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increase from 5 to 6. By using the same mathematical formula discussed above, 20 panels would be required to have the six positions combined into panels of three without repeating a combination. While this would certainly augment any workload reductions that would otherwise be achieved by panels, it would be administratively too unwieldy to attempt to manage 20 panels. If additional pro tempore assistance were to be used in concert with the panel system, it would be preferable to keep the same ten panels described above, and substitute a pro tem justice for each of the five sitting justices periodically and on a rotating basis.

There are, however, both philosophical and practical limitations on the frequent use of superior court judges on the panels as justices pro tempore. In order to achieve a significant additional workload reduction by use of pro tem assistance, a fairly large number of cases would have to be heard by panels made up of two justices and one pro tem justice. With only two of the five justices sitting on a large number of panel calendars, the Supreme Court's law-making function is even more diluted. The predictability of results declines, and the potential for conflicts among the panels increases greatly, necessitating further hearing by the Court en banc.

There is also a limit to the amount of time that a superior court judge can be expected to divert from his trial court duties. In this vein, it must be remembered as well that the

pro tem justice cannot work as efficiently as a full time justice. He may have one law clerk at the most, and will not have the level of assistance for preparation of pre-argument memoranda and draft opinions that a sitting justice has. Further, he lacks the advantage of being able to devote full time to appellate matters and thereby develop a routine for efficient disposition of these types of cases.

Some further problems should also be noted. It has been suggested that one way of meeting the objection concerning the dilution of the law-making function is to provide that in any case where the panel decision were not unanimous, or if a non-participating justice disagreed with the draft opinion, then the case would be referred to the court for en banc resolution. While this requirement would to some extent reduce the problems concerning the dilution of the law-making function, it would also mean that such a case would probably have to be argued again before the full court and certainly would require another conference. This would result in inconvenience and delay to counsel and litigants, and a duplication of effort for the members of the panel who initially considered the case.

As another means of safeguarding the lawmaking function, it has been suggested that before argument, a single justice on a panel should be empowered to order any case before the panel moved to the en banc calendar. Again, this would provide some additional safeguards. However, while it is impossible,

without some experience to draw upon, to predict how frequently this prerogative might be exercised, it would certainly be exercised to some extent, and this would result in further diminishing the overall percentage workload reduction that a panel system might achieve, by increasing the number of en banc cases.

Finally, in order for a panel system to operate efficiently, there must be a mechanism for identifying those cases that will be amenable to panel treatment. If unanimity on the panels is required, this means in addition that the identification process must include the ability to predict with some accuracy those cases that will be likely to result in a unanimous decision. (Otherwise delay and duplication of effort will be increased). It is unlikely that the recently established central staff attorney position will be able, without additional attorney assistance, to perform this screening function adequately and also provide substantial assistance to the court on motions and petitions. Additionally, the Clerk of the Supreme Court has expressed the concern that the initiation of a ten-panel system would require the hiring of an additional calendar clerk to coordinate the assignments and the calendaring of cases for the ten panels and for the en banc calendars.28/

28/ It would be possible, of course, to reduce the number of panels from ten to five, with each justice sitting on three different panels. The number of panels could not be fewer than five, however, and still maintain an equal distribution of panel assignments. In this event, it is estimated by the Clerk that an additional one-half time calendar clerk would be required. Five panels would achieve the same percentage workload reductions as would ten panels, but such a system would not be fully rotating.

It is anticipated that an additional central staff attorney and an additional calendar clerk would be required to implement the panel system. The approximate cost for the first year of an attorney, secretary, and equipment would be $69,000 and for each year thereafter $65,000. If a calendar clerk were added the total cost would be $90,000 for the first year and $74,000 each year thereafter.

Limit appeals of right to the supreme court. Since the primary goal of these changes in the appellate system is to reduce the workload of the supreme court, one direct method of dealing with the problem would be to permit fewer appeals. This could be done by abolishing appeals of right to the supreme court in certain types of cases or by totally eliminating appeals of right and authorizing the supreme court to grant writs of certiorari for those cases which it wishes to hear. The primary advantage of such a system is that it would produce an immediate reduction in the caseload of the supreme court and would enable the court itself to exercise control over the size of its caseload.

