen judges standing for retention in 1988 were found qualified by the Judicial Council and recommended for retention (Judge Johnstone was found unqualified and the Council recommended against his retention). All judges were retained.

The number of "yes" and "no" votes cast for each judge are shown in Table A. The vote tallies were supplied by the Division of Elections during a November 23, 1988 phone call. "Retention Vote Analysis, Trial Judges", compares the outcomes for 1988 with the "yes" vote percentages in all prior years during which the Council evaluated judges. Table B also shows the survey scores (Overall Judicial Performance, experienced raters) by Bar and Peace and Probation officers for each year. Table C shows the "yes" vote percentages for the supreme court justices for each year since 1976.

The vote percentages, overall, resemble the voting patterns found in 1986 (see attached 1986 vote analysis). Most judges received "yes" vote percentages between 67 and 72%. One judge received 74.3% "yes" votes (Judge Anderson) and two judges received "yes" votes below 60% (Judge Johnstone, 58.1%; Justice Rabinowitz, 59.0%). As in 1986, it can be hypothesized that the relatively high vote percentages indicate a lack of controversy and a high level of public confidence in the judges.

The two judges who received lower percentages of "yes" votes were both involved in some degree of controversy. Judge Johnstone was found unqualified by the Judicial Council and a "no" vote on his retention was recommended. Between the Council's meeting in July and the election in November, frequent letters appeared in the Anchorage newspapers supporting Judge Johnstone's retention. Several articles and one ad (paid for by the Council) appeared that reiterated the Council's position. Justice Rabinowitz was opposed in newspaper and TV ads by a citizens' group that was funded by a combination of tort reform proponents and fundamentalists. Newspaper ads supporting him were run by another citizens' group (primarily attorneys) and the Judicial Council (the Council's ad included both Justice Burke and Justice Rabinowitz). In both instances, the fact of controversy appears to have resulted in a lower percentage of "yes" votes than those given to other judges in comparable positions. In the case of Judge Johnstone, the controversy may also have encouraged a larger number of people to cast a vote, since his total number of votes is over 1,000 more than any other superior court judge.

Table A also shows the number of registered voters, the percentage who actually participated in the 1988 general election, the percentage casting votes in the U.S. House of Representatives race and the percentage voting in the supreme court retention election. Of the registered voters actually voting in 1988, 93.8% voted in the congressional race and 83.5% voted on the retention of Justice Burke. The percentage voting in the congressional race was very similar to the 1986 percentage of 93.5%, and within the range for other years (90.8% to 96.9%). The percentage voting in the retention election was higher than the 79% turnouts in 1984 and 1986, and comparable to the 83% to 87% range found in earlier years.

TABLE A
1988 Retention Vote Totals

<u>DISTRICT</u>	<u>JUSTICE/ JUDGE</u>	<u>"YES" VOTES</u>		<u>"NO" VOTES</u>		<u>TOTAL VOTES</u>	
		<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>		
<u>Supreme</u>	Burke	123,878	(72.9%)	45,818	(27.0%)	169,696	
	Rabinowitz	99,918	(59.0%)	69,334	(40.9%)	169,252	
<u>1st District</u>	Jahnke	18,186	(72.3%)	6,964	(27.6%)	25,150	
	Gucker	17,877	(71.1%)	7,294	(28.9%)	25,171	
<u>2nd District</u>	(No judges standing for retention)						
<u>3rd District</u>		65,145	(68.6%)	29,814	(31.3%)	94,959	
	Bosshard	61,772	(65.2%)	32,864	(34.7%)	94,636	
	Gonzalez	69,364	(72.3%)	26,519	(27.3%)	95,883	
	Hunt	56,521	(58.1%)	40,723	(41.8%)	97,244	
	Johnstone	66,931	(70.5%)	27,921	(29.4%)	94,852	
	Katz	65,493	(69.9%)	28,198	(30.1%)	93,691	
	Michalski	64,583	(68.7%)	29,422	(31.2%)	94,005	
	Souter		70,163	(74.3%)	24,196	(25.6%)	94,359
	Anderson	65,360	(70.6%)	27,380	(29.3%)	93,240	
	Ashman	68,855	(72.8%)	25,643	(27.1%)	94,498	
	Finn	63,682	(68.5%)	29,150	(31.4%)	92,832	
	Fuld	63,949	(68.2%)	29,785	(31.7%)	93,734	
	Mason						
	<u>4th District</u>	Greene	24,412	(67.6%)	11,694	(32.3%)	36,106

* * * * *

- | | | | |
|----|---|---------|---------|
| 1. | Total number of Registered Voters: | 292,441 | |
| 2. | Number that actually voted: | 203,132 | (69.1%) |
| 3. | Number that voted in U.S. House race for either Young or Gruenstein* | 190,442 | |
| 4. | % of all who voted, who voted in the U.S. House Race | | (93.8%) |
| 5. | Number and percent of all who voted, who voted for or against Justice Burke | 169,696 | (83.5%) |

* The vote tallies provided did not include write-in votes.

RETENTION VOTE ANALYSIS, TRIAL JUDGES
Alaska Judicial Council, December 7, 1988

Judge	Bar	1976 PRO	Vote	Bar	1978 PRO	Vote	Bar	1980 PRO	Vote	Bar	1982 PRO	Vote	Bar	1984 PRO	Vote	Bar	1986 PRO	Vote	Bar	1988 PRO	Vote	
FIRST JUDICIAL DISTRICT SUPERIOR COURT																						
Carpeneti														4.4	3.6	77.0%						
Compton							4.4	4.0	76.1%													
Craske							3.7	3.0	70.4%								3.9	3.2	72.5%			
Vahne																			4.0	4.1	72.3%	
Pedues													3.5	3.7	75.4%							
Schulz													3.8	3.2	74.1%							
Stewart, T.	4.0	3.3	72.8%	3.9	2.6	74.8%																
FIRST JUDICIAL DISTRICT DISTRICT COURT																						
Asper																	4.0	3.2	72.5%			
Craske	3.8	3.7	76.2%																			
Gucker													3.8	2.1	67.9%					3.3	3.1	71.1%
Keene				3.1	3.6	73.2%				3.5	4.1	76.4%										
Taylor, R.				3.8	3.2	75.1%																
Williams	2.3	3.4	71.5%				2.2	3.9	59.1%													
SECOND JUDICIAL DISTRICT SUPERIOR COURT																						
Jeffrey																	3.4	3.5	79.3%			
Jones																						
Amley														3.8	2.9	71.4%						

PETITION VOTE ANALYSIS/Page 2
December 7, 1988

Judge	Bar	1976 PPO	Vote	Bar	1978 PPO	Vote	Bar	1980 PPO	Vote	Bar	1982 PPO	Vote	Bar	1984 PPO	Vote	Bar	1986 PPO	Vote	Bar	1988 PPO	Vote		
THIRD JUDICIAL DISTRICT SUPERIOR COURT																							
Bosshard																			3.2	3.8	68.6%		
Buckalew	3.7	3.1	62.2%							3.9	3.4	59.9%											
Carlson				3.9	3.2	67.4%							3.6	4.1	63.6%								
Cranston													4.1	3.1	65.1%								
Gonzalez																3.9	3.7	68.9%					
Hanson							3.0	2.8	54.7%										3.5	2.8	65.6%		
Hunt																			4.1	3.4	72.8%		
Johnstone												not evaluated	52.0%						2.9	3.2	57.8%		
Kalamarides	3.0	3.1	64.2%																				
Katz																			3.7	3.7	71.1%		
Madsen				2.8	3.1	64.1%							3.1	3.1	62.1%								
Michalski																			3.5	3.9	70.4%		
Woody				3.3	3.6	64.6%																	
Ripley				3.5	3.5	67.8%							3.4	3.7	64.2%								
Rowland							3.8	3.6	61.0%							3.6	3.9	69.6%					
Serbanely													4.1	3.7	68.1%								
Shortell													3.8	3.5	67.4%								
Singleton							4.0	3.3	missing														
Souter										3.6	3.2	56.4%							3.7	3.5	69.2%		
THIRD JUDICIAL DISTRICT DISTRICT COURT																							
Anderson							4.1	3.9	63.7%				4.1	3.8	72.4%				4.2	4.0	74.7%		
Andrews										4.1	3.7	66.1%				4.1	3.9	71.2%					
Ashman																3.7	3.7	69.8%			4.4	3.4	71.1%
Beckwith																							
Bosshard				3.6	3.8	67.1%				3.6	3.5	57.9%											
Brewer				2.7	2.7	55.6%				2.6	2.7	45.5%											
Bryner	4.2	3.7	66.2%																				
Butler				3.8	2.8	69.5%				4.0	3.0	63.0%											
Clinn													4.1	4.0	72.4%				4.1	4.0	73.4%		
Fuld													3.6	3.7	68.3%				3.5	3.5	69.1%		
Homaday				3.1	3.1	66.6%				3.2	4.1	59.8%				3.1	3.9	67.2%					
Mason	3.3	3.3	63.7%							3.1	3.1	57.8%				3.2	2.8	58.1%			3.2	3.0	68.6%
Petersen	3.9	3.9	68.1%																				
Stemp																			3.3	4.0	67.8%		
Stewart, D.																4.0	3.6	70.5%					
Rucker				2.8	2.8	54.9%				2.8	3.1	54.5%											
Vochoska				3.7	2.8	51.6%				2.7	2.4	42.3%											
White																			3.8	3.9	70.5%		

Judge	Bar	1976 PPO	Vote	Bar	1978 PPO	Vote	Bar	1980 PPO	Vote	Bar	1982 PPO	Vote	Bar	1984 PPO	Vote	Bar	1986 PPO	Vote	Bar	1988 PPO	Vote
FOURTH JUDICIAL DISTRICT SUPERIOR COURT																					
Blair				3.7	3.7	71.4%							3.4	3.8	65.4%						
Cook							3.2	2.5	69.4%												
Greene																			4.2	2.4	67.4%
Hodges							3.5	3.1	65.7%							3.4	3.2	69.2%			
Taylor, W.							3.1	3.8	72.8%												
Van Voorhise							3.5	4.1	72.3%							3.4	4.0	72.2%			
FOURTH JUDICIAL DISTRICT DISTRICT COURT																					
Judge	Bar	1976 PPO	Vote	Bar	1978 PPO	Vote	Bar	1980 PPO	Vote	Bar	1982 PPO	Vote	Bar	1984 PPO	Vote	Bar	1986 PPO	Vote	Bar	1988 PPO	Vote
Clayton	3.9	3.8	75.8%				3.7	3.3	msng												
Cline							2.5	2.6	55.5%												
Connelly				3.0	4.0	74.3%				3.8	4.0	71.8%				3.6	3.8	74.2%			
Crutchfield										3.7	3.8	67.9%				3.5	3.6	71.3%			
Kalvar										3.6	2.9	68.7%				3.4	3.4	72.0%			
Miller				3.3	3.0	82.0%															
Zimmerman																4.0	3.8	74.8%			

TABLE C

SUPREME COURT "YES" VOTE PERCENTAGES

Supreme Court

Boochever	1976	67.8%
Burke	1978	68.6%
Rabinowitz	1978	67.8%
Matthews	1980	53.5%
Connor	1982	61.5%
Compton	1984	69.7%
Moore	1986	69.1%
Burke	1988	72.9%
Rabinowitz	1988	59.0%



alaska judicial council

1031 W. Fourth Avenue, Suite 301, Anchorage, Alaska 99501 (907) 279-2526

EXECUTIVE DIRECTOR
Francis L. Brenson

NON-ATTORNEY MEMBERS
Mary Jane Fatt
Hilbert J. Henrikson, M.D.
Renee Murray

December 12, 1986

ATTORNEY MEMBERS
William T. Council
James D. Gilmore
Barbara L. Schuhmann

MEMORANDUM

TO: Retention Consultant Committee
FROM: Teri Carns, Senior Staff Associate *TWC*
RE: Results of 1986 Retention Elections

CHAIRMAN, EX OFFICIO
Jay A. Rabinowitz
Chief Justice
Supreme Court

All of the eighteen judges standing for retention in 1986 were recommended for retention by the Judicial Council, and all were retained. The percentages of "yes" votes for each judge were somewhat higher overall than in past years, as can be seen by comparing the data in Attachment A with the data in this memo. In 1984 for example, the lowest percentage of "yes" votes was 58.1% for Judge Mason, as compared to 67.2% for Judge Hornaday in 1986. One reason for the difference may be that there was no significant opposition to any judge in 1986.

Table A

<u>Judge/Justice</u>	<u>Total "Yes" Votes</u>	<u>"Yes" votes as a % of all votes cast for that judge</u>
Justice Daniel A. Moore	100,857	69.1%
Judge Duane K. Craske	15,994	72.5%
Judge Linn Asper	16,023	72.5%
Judge Michael I. Jeffery	5,401	76.3%
Judge Beverly W. Cutler	61,598	68.9%
Judge Mark C. Rowland	60,742	69.6%
Judge Elaine Andrews	62,233	71.2%
Judge Martha Beckwith	60,562	69.8%
Judge James C. Hornaday	58,608	67.2%
Judge Ralph E. Stemp	58,119	67.8%
Judge David Stewart	60,615	70.5%
Judge Michael White	60,925	70.5%
Judge Jay Hodges	20,435	69.2%
Judge Gerald Van Hoomissen	21,127	72.2%
Judge Hugh H. Connelly	21,569	74.2%
Judge H. Ed Crutchfield	20,416	71.3%
Judge Jane F. Kauvar	20,766	72.0%
Judge Christopher Zimmerman	21,388	74.8%

EXHIBIT M.1

III:5.25

01/01/88

Voter turnout was also analyzed. Table 4 (Attachment B) has been updated with 1986 figures to show the percentage of registered voters who cast ballots. The percentages of those casting ballots who voted in the Congressional race and who voted for or against Justice Moore (the only judge who was on all ballots in the state) are also shown.