Although the right to at least one appeal is traditional in the American judicial system, such a right is not conferred by the United States Constitution. The American Bar Association Standards on Court Organization include the following statement: "[I]t should be recognized that a litigant has no unqualified right to an appeal..."29/

29/ ABA Standards on Court Organization at 35.

A limitation or abolition of appeals of right to the supreme court would require an amendment to A.S. 22.05.010(a), which currently reads in part:

> The supreme court has final appellate jurisdiction in all actions and proceedings. ...An appeal to the supreme court is a matter of right. ...

Article IV, section 1, of the Alaska Constitution grants to the legislature the authority to prescribe the jurisdiction of courts: "The jurisdiction of courts shall be prescribed by law." This would seem to preclude any constitutional problems with the elimination of appeals of right, but article IV, section 2, may place some limitation on the legislature's power to prescribe jurisdiction. Article IV, section 2(a), provides in part: "The supreme court shall be the highest court of the State, with final appellate jurisdiction." [Emphasis added.] Thus, although under section 1 the legislature has the authority to "prescribe jurisdiction", under section 2 it may not have the authority to grant final appellate jurisdiction to any court other than the supreme court.

Since no legislative attempt has been made to limit appeals of right to the supreme court, the Alaska Supreme Court obviously has had no opportunity to consider the constitutionality of such a limitation. However, if appeals of right were limited or abolished, the supreme court would retain the power to accept cases by certiorari, and the Alaska Supreme Court has indicated that the exercise of such a power is equivalent to the exercise of "final appellate jurisdiction". In State v. Browder[30/] the court stated:

30/ 486 P. 2d 925 (Alaska 1971).

> We think it significant that the legislature in prescribing this court's jurisdiction specifically provided that "The supreme court may issue injunctions, writs of review, mandamus, certiorari, prohibition, habeas corpus, and all other writs necessary or proper to the complete exercise of its jurisdiction." In our view this provision is a clear manifestation of the legislature's intent that the supreme court would be able to exercise its final appellate jurisdiction other than by appeal.[31]

It is possible then that the limitation or abolition of appeals of right could be construed as a legitimate exercise of the legislature's power to prescribe jurisdiction and not as an unconstitutional grant of final appellate jurisdiction to a lower court. The resolution of this constitutional question, however, is far from clear, and it would have to be given serious consideration if an attempt is to be made to obtain an amendment of A.S. 22.05.010(a) so as to limit or abolish appeals of right to the supreme court.

The consensus of the commentators appears to be that limiting the right to appeal is not a desirable solution to the caseload problem. Hufstedler, for example, is strongly opposed to this approach:

> There are direct and indirect ways to trim an appellate docket. The direct way is to cut off or limit the right to appeal. The indirect way is to create a series of procedural or financial impediments which discourage appeals. We can dispose of the indirect methods summarily.

31/ Id. at 930.

> Entwining the appellate process in even more red tape than there is at present or making appeals even more expensive is a vigorous step backwards. There remains the direct route. The amputation method will undoubtedly cure congestion, but the treatment may be worse than the disease. [FOOTNOTE OMITTED.]32/

The American Bar Association Standards on Appellate Courts take the position that litigants generally should have at least one appeal of right.33/ The Commentary to Standard 3.10, Opportunity for Appellate Review, states in part:

> The right of appeal, while never held to be within the Due Process guaranty of the United States Constitution, is a fundamental element of procedural fairness as generally understood in this country. That right should be accorded an aggrieved party to a trial court proceeding.34/

Even if there are no legal problems with limiting the right of appeal, such a limitation does raise serious policy questions. Indeed, the Idaho committee rejected this approach solely for policy reasons:

> Ultimately, the suggestion that the right of appeal should be limited was rejected by the committee, but not on legal grounds. Overwhelmingly, committee members felt that in a state such as Idaho with a strong western tradition of independence, persons should have the right to at least one appeal from a trial judge's decision to allow for correction of error. Limiting the right to appeal in any way would not be popular with Idaho citizens and would be opposed. Thus, this alternative was discarded.35/

32/ Hufstedler, Constitutional Revision, supra, note 15, at 586-87.

33/ ABA Standards on Appellate Courts at 14.

34/ Id. at 15.