Voter turnout was lower than in 1982 and 1984, but comparable to 1980 and earlier years. The percentage of voters casting ballots who voted in the Congressional race was 93.5%, comparable to past years. The 79.9% of voters casting ballots who voted in the retention election of Justice Moore was about the same percentage as 1984, and lower than the percentages between 1976 and 1982.



alaska judicial council

1031 W. Fourth Avenue, Suite 301, Anchorage, Alaska 99501 (907) 279-2526

EXECUTIVE DIRECTOR
Francis L. Bremson

NON ATTORNEY MEMBERS
Mary Jane Fate
Robert H. Moss
Renee Murray

December 28, 1984

ATTORNEY MEMBERS
James B. Bradley
James D. Gilmore
Barbara L. Schuhmann

CHAIRMAN, EX OFFICIO
Jay A. Rabinowitz
Chief Justice
Supreme Court

M E M O R A N D U M

TO: Retention Consultant Committee

INFO: Judicial Council

FROM: Staff *WLC*

RE: 1976 - 1984 Judicial Retention Election Vote Analysis

This memo has been prepared to assist the Judicial Council, its Retention Consultant Committee and others in the analysis of voting patterns in judicial retention elections since 1976. Section A presents voting patterns by year and by judicial district. Section B compares voter interest in judicial retention with interest in other elected positions.

The analysis shows that, in general, voting patterns in judicial retention elections tend to vary both by year and by judicial district. The percentage of voters who appear to oppose all judges is highest in the Third Judicial District (about 35-40%) and noticeably lower (about 20-30%) in the other three districts. Although influences on the voting patterns cannot be supported by statistical evidence, it does appear that both the Council's evaluations and other public support or opposition (including that provided by the judicial candidate himself) can affect the vote significantly.

Voter turnout for judicial retention elections was gauged by comparing vote totals for the U.S. House of Representatives race with vote totals for Supreme Court seats. It is reasonably high, ranging from 79.0% in 1984 to 87.4% in 1980. Thus, it appears that voters are both interested in and to a large extent, somewhat knowledgeable about, judicial retention elections in Alaska.

Section A: Voting Patterns

Table 1 indicates the percentage of "yes" votes received by each judge standing for retention in the years during which the Judicial Council has evaluated judges eligible for retention. The table permits comparisons by level of court, judicial district, judge, and year. The analysis which follows provides some possible explanations for the variations by judge and judicial district.

1) Variation by judge

Eighteen judges have stood for retention at least twice in the same position between the years of 1976 and 1984. Judge Anderson's vote percentage improved between 1980 and 1984 (from 63.7% to 72.4%). Judge Keene's vote also improved, from 73.9% in 1978 to 76.4% in 1982. Judge Schulz's vote stayed about the same (74.8% in 1978 and 74.1% in 1984). Judge Mason's vote dropped between 1976 and 1980 (63.7% to 57.8%) but stayed about the same in 1984 as in 1980 (58.1% in 1984).

Although each of the other thirteen judges "lost" a percentage of "yes" votes between their first and second retention elections, in each case the loss is at least partially explicable. Three (Williams, Brewer and Vochoska) were opposed by the Council during both of their retention elections. Three were opposed in ad campaigns in 1984 (Blair, Carlson and Ripley). Two had very low survey scores in both retention election years (Madsen and Tucker).

Table 1

Percentage of "Yes" Votes by Judge and Year
(1976-1984 Retention Vote Analysis)

Court	1976		1978		1980		1982		1984	
Supreme Court	Boochever	67.5%	Burke Rabinowitz	68.6% 67.6%	Mattheus	53.1%	Conner	61.5%	Compton	69.7%
Court of Appeals	-----	-----	-----	-----	-----	-----	-----	-----	Bryner	68.8%
									Coats	68.2%
									Singleton	69.1%
1st Dist. - Super. Ct.	Stewart	72.6%	Schulz	71.6%	Compton Craske	76.1% 70.4%	-----	-----	Schulz	74.1%
									Pegues	75.4%
									Carpeneti	77.0%
1st Dist. - Dist. Ct.	Craske	78.2%	Keene	73.9%	Williams	59.1%	Keene	76.4%	Gucker	67.5%
	Williams	71.5%	Taylor	75.1%						
2nd Dist. - Super. Ct.	-----	-----	-----	-----	-----	-----	-----	-----	Jones	75.6%
									Tunley	71.4%
3rd Dist. Super. Ct.	Buckalew	52.2%	Carlson	67.4%	Hanson	54.7%	Buckalew	59.9%	Carlson	63.6%
	Kalamarides	64.2%	Hadsen Moody Ripley	64.1% 64.6% 67.6%	Rowland	61.0%	Johnstone Souter	52.0% 56.4%	Ripley	64.2%
									Serdshely	68.1%
									Shortell	67.4%
									Cranston	65.1%
									Hadsen	62.1%
3rd Dist. - Dist. Ct.	Bryner	65.2%	Brewer	55.6%	Anderson	63.7%	Andrews	66.1%	Anderson	72.4%
	Hason	63.7%	Bosshard	67.1%	Hason	57.5%	Bosshard	57.9%	Finn	72.4%
	Peterson	68.3%	Cutler	69.5%			Brewer	45.5%	Fuld	68.3%
			Hornaday	66.6%			Cutler	63.0%	Hason	59.1%
			Tucker	64.9%			Hornaday	55.8%		
			Vochoska	51.6%			Tucker	54.5%		
							Vochoska	42.3%		
4th Dist. - Super. Ct.	-----	-----	Blair	73.4%	Cooke	68.4%	-----	-----	Blair	65.4%
					Hodges	65.7%				
					Taylor	72.8%				
					Van Hornussen	72.3%				
4th Dist. - Dist. Ct.	Clayton	75.5%	Connelly Hilier	74.3% 62.3%	Cline	55.5%	Connelly	71.5%	-----	-----
							Crutchfield	67.5%		
							Kauvar	69.7%		

* See following page for footnotes to Table 1.

Rev. 3/1/85

The remaining five judges (Bosshard, Cutler, Hornaday, Connelly and Buckalew) all stood for their second retention elections in 1982. As Tables 2 & 3 suggest, both 1980 and 1982 may have been years of unusually high voter concern about judges. Council recommendations against two judges in each year, and adverse publicity about other judges may have caused a "coat-tail" effect, in which all judges in those districts experienced some vote loss.

2) Variations by judicial district and court type

The Supreme Court's typical range (excluding Matthews) appears to be 61-69%. Justice Connor's imminent retirement in 1982 and the general low vote percentages for judges in the Third Judicial District may have affected his vote. If so, the range would be much narrower: 67-69% yes votes. The Court of Appeals in its 1st year of evaluation appears to be similar to Supreme Court.

Footnotes, Table 1

1. Opposed by Chuck Imig in extensive Anchorage newspaper campaign for about two weeks prior to election.
2. Council recommended Williams not be retained in both '76 and '80.
3. Low ratings in surveys + recent public censure by Supreme Court.
4. High publicity regarding court case over questioned appointment date; no Council evaluation but some unfavorable press.
5. Last-minute ad campaign against "lenient" sentencing countered by heavy law-enforcement support, and Council publicity for all judges.
6. Council recommended non-retention in 1978 and 1982.
7. Anchorage Daily News recommended against retention; Council recommended for.
8. Drop between 1978 and 1984 possibly due to two separate ad campaigns against retention in 1984, Council recommended retention in both years.
9. Council recommended against retention.

The First District Superior Court range is 70-77%. The District Court range appears to be in the 70's also. Judge Williams was opposed by the Council in '76 and '80, and both times mounted highly visible campaigns for retention. Judge Gucker was found qualified in 1984, but published survey scores from peace officers were very low.

The Second District Superior Court appears similar to First and Fourth District Superior Courts. Judges in these districts typically receive "yes" votes in the mid-to-high 60s percent range or low 70s. The Fourth District District Court vote percentages also tend to be high 60s and 70s. Judge Cline in 1980 (Council recommended against retention), and Judge Miller in 1978 (no known reason for the relatively low "yes" vote percentage) appear to be exceptions.

The typical range for Third Judicial District Superior Court is somewhat lower than for the other three districts. The highest vote is Judge Serdahely's in 1984, with 68.1%. Votes for the two judges in 1980 and three in 1982 were all 61.0% or less.

Third District District Court votes range from 72.4% yes (Judges Anderson and Finn in 1984) down to 42.3% (Judge Vochoska in 1982). A mid-60s range would appear to be typical, but there seems to be more variation, both within a given year and over a period of years, than for any other court in the state.

Finally, the mean (average) percentage of "yes" votes for all judges in the 1st, 2nd and 4th districts (years 1976 through 1984) is 71.2%. The mean for all judges in the 3rd district for the same years is 62.1%, a difference of 9.1 percentage points.

Table 2

"Yes" Vote Ranges, by Year
(1976-1984 Retention Vote Analysis)

1976 -	No judge fell below 62% yes votes. (10 judges total)	
1978 -	Two judges (both found unqualified by Council) received fewer than 56% yes votes; otherwise, no judge fell below 62% yes votes. (18 judges total)	
1980 -	Matthews (ad campaign against)	55.5%
	Williams (Council recommended against)	59.1%
	Hanson (adverse publicity)	54.7%
	Mason (low ratings in surveys)	57.8%
	Cline (Council recommended against)	55.5%
	5 of 13 judges with ratings below 61.0%	
	8 of 13 judges with ratings above 61.0%	
1982 -	Buckalew	59.9%
	Johnstone (adverse publicity)	52.0%
	Souter	56.4%
	Bosshard	57.9%
	Brewer (Council recommended against)	45.5%
	[not retained]	
	Hornaday (some adverse publicity)	59.8%
	Tucker (low survey scores)	54.5%
	Vochoska (Council recommended against)	42.3%
	[not retained]	
	8 of 15 judges rated below 61.0%	
	7 of 15 judges rated above 61.0%	
1984 -	Mason (adverse publicity)	58.1%
	All other judges (20) above 61.0%	

Table 3

% "yes" votes (trial judges only)
(1976-1984 Retention Vote Analysis)

	<u>1976</u>	<u>1978</u>	<u>1980</u>	<u>1982</u>	<u>1984</u>
3rd District	64.9%	63.9%	59.3%	55.7%	66.2%
1st, 2nd, 4th Districts	74.6%	72.3%	67.5%	71.2%	72.4%

The figures in Tables 2 and 3 may indicate that 1980 and 1984 were anomalous years, with greater-than-usual concern about judges. Voters in the Third Judicial District appear much more likely to express such concerns than voters in the other three districts. A quick scan of precinct-level votes in the Third District for 1984 also suggests that smaller communities in this District may account for disproportionate shares of "no" votes. A more detailed analysis could provide the foundation for additional public information work by the Council in these outlying areas.

A separate analysis (Table not included) compared the judges' bar & Peace Officer survey scores for "overall judicial performance" to "yes" vote percentages. There does not appear to be any strong correlation between survey scores and vote percentages. However, there does appear to be a relationship since 1980 between the Council's recommendation and the vote percentages.

Another finding suggested by the voting patterns is that voters may be relying on the Judicial Council's recommendations in increasing numbers. In 1984, the recommendations were published not only in the Voters' Pamphlet, but also in feature articles by both Anchorage papers shortly before election day, in large ads paid for by the Council in papers throughout the state, and in other news articles throughout the state between August and October. Thus, despite the unusual number of campaigns against retention of specific judges, all but one of the judges were retained with over 60% of the vote.

Finally none of the campaigns against judges in 1984 started more than a week prior to the election. None of them had the visibility or additional press coverage generated by Imig's campaign against Matthews in 1980 or campaigns by judges

responding to the Council's recommendations against their retention. None of them were able to build on any degree of general public interest in law-and-order issues, since there were few such issues in the 1984 campaigns at national, state or local levels.

Section B: Voter Turnout

Voter turnout and percentages voting for judges are also of interest. Because the U.S. House of Representatives race is the only statewide contest which occurs every two years, the number of voters for that position is used as a comparison to gauge voter interest in judicial positions.

Table 4

	<u>Column A</u>		<u>Column b</u>		<u>Column C</u>	
	Number of registered voters who went to polls	% of all voters in Alaska	Number and percent of Column A voters who voted in U. S. House of Represent. Race		Number and % of Column A voters who voted for or against supreme court justices standing for retention	
	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>
<u>1976</u>	127,877	(61.7%)	118,208	(92.5%)	108,538	(84.9%)
<u>1978</u>	129,705	(54.3%)	124,187	(95.7%)	a) 107,647 (85.0%) b) 107,707 (83.0%)	
<u>1980</u>	162,653	(62.8%)	154,618	(95.1%)	142,086	(87.4%)
<u>1982</u>	199,358	(74.9%)	181,084	(90.8%)	169,515	(85.0%)
<u>1981</u>	211,009	(69.1%)	204,381	(96.9%)	166,746	(79.0%)
<u>1986</u>				(93.5%)		(79.7%)

With the exception of 1984, where the base figures provided by Division of Elections are somewhat confusing, voter turnout in the Alaska Supreme Court retention elections has been about 85% of all persons voting. The comparison race (U.S. House) pulls about 91% to 97% of the vote. This suggests that most voters who go to the polls are interested in judicial retention. More public information might increase the proportion of voters casting ballots in the judicial retention elections.