35/ Draft Idaho Appellate Court Report, supra, note 17, at 28.

The limitation of the right of appeal would create no significant new costs to the court system, and would probably result in a reduction of costs.

A less drastic alternative to direct limitation on the right to appeal would be to devise some disincentives to appealing. One possible disincentive would be to provide for substantially higher awards of attorney fees to the prevailing party. The criticisms of such an approach are identical to those surrounding the continuing Rule 82 controversy. Primarily, the objection is that meritorious appeals as well as unmeritorious ones are discouraged, and access to the court is denied on the basis of one's financial ability to take the risk of losing.

While Alaska's ratio of appeals to trial court cases is substantially higher than Idaho's, it may be that this higher ratio is more appropriate. (In fact, the relatively high reversal rate in Alaska suggests that at least in Alaska this may be the case.) Before any disincentives should be adopted as a method of reducing caseload, the Court must conclude that a substantial number of the appeals coming before it should not have been brought. And the particular disincentive chosen must be directed at discouraging only those that should not be brought. It might be appropriate, for example, to award substantial attorney fees to a prevailing appellee in a clearly frivolous appeal. Of course, the truly difficult question (and one that

goes beyond the scope of this study) is whether Alaskan litigants do in fact appeal "too many" cases, and if so, why they do. For until the cases that should not be appealed can be identified, and the reasons for appealing them divined, then disincentives cannot be fashioned that will discourage only these sorts of cases.

It has also been suggested that the Court consider limiting the right to oral argument. The advantage of such an approach is that the Court would spend less time preparing for and hearing oral arguments in cases that do not warrant it. For example, in the First District of the Court of Appeals in California, the central screening staff identifies the more routine cases that are amenable to summary disposition. If the panel assigned to the case agrees with the staff conclusion, then counsel are notified that the case will not be placed on the argument calendar unless the request for argument is renewed within a certain period of time. Such a procedure requires, of course, an operating central screening staff, but it does permit the Court to handle the more routine cases in a truly summary fashion. A similar approach (and more effective in terms of controlling workload) would be to permit oral argument generally only at the discretion of the court. This approach would also require careful review and recommendations from a central staff if substantial savings in

judicial time were to be achieved.36/

Finally, it has been suggested that the Court adopt a procedure whereby counsel can stipulate to disposition of their appeal without opinion. It is impossible to predict how many parties would choose this approach, but even a few such stipulations would provide some relief. Adoption of this suggestion would require a preliminary decision as to whether such a stipulation would require a waiver of oral argument, and procedures setting out time limitations would need to be drafted. Finally, the Court should retain discretion to disapprove the stipulation.

4. Establish central research and screening staff. There are currently several states which have established a central staff of attorneys to perform research and screening duties in an attempt to deal with the problem of increasing caseload. As outlined in the American Bar Association Standards on Appellate Courts, the duties of such a staff may include the following:

> (1) Monitoring and reviewing cases coming before the court to assure compliance with procedural rules, and making recommendations for disposition of routine procedural matters in accordance with criteria established by the court;

36/ Limiting the opportunity for oral argument may result in increasing the average time to dispose of cases. The addendum to the 1976 Appellate Delay Study prepared by the Administrative Office (6/21/76) showed that the average time from the assignment of a case on the briefs to the publication of the opinion was 218 days, while the average time from oral argument to publication was 159 days. This disparity may have lessened since the publication of that study, and the use of central staff to recommend dispositions in more routine cases would further alleviate this problem.

(2) Preparing case summaries, including procedural history, facts, and principal issues and authorities, for the court's use in managing its caseflow and conducting its deliberations;

(3) Reviewing all matters presented in propria persona and taking measures necessary to put them in correct and intelligible form;

(4) Supplementing the research of the judges' individual law clerks; and

(5) Acting for the court in supervising preparation of complex records...37/

In 1971 the National Center for State Courts began the Appellate Justice Project which established experimental central research staffs in Nebraska, Virginia, New Jersey and Illinois.38/ The evidence accumulated during these projects supported the following initial hypotheses of the project:

1. That a central staff of lawyers can increase an appellate court's productivity.

2. That a court with a staff can retain effective control over the decisional process and the final decisions.

3. That a substantial number of appeals are "routine" and can be decided appropriately by short, unsigned opinions.

4. That in such a routine case a central staff memorandum is helpful to the judges and makes it feasible to utilize a short, unsigned opinion.

37/ ABA Standards on Appellate Courts at 98-99.

38/ D. Meador, Appellate Courts: Staff and Process in the Crisis of Volume (1974). This book is the official report on the Appellate Justice Project and contains detailed discussions on how the staff functioned in each project state.

5. That appellate staff assistance of this sort is acceptable to the practicing bar.39/

However, for three other initial hypotheses, the evidence either did not support the hypothesis or the evidence was too ambiguous to permit a conclusion:

1. That adding a central staff would increase productivity more than providing additional law clerks for the judges.

2. That adding a central staff would increase productivity and preserve collegiality more effectively than adding judges to the court.

3. That adding a central staff would allow more judge time to be devoted to difficult cases.40/

The report on the project emphasizes the project did not disprove these unsupported hypotheses; it only failed to verify them.41/ The conclusion of the report which is most pertinent to this study is the following:

> Among the positive showings perhaps the most important point is that central staff lawyers do contribute to appellate productivity and expedition. A staff allows a court to handle a heavier caseload than the court could handle without it. Precisely how much a staff can step up the court's capacity depends on a number of variables, including the size of the staff and the court's internal procedures for deciding the staff processed cases.42/

A single staff attorney position was recently requested by the Alaska Supreme Court and funded by the legislature. Recruitment

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39/ Id. at 163.

40/ Id. at 163-64.

41/ Id. at 164.

42/ Id.

for this position closed July 5, 1977, and the position will be staffed by November 1, 1977. As proposed and currently contemplated, the central staff will consist of one attorney, who will report to and work with the Clerk of the Supreme Court. The Clerk of the Court will serve as staff director for the central staff. Temporary secretarial staff will be provided for the remainder of this fiscal year, and the request for permanent support staff will be renewed in the FY 1979 budget request. The proposed duties of the staff attorney are as follows:

1. Perform legal research on matters filed with the supreme court.
2. Review all appeals once all briefs are in and propose possible disposition of routine cases.
3. Recommend consolidation of appeals for argument.
4. Review petitions for review and prepare memoranda recommending appropriate disposition.
5. Review and research complex motions presented to the court.
6. Review and research briefs and records in sentence appeals and prepare memoranda recommending possible disposition.
7. Assist clerk in scheduling expedited appeals before the court.
8. Assist clerk in preparing complicated records on appeal.
9. Develop systems for operation of the staff attorney position.43/

43/ Recruitment Bulletin dated June 4, 1977. See Appendix III.

While the establishment of this one position may contribute to the administrative efficiency of the court's operations, as currently staffed it is by no means the equivalent of a full-scale program of central staff research and screening designed to increase significantly the court's capacity to process cases.[44/] The experimental staffs which were established by the Appellate Justice Project included several staff attorneys, who worked under the supervision of a senior attorney functioning as the staff director. Of course, the courts participating in the project were much larger, higher volume courts than Alaska's.

In 1976 the Idaho Supreme Court established the position of central research attorney with the primary duties of screening petitions and motions and carrying out specialized research projects for the court.[45/] In a telephone conversation on July 29, 1977, Carl Bianchi, Administrative Director of the Courts for the State of Idaho, indicated that the central staff approach is working very well and has been of particular benefit in the

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44/ The Administrative Office is currently developing a federal grant under which two additional clerical support positions for the central staff would be funded. The request for clerical support in the FY 1978 budget was denied by the Legislature.

45/ Draft Idaho Appellate Court Report, supra, note 17, at 21. This action was taken in accord with a proposal prepared by Carl Bianchi, Administrative Director of the Courts for the State of Idaho. A copy of this proposal has been forwarded to Donna Pegues, Clerk of the Supreme Court.

area of petitions for review and motions. The court currently has one staff attorney and is considering hiring an assistant staff research attorney in the near future.