Table A
(1984)

	Justice/ Judge	Yes Votes		No Votes		Total Votes
		#	%	#	%	
Supreme	Compton	116,142	69.7%	50,604	30.3%	166,746
Appel. Ct.	Bryner	112,428	68.8%	50,984	31.2%	163,412
	Coats	110,313	68.2%	51,387	31.8%	161,700
	Singleton	111,916	69.1%	50,098	30.9%	162,014
1st Dist.	Schulz	17,769	74.1%	6,225	25.9%	23,994
	Pegues	18,191	75.4%	5,923	24.6%	24,114
	Carpeneti	18,629	77.0%	5,579	23.0%	24,208
	Gucker	15,936	67.9%	7,543	32.1%	23,479
2nd Dist.	Jones	5,152	75.6%	1,660	24.4%	6,812
	Tunley	4,736	71.4%	1,896	28.6%	6,632
3rd Dist.	Carlson	66,323	63.6%	38,002	36.7%	104,325
	Ripley	65,903	64.2%	36,791	35.8%	102,694
	Serdahely	69,135	68.1%	32,350	31.9%	101,485
	Shortell	68,507	67.4%	33,186	32.6%	101,693
	Cranston	66,249	65.1%	35,494	34.9%	101,743
	Madsen	63,354	62.1%	38,599	37.9%	101,953
	Anderson	72,986	72.4%	27,802	27.6%	100,788
	Finn	73,243	72.4%	27,989	27.6%	101,232
	Fuld	68,080	68.3%	31,785	31.7%	99,865
	Nasen	58,894	58.1%	42,462	41.9%	101,356
4th Dist.	Blairst	21,608	65.4%	11,419	34.6%	33,027

Table B
(1982)

	<u>Justice/ Judge</u>	<u>Yes Votes</u>		<u>No Votes</u>		<u>Total Votes</u>
		<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>	
Supreme	Connor	104,275	61.5%	65,240	38.5%	169,515
1st Dist.	Keene (Dist.)	22,957	76.4%	7,087	23.6%	30,044
3rd Dist.	Buckalew	59,172	59.9%	39,644	40.1%	98,816
	Johnstone	50,109	52.0%	46,342	48.0%	96,451
	Souter	53,827	56.4%	41,653	43.6%	95,480
	Andrews	64,094	66.1%	32,907	33.9%	97,001
	Bosshard	54,945	57.9%	39,990	42.1%	94,935
	Brewer	44,007	45.5%	52,701	54.5%	96,708
	Cutler	61,406	63.0%	36,070	37.0%	97,476
	Hornaday	57,365	59.8%	38,568	40.2%	95,933
	Tucker	51,892	54.5%	43,248	45.5%	94,140
	Vochoska	40,686	42.3%	55,513	57.7%	96,199
4th Dist.	Connelly	24,115	71.8%	9,449	28.2%	33,564
	Crutchfield	22,274	67.9%	10,547	32.1%	32,821
	Kauvar	22,928	68.7%	10,434	31.3%	33,362

Table C
(1980)

	Justice/ Judge	Yes Votes		No Votes		Total Votes
		#	%	#	%	
Supreme	Matthews	75,991	53.5%	66,095	46.5%	142,086
1st Dist.	Compton	17,075	76.1%	5,359	23.9%	22,434
	Craske	15,637	70.4%	6,566	29.6%	22,203
	Williams	13,739	59.1%	9,517	40.9%	23,256
3rd Dist.	Hanson	45,791	54.7%	37,971	45.3%	83,762
	Rowland	50,661	61.0%	32,358	39.0%	83,019
4th Dist.	Anderson	52,523	63.4%	29,936	36.5%	82,459
	Mason	47,821	57.8%	34,985	42.2%	82,806
	Cooke	18,150	68.4%	8,403	31.6%	26,553
	Hodges	18,122	65.7%	9,470	34.3%	27,592
	Taylor	19,887	72.8%	7,424	27.2%	27,311
	Van Hoomissen	19,923	72.3%	7,650	27.7%	27,573
	Cline	15,219	55.5%	12,193	45.5%	27,412

Table D
(1978)

	Justice/ <u>Judge</u>	Yes Votes		No Votes		Total <u>Votes</u>
		<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>	
Supreme	Burke	73,841	68.6%	33,806	31.4%	107,647
	Rabinowitz	72,978	67.8%	34,729	32.4%	107,707
1st Dist.	Schulz	13,647	74.8%	4,604	25.2%	18,251
	Keene	13,371	73.9%	4,712	26.1%	18,083
	Taylor	12,414	75.1%	4,444	24.9%	17,858
3rd Dist.	Carlson	41,446	67.4%	20,038	32.6%	61,484
	Madsen	38,989	64.1%	21,791	35.9%	60,780
	Moody	42,271	64.6%	23,208	35.4%	65,479
	Ripley	40,898	67.8%	19,385	32.2%	60,283
	Bosshard	39,972	67.1%	19,608	32.9%	59,580
	Brewer	34,317	55.6%	27,357	44.4%	61,674
	Gutler	42,240	69.5%	18,538	30.5%	60,778
	Hornaday	39,791	66.6%	19,983	33.4%	59,774
	Tucker	38,775	64.9%	20,985	35.1%	59,760
	Vochoska	31,187	51.6%	29,221	48.4%	60,408
4th Dist.	Blair	15,790	73.4%	5,709	26.6%	21,499
	Connelly	16,183	74.3%	5,598	25.7%	21,781
	Miller	13,894	62.2%	8,444	37.8%	22,338

Table E
(1976)

	<u>Justice/ Judge</u>	<u>Yes Votes</u>		<u>No Votes</u>		<u>Total Votes</u>
		<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>	
Supreme	Boochever	73,062	67.3%	35,476	32.7%	108,538
1st Dist.	Stewart	13,312	72.8%	4,972	27.2%	18,284
	Craske	13,185	78.2%	3,684	21.8%	16,869
	Williams	12,946	71.5%	5,172	28.5%	18,118
3rd Dist.	Buckalew	38,344	62.2%	23,286	37.8%	61,630
	Kalamarides	39,411	64.2%	21,958	35.8%	61,369
	Bryner	39,439	66.2%	20,099	33.8%	59,538
	Mason	37,531	63.7%	21,408	36.3%	58,939
	Peterson	41,314	68.3%	19,141	31.7%	60,455
4th Dist.	Clayton	17,231	75.9%	5,465	24.1%	22,696

The Committee also discussed the analysis of voting patterns presented by Ms. Carns. Mr. Moss observed that the percentage "yes" vote has been steadily decreasing since 1976, and wondered whether this trend was likely to continue. Ms. Burke asked if the Council could conduct a post-election voter survey to determine whether or not voters voted to retain or not to retain some or all judges, and for what reasons such votes were cast. Fran indicated that the Council had conducted such a study in 1979; that the cost of such a study would be in the neighborhood of \$30,000; and that such a study had indeed been proposed as part of the Council's FY'85 budget request to the Legislature, but that such study had not been funded.

Lastly, the Committee discussed the appropriateness of the Council's surveying peace officers. Mr. DeWitt stated that he believed that the Council's survey of peace officers helped provide a measure of credibility to the overall evaluation process. Ms. Burke expressed concern that survey of peace officers tended to overemphasize the criminal case side of a judge's workload, and recommended that the relative weight of peace officer evaluations and criminal sentencing practices of judges be accorded appropriate perspective.

On behalf of the Judicial Council, Mr. Moss expressed appreciation to the bench and bar members of the Committee who have provided so much advice and assistance over the past year, and urged Committee members to continue to advise Council staff or Council members in the future regarding any comments or recommendations for improvement of the judicial retention evaluation process.

The meeting was adjourned at 1:00 p.m.

Jean W. Carns
Secretary



alaska judicial council

1031 W. Fourth Avenue, Suite 301, Anchorage, Alaska 99501 (907) 279-2526
FAX (907) 276-5046

EXECUTIVE DIRECTOR
Harold M. Brown

NON-ATTORNEY MEMBERS
Hilbert J. Hennickson, M.D.
Renee Murray
Leona Okakok

ATTORNEY MEMBERS
Daniel L. Callahan
William T. Council
James D. Gilmore

ACCESS TO JUSTICE IN RURAL ALASKA

PROGRAM MATERIALS

CHAIRMAN, EX OFFICIO
Warren W. Matthews
Chief Justice
Supreme Court

Project Director: Marla N. Greenstein
Senior Staff Attorney

BUSH JUSTICE RESEARCH WORK PLAN

As set out in our proposal to the State Justice Institute, the research will be conducted in two separate stages. The first stage will evaluate existing justice systems in rural Alaska and the second will assess the feasibility of alternative programs to increase Bush access to justice. The first stage will take the good part of one year to complete and is the scope of this work plan. Our proposal outlines three separate components to this first stage:

- (a) a needs assessment
- (b) a survey of other jurisdictions
- (c) an evaluation of technological aids to justice delivery.

(a) Needs Assessment

A needs assessment will entail several steps. First, an annotated bibliography should be compiled. The bibliography will be divided by specific topic and will identify government research. At the same time, a listing of all Bush justice programs will be compiled. The program listing will cross reference the bibliography and include assessments of the success of the program, its funding, its duration, and contacts for further information. A third component of the needs assessment will be a problem identification paper. This paper will list perceived justice problems in the Bush, identify the source who perceives the problem, corresponding agencies with jurisdiction, and interviews with individuals from those agencies with Bush experience. The final step in the needs assessment stage will be a synthesis of the information, identifying key issues on which to focus the balance of our research.

1. Annotated bibliography

The Bush justice bibliography will be a survey of the literature relating to rural justice issues in Alaska since it became a U.S. territory. Generally, the bibliography will first identify historical works, followed by legal publications, cultural/anthropological studies, and government analyses and recommendations. Under each of these general topics, there will be sub-topics. Listings in the bibliography will contain the title, author, publisher, and date of the work. In addition, the listing will identify the purpose or focus of the publication and its findings and conclusions. Where the publication has influenced policy or otherwise left a lasting mark, that information will be included as well.

2. Program listing

The program listing will identify all justice-related programs in the Bush since statehood. In addition to identifying the program, the listing will identify the individuals and agencies responsible, the dates that the program was in place, its purpose, the nature of its funding, the reason for its discontinuation, and a brief assessment of its accomplishments/shortcomings. Individuals not necessarily associated with a particular program but having conducted a study related to justice in the Bush will be identified and their work summarized. Staff will attempt to talk with at least one of the individuals involved in each of the programs listed and with commentators in the field.

3. Problem identification paper

This paper will identify justice problems in the Bush and will be divided into topics. These topics will include: alcohol & drug abuse, juvenile problems, fish & game, violent crime, civil la., and family matters. Under each topic a specific Bush justice problem will be identified, a contact person named, the appropriate agency or agencies with jurisdiction, and a priority rating will be given. In addition, the geographic areas where the problem is most prevalent will be identified.

4. Final assessment

A synthesis of the information in the first three parts, the final assessment will provide the core for stage two of our project, program implementation. The assessment will analyze existing justice-related problems in the Bush, their relative significance, and the geographic areas where they appear. This analysis will consider the historic and cultural context of each of the identified problems and the shortcomings of the previous attempts to address them. Any existing programs and/or agencies responsible for addressing the problems will be identified as well. Ultimately, the final assessment will recommend which problem areas should become the focus of the Council's study.

(b) Survey of Other Jurisdictions

Focusing on the problems identified in the final needs assessment, staff will look to other jurisdictions for their solutions to similar problems. Staff will contact individuals at the Bureau of Indian Affairs offices, state court administrators, tribal court officials, rural justice associations, and officials in Canada with comparable experience. The problems will be identified geographically with a brief description of how the problem is addressed in that jurisdiction. Resources used to address the problem will also be identified and quantified.

(c) Technological Aids

Many technological aids have been introduced into the Bush, and into the justice system as a whole, in the last few years. This stage of the project will identify existing technology, possible future developments in technology, and the feasibility of their use in addressing justice needs in the Bush. The technological aids will be discussed in the context of their application to the problems identified in the needs assessment. Research in this area will include talking with many of the technical people already in place in the Bush and in justice agencies across the country.

(d) Report and Recommendations

Staff will compile a final report at the end of the information gathering outlined above. The final report will consolidate all of the relevant material. It will identify the problems and recommend alternative solutions for the program implementation stage. The problems will be those identified in the needs assessment and the recommended alternative solutions will include reference to innovative programs effective in other jurisdictions and technological aids that might be available.

BUSH JUSTICE WORK PLAN PART 2

The project's second year will be divided into four parts:

- (a) a suitability analysis
- (b) development of alternative program plans
- (c) identification of pilot sites
- (d) a final project report.

The primary emphasis during the project's second year will be the identification of, and preparation for implementation of, innovative programs to meet justice needs of rural residents. The needs assessment of the first year will be used to create alternative program plans. Each program plan will be designed to fit a type of community. With the assistance of Native and community leaders, communities will be classified in the initial section of the analysis. According to their classification, each community will fall under a specific program plan. In the final stage of the project, communities will be invited to participate in implementation of justice programs as pilot sites.

(a) Suitability Analysis

The first part of the second year will be largely devoted to applying the research of the first year to the specific community characteristics of rural Alaska. The suitability analysis will include an outline of guidelines or criteria for classifying communities. Similar classifications will be established for the problems that rural communities face. These classifications will then be incorporated into a program matrix that will allow a specific community with certain problems to identify an appropriate program solution.

1. Community classification guidelines

First, communities will be classified according to guidelines that will consider characteristics such as: community size, existence of a community center, church, or school, degree of cohesiveness, longevity, distance from a regional center, court or other government presence, demographic characteristics, economic base, transportation facilities, and crime rate.

2. Problem classification

The problems identified in the first year of the project will be classified in groups. These problem groups will include: substance abuse, juvenile problems, fish and game regulation, intra-family concerns, criminal justice services, and community/justice system responsiveness.

3. Program matrix

A final step in the suitability analysis, will be the program matrix. A matrix will be set up to correlate community types with problem groups, and to enable communities to identify the appropriate programs that address their problems. Programs listed on the matrix will include: court related programs, community conciliation boards, tribal courts, other governmental assistance, school programs, technological assistance, educational efforts, and legislative changes.

(b) Alternative Program Plans

Alternative plans will be developed for each of the programs identified in the program matrix. The alternative plans will be specific blueprints for addressing justice problems in rural communities. The plans will include goals and objectives, descriptions of supervisory personnel, a definite program structure, a program budget, identification of funding sources or providers of services, and a program evaluation procedure.