The only real disadvantage of a central staff approach to the caseload problem is the risk that the staff may assume judicial responsibilities which properly should be performed by the justices. The Commentary to Standard 3.62, Legal Staff, of the American Bar Association Standards on Appellate Courts, comments on this problem:

> The problem created by use of a central legal staff is that judicial responsibility may be diffused among the staff to the detriment of the appellate process. Where a court employs a central staff, it must be continually alert to the risk of internal bureaucratization and guard against any tendency to rely on staff for decisions that should be made only by judges personally. Some arrangements involving central staff....seem to involve excessive delegation to staff.46/

Since the use of a central staff is purely a matter of internal operating procedure, such a system could be adopted by administrative action. No constitutional or statutory amendments would be required.

It is extremely difficult to quantify the workload reductions that a central research staff would achieve for the court. Cer-

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46/ ABA Standards on Appellate Courts at 100.

tainly the use of central staff for researching and making recommendations for disposition in petitions for review, complex motions, sentence appeals, and other routine appeals will free the justices' personal law clerks for work on draft opinions and bench memoranda. There is also some advantage to be gained from a permanent central staff in terms of both experience and the development of an efficient routine.

It has been suggested that the Court may wish to consider pooling five of the ten existing law clerk positions and relocating these five positions in the central staff, leaving each justice with one personal law clerk. While this suggestion may have some merit, it cannot be said conclusively that this would permit the Court to handle its caseload more effectively. As noted above, the National Center's Appellate Justice Project failed to demonstrate that the addition of central staff would increase productivity more than additional law clerks. Further, five additional attorneys are probably more than this Court requires for a central staff, although internal procedures could be designed to re-distribute some existing law clerk functions to such an augmented central staff.47/

47/ For example, the augmented central staff might be assigned all bench memoranda, leaving the personal law clerks only with the tasks of drafting opinions and preparing substantive and technical comments.

It appears in addition that centralizing law clerk positions would permit a more even distribution of workload among the non-judicial legal assistance and might well result in increased productivity for the Court overall. It is debatable, however, whether this redistribution of positions and workload would result in a sufficient increase in productivity to warrant the upheaval involved in making the change.

The projected cost of establishing a minimal central staff of two attorneys and one secretary, including space and equipment requirements, would be approximately $138,000 the first year and $130,000 each subsequent year. This includes the cost of the existing staff position, so the additional cost would be substantially less.

5. Establish intermediate appellate court. The commentators are uniformly in agreement that the most desirable method of dealing with increasing appellate caseloads is the establishment of an intermediate court of appeals. Several recent articles have advocated this solution,[48/] and the American Bar Association Standards on Court Organization are emphatic in their

48/ See e.g., Hopkins, The Role of an Intermediate Appellate Court, 41 Brooklyn L. Rev. 459 (1975); Hufstedler, Constitutional Revision and Appellate Court Decongestants, 44 Washington L. Rev., 577 (1969); and Appellate Court Reform, 45 Miss. L. J. 121 (1974). Appendix IV to this report contains summaries of these articles prepared by the Idaho Administrative Office.

support of this solution:

> Where a supreme court by reason of workload is unable to perform both its principal functions, some additional mechanism of appellate review becomes necessary. This situation has long since prevailed in states with large population, and is becoming increasingly prevalent in states of smaller population. The immediate necessity for an intermediate appellate court may be met or postponed by such devices as use of per curiam and memorandum decisions in cases having limited general significance, by limiting oral argument in appropriate circumstances, and by improved efficiency in management of the highest appellate court's work... Since there seems little prospect for a long run decline in the volume of appellate litigation, once the surge of appellate cases has been felt in a state having only one appellate court, steps should be taken forthwith to establish an intermediate appellate court rather than temporizing with substitute arrangements. [EMPHASIS ADDED.] 49/

In addition to being the solution most often advocated by the commentators, the creation of an intermediate appellate court is the solution which has been chosen most frequently to relieve congestion in a single appellate court. 50/ Twenty-eight states now have intermediate appellate courts, and several states are studying their need for such a court. 51/ The following table 52/ indicates the status of intermediate appellate courts in the western states:

49/ ABA Standards on Court Organization at 35.

50/ Hopkins, supra, note 48, at 462.

51/ Draft Idaho Appellate Court Report, supra note 17, at 25.

52/ Id. at 26.