1. Outline of goals and objectives

Each program plan will open with an outline of that program's goals and objectives. The goals will identify the general purpose of the particular program. The objectives will outline the means for obtaining the goals. For example, if a cohesive community with no court facilities has a severe teenage petty crime problem and a community conciliation board is the appropriate program, its goals would include reducing theft and developing teenage responsibility, while its objectives could include creating a conciliation board to hear teenage crime problems and supervising community work service programs.

2. Identification of supervisors

All necessary supervisory personnel will be described in the program plan. These detailed job descriptions, will outline the role each individual is expected to play in the program, the qualities that person must possess, and the time commitments required of each individual. This part of the program plan will enable community members and government agency staff to define their roles in the community and assess the time commitments each community program expects. The job descriptions will also help to identify those community volunteers who are best suited to the particular justice program.

3. Description of program structure

Essentially a working outline for the program, the program structure description will set out the details for implementing

each justice program. If, in a community with a teen crime problem, a conciliation board was to be established, this part of the program plan will establish the composition of the board, suggested procedures for filing a complaint and conducting an investigation and hearing, time frames for each step of the process, and follow-up compliance procedures.

4. Identification of needed resources and providers

Although the programs will be designed to fit into existing institutional structures whenever possible, specific resources needed to implement each program must be identified. Resources may include personnel, improved technological assistance, office space, hearing rooms, training facilities, or consulting services. In addition to identifying the resources needed, the program plan will identify the governmental agency or private association that can provide those resources. If, for example, a project requires offices, the report will note whether adequate space is available in the communities being considered. If the project requires cooperation from federal courts or other agencies, the program plan will include preliminary assurances from those agencies that they will cooperate.

5. Outline for program evaluation

Finally, the program plan will outline procedures for periodic evaluation of the pilot justice program. These evaluations will be conducted by the Alaska Judicial Council with the assistance of the implementing agency. The program evaluation outline will contain suggested procedures for ongoing recordkeeping by the implementing agency, criteria to be used when evaluating the success of a program, and a suggested methodology for the evaluation.

(c) Identification of Pilot Sites

Using the suitability analysis established in the first part of year two of the project, up to five communities will be identified and invited to participate in pilot projects that address their justice problems in a way best suited to their particular structures. The communities will be chosen for their diversity and need for supplemental justice services. Diversity will be both geographical and cultural. Communities invited to participate will work closely with the Judicial Council staff to develop their project plans. The project plan designed for each community will be specific enough to allow immediate implementation without further research.

(d) Report

A final report will be written that summarizes the project's work during its second year. This report will be made available to all rural communities as well as all government agencies concerned with rural justice. The report will describe the criteria developed, the programs considered and the resources needed for implementation in sufficient detail to allow rural communities and agencies to initiate their own rural justice programs. The report will also be made available to national organizations and groups interested in rural justice.

Each suggested project to be analyzed for feasibility during Year II would be reviewed along several dimensions. Criteria for feasibility of a project would include:

- 1) Suitability of the program to the community (or communities) where it would be implemented;
- 2) Community desire for and support of the program;
- 3) Extent to which the program could adequately interact with and enhance the services offered by other agencies and organizations;
- 4) Ability of the program to become self-sufficient, and amount of time required to accomplish this (if self-sufficiency is determined to be realistic or desirable);
- 5) Initial costs/benefits of the program to the community, state/or other funding entities;
- 6) Long-range cost/benefits considerations;
- 7) Resources available to support the program, both during the start-up phase and on a maintenance basis;
- 8) Ability of the program to function well without legal challenge; and
- 9) Availability of a mechanism for evaluation of the program.

RURAL JUSTICE ANNOTATED BIBLIOGRAPHY ENTRY FORM

Title:

Author(s):

Publisher:

Date Published:

Obtained From:

Length in pages:

Type: (circle all appropriate descriptions)

historical

legal

cultural/anthropological

government study

other _____

Name of staff person completing form:

Publication's purpose and/or focus:

Publication's findings and conclusion:

Effect of Publication (e.g. influenced legislation):

RURAL JUSTICE PROGRAM LISTING FORM

Name of Staff Person Completing Form:

Name of Program:

Date Program Started:

Date Program Ended:

Program's Sponsor: _____

(name)

(underline all that apply)

government program

(a) federal

(b) state

private program

government sponsored private program

joint government / private project

Program Supervisor: _____

(name)

(title)

Current position and phone number (if available):

Program's Goals and Objectives:

Program's Structure: (e.g. gave grants, established local offices, etc.)

Assessment of Program's Success:

RURAL JUSTICE ANNOTATED BIBLIOGRAPHY ENTRY FORM

Title: Village Journey

Author(s): Thomas R. Berger

Publisher: Hill and Wang

Date Published: 1985

Obtained From:

Length in pages: 199

Type: (circle all appropriate descriptions)
historical legal cultural/anthropological
government study other _____

Name of staff person completing form: Jody Stoops

Publication's purpose and/or focus:

Thomas Berger was selected by the Inuit Circumpolar Conference to head the Alaska Native Review Commission. "Village Journey" is his report. The book focuses on the Alaska Native Claims Settlement Act. Berger explains the history, formation, and the current effects of ANCSA. He also includes within his book a number of testimonies given by the Alaska natives on a variety of subjects and issues.

Publication's findings and conclusion:

The recommendations that Berger gives in his book follow.

1. Village corporations who are concerned that their land may be lost should transfer their land to tribal governments. Village corporations could be maintained and then leased the land by the tribal government; or all of the village assets could be transferred to the tribal government and the corporation dissolved.

2. Regional corporations should consider transferring the subsurface of village lands to the respective village tribal governments.

3. Tribal governments in Alaska should assert their Native sovereignty.

4. Natives should have exclusive control over fish and game on Native-owned land. State, federal and tribal governments should work together to exercise jurisdiction on state and federal lands used by the Natives.

Effect of Publication (e.g. influenced legislation):

None Known

RURAL JUSTICE ANNOTATED BIBLIOGRAPHY ENTRY FORM

Title: Regional Government In Alaska

Author(s): Dan Zockhorst, Gene Kane, Carol Akerelrea, Michael Cushing, and Bruce Webb

Publisher: Department of Community and Regional Affairs

Date Published: August 1988

Obtained From:

Length in pages: 35

Type: (circle all appropriate descriptions)

historical legal cultural/anthropological
government study other _____

Name of staff person completing form: Jody Stoops

Publication's purpose and/or focus:

This publication provides information about borough government in Alaska. The report focuses on how boroughs differ from cities, the advantages of forming a borough, the different classes of boroughs and cities, and the revenues and assistance available for municipal governments. In the final chapters, the D.C.R.A. clearly outlines the requirements and procedure for incorporating into a borough. Information regarding the populations, geographic areas, and dates of formation of current boroughs are also listed within the report.

Publication's findings and conclusion:

The report does give some reasons why there is a renewed interest in establishing boroughs.

1.To maintain or improve public services in the face of declining state revenues.

2.With the 1990 census, the likelihood is that legislative power will shift to urban areas. Thus laws might be unfavorable to unorganized regions of the state.

3.Legislation will require areas to form boroughs.

4.The desire to have more local control over the delivery of public services and facilities.

Effect of Publication (e.g. influenced legislation):

none known

RURAL JUSTICE ANNOTATED BIBLIOGRAPHY ENTRY FORM

Title: Village Government Manual

Author(s): Lisa Steger and Mike Walleri

Publisher: Tanana Chiefs Conference, Inc.

Date Published: 1988

Obtained From:

Length in pages: 81

Type: (circle all appropriate descriptions)

historical legal cultural/anthropological
government study other informational report

Name of staff person completing form: Jody Stoops

Publication's purpose and/or focus:

This manual, prepared for the Tanana Chiefs Conference, Inc., gives extensive ideas and information on how to "setup" and operate a village government. The authors give many definitions of governmental terms as well as samples of different procedural forms. Within the manual, they also give a number of agencies addresses to contact for further specific information. Some of the topics the manual covers are; the powers and limitations of tribal government, relationship of council government to other governments, constitutions, village membership, elections, recordkeeping, and personnel in the village government.

Publication's findings and conclusion:

The manual makes a number of recommendations concerning the procedural aspects of the village council. This publication also finds that IRA (Indian Reorganization Act) village governments have a more secure status. IRA governments are also granted things that traditional village councils are not. The authors feel that IRA official federal recognition is helpful for the village. In regards to sovereign immunity, the publication mentioned that when a village must waive sovereign immunity, they should try to limit the scope by allowing to be sued only in federal court. The manual finds that federal courts are generally more favorable toward Indians.

Effect of Publication (e.g. influenced legislation):

follow-up contact T.C.C., Mike Walleri



alaska judicial council

1031 W. Fourth Avenue, Suite 301, Anchorage, Alaska 99501 (907) 279-2526

FAX (907) 276-5046

EXECUTIVE DIRECTOR
Harold M. Brown

NON ATTORNEY MEMBERS
Hilbert J. Hennickson, M.D.
Walter Murray
Leona Okakok

March 28, 1989

ATTORNEY MEMBERS
Daniel L. Callahan
William T. Council
James D. Gilmore

M E M O R A N D U M

CHAIRMAN EX OFFICIO
Warren W. Matthews
Dept. Justice
Supreme Court

TO: Judicial Council

FROM: Staff *TWC*

RE: Update on Plea Bargaining Project Activities

The staff of the plea bargaining project has spent the past six weeks compiling data from a sample of about 1900 prosecutors' and court files to supplement the data available for all 10,000 cases on computer from the Departments of Law, Public Safety and Corrections. The larger database includes all cases with one or more felony initial charges filed between January 1, 1984 and December 31, 1987. The sample contains only cases filed in 1986 and 1987. Data collection will be completed by mid-April.

The process of drawing the sample permitted a very preliminary look at the types of cases that will be used for the analysis of case processing and sentencing in the larger study. The cases shown on the two attached tables include a few that are open that will be excluded from the final analysis. The data provided here is meant to give only a general idea of variations among felony arrests and charges in 1986 and 1987.

Sample Definition

The tables include all felony cases referred to the prosecutors in 1986 and 1987 for nine communities: Sitka and Juneau in the First Judicial District; Barrow, Kotzebue and Nome in the Second Judicial District; Anchorage and Palmer in the Third District; and Fairbanks and Bethel in the Fourth District. Cases contained one or more charges that had originated either with a police investigation or arrest, or that were initiated by the prosecutor. About 30 to 45% of the cases were either declined for prosecution or ended with all charges against the defendant being dismissed. The remainder of the cases resulted

Page 2
Memo re Plea Bargaining Project
March 28, 1989

in conviction of the defendant on either felony or misdemeanor charges.

Table A shows the types of offenses that were charged in the various communities during the two years studied. Offenses are categorized as Murder (first and second degree murders), Violent (assaults, robberies, manslaughter, extortion and negligent homicide), Sexual, Property, Drugs, and Other (weapons, escapes, perjury, liquor, driving, and all other offenses). The table shows the total number of cases with those charges during the two years, and the percentage that each type of offense constituted of that prosecutor's office caseload.

Table B shows the total number of cases in which one or more charges were reduced before the final disposition. Charges may have been reduced prior to filing the case in court, prior to indictment, following indictment, or at trial. This table includes all the cases shown on Table A, both dismissed and convicted.

As noted above, this data is very preliminary. Please let me know if you have any questions.

TABLE B

PROPORTION OF CHARGES REDUCED,
BY TYPE OF CRIME AND COMMUNITY

ALASKA JUDICIAL COUNCIL PLEA BARGAINING STUDY

1986 - 1987 CASES

	<u>Murder</u>	<u>Violent</u>	<u>Sexual</u>	<u>Drugs</u>	<u>Property</u>	<u>Other</u>
Anchorage	31%	44%	18%	20%	25%	21%
Palmer	33%	39%	20%	20%	28%	17%
Fairbanks	22%	21%	15%	15%	11%	6%
Juneau	30%	45%	16%	18%	21%	21%
Sitka	68%	40%	21%	17%	30%	27%
Bethel	36%	41%	21%	23%	25%	18%
Barrow	33%	41%	22%	13%	19%	21%
Kotzebue	25%	60%	31%	33%	37%	23%
Nome	58%	43%	35%	15%	29%	39%

TABLE A
TYPES OF OFFENSES BY COURT SITE & PRELIMINARY DATA
ALASKA JUDICIAL COUNCIL PLEA BARGAINING STUDY
1986 - 1987 CASES

	<u>Murder</u>		<u>Violent</u>		<u>Sexual</u>		<u>Drugs</u>		<u>Property</u>		<u>Other</u>		<u>Total N</u>
	<u>N**</u>	<u>%</u>	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>	
Anchorage	43	(2.0%)	537	(24.6%)	241	(11.0%)	331	(15.2%)	857	(39.3%)	173	(7.9%)	2182
Palmer	7	(1.0%)	126	(22.0%)	85	(15.0%)	80	(14.0%)	211	(36.0%)	74	(13.0%)	583
Fairbanks	21	(2.0%)	192	(19.0%)	122	(12.0%)	112	(11.0%)	486	(48.0%)	89	(9.0%)	1022
Juneau	5	(1.0%)	77	(17.0%)	77	(17.0%)	93	(20.0%)	153	(33.0%)	54	(12.0%)	459
Sitka	1	(1.0%)	30	(23.0%)	15	(11.0%)	40	(31.0%)	42	(32.0%)	3	(2.0%)	131
Bethel	12	(3.0%)	120	(25.0%)	136	(29.0%)	24	(5.0%)	144	(30.0%)	37	(8.0%)	473
Barrow	4	(2.0%)	56	(28.0%)	37	(18.0%)	26	(13.0%)	60	(30.0%)	18	(9.0%)	201
Kotzebue	7	(4.0%)	34	(20.0%)	32	(19.0%)	12	(7.0%)	71	(43.0%)	10	(6.0%)	166
Nome	4	(2.0%)	45	(17.0%)	95	(37.0%)	30	(12.0%)	80	(31.0%)	5	(2.0%)	259

** N = Number of felony cases filed.