INTERMEDIATE APPELLATE COURTS IN WESTERN STATES

States With Intermediate Appellate Courts	States Without Intermediate Appellate Courts	States Considering Establishing Intermediate Appellate Courts
Oregon	North Dakota	North Dakota
Washington	South Dakota	
California	Montana	
Arizona	Wyoming	
New Mexico	Idaho	Idaho
Oklahoma	Utah	Utah
Texas	Hawaii	Hawaii
	Alaska	
	Nebraska	
	Nevada*	Nevada

* A constitutional amendment is pending in Nevada to create an intermediate appellate court. The amendment has passed one session of the Nevada Legislature.53/

Although the creation of an intermediate appellate court is the most often recommended solution as well as the most frequently adopted solution, the creation of such a court in Alaska would raise some of the same constitutional questions which were discussed above54/ in connection with limiting appeals of right to the supreme court.

The basic question which must be resolved is whether article IV, section 2, of the Alaska Constitution, which specifies that the supreme court has "final appellate jurisdiction", prevents the

53/ See Appendix V for a copy of the Nevada Legislation.

54/ See p. 25-26, supra.

exercise of final appellate jurisdiction by lower courts. Since no intermediate appellate court exists in Alaska, the Alaska Supreme Court obviously has had no opportunity to consider the question of the jurisdiction which may be exercised by such a court under the constitution. However, an analogous question did arise in State v. Marathon Oil Company.[55] In that case the criminal defendant had appealed a district court decision to the superior court, and the supreme court then had to consider whether the state could appeal the superior court's decision to the supreme court. In concluding that the state did have the right to such an appeal, the court treated the superior court as an intermediate appellate court and found that final appellate jurisdiction could not lie in that court:

> In this matter the superior court must be recognized as an intermediate appellate court since final appellate jurisdiction by reason of Article IV, Section 2, of the Alaska state constitution rests in this court:
>
> > "The supreme court shall be the highest court of the State, with final appellate jurisdiction."
>
> Once the appellate process is properly invoked, final appellate jurisdiction is in the Supreme Court; for to hold otherwise would contravene the explicit constitutional provision. [Emphasis added.][56]

55/ 528 P. 2d 293 (Alaska 1974).

56/ Id. at 295.

If the right to appeal to the supreme court from decisions of an intermediate court of appeals is retained in all cases, no constitutional question would arise. However, the primary purpose of establishing an intermediate court of appeals would be to reduce the caseload of the supreme court, and retention of appeals of right to the supreme court in all cases would defeat that purpose. On the other hand, of course, if appeals of right to the supreme court are abolished, the intermediate court of appeals would then be the court of final appellate jurisdiction, and arguably this would be a direct contravention of article IV, section 2, of the constitution, as interpreted in Marathon.

It is more likely, however, that the abolition of appeals of right to the supreme court would be found not to contravene the constitution. Any statute establishing an intermediate appellate court and abolishing appeals of right to the supreme court would most likely grant to the supreme court the authority to accept petitions for writs of certiorari and to hear cases on that basis at its discretion. Since the supreme court could exercise its discretion to hear any case, it could be found that final appellate jurisdiction still lies in the supreme court, although it may choose not to exercise that jurisdiction.57/

57/ As discussed above at p. 25-26, it appears that the supreme court in State v. Browder, 486 P. 2d 925 (Alaska 1971), interpreted the exercise of the power to grant certiorari to be equivalent to the exercise of final appellate jurisdiction. Such an interpretation would eliminate any constitutional problem with a grant of "final" appellate jurisdiction to an intermediate appellate court.

The primary benefits which can be expected to result from the creation of an intermediate court of appeals are a reduction in the court's backlog of cases and a reduction in the elapsed time between the submission of briefs and final disposition. In Oregon, for example, the average number of days from submission of briefs to a final decision dropped from 221 days to 130 days following the creation of an intermediate appellate court in 1969.

If a decision is made to create an intermediate appellate court, decisions must then be made on several subsidiary issues relating to such a court. We have not attempted in this report to resolve or make recommendations concerning these subsidiary issues, but the following are illustrative of some of the major issues. The primary question which must be resolved is what the jurisdiction of an intermediate court of appeals should be.58/ The American Bar Association Standards on Court Organization make the following recommendation relating to jurisdiction:

58/ In the Draft Idaho Appellate Court Report, supra, note 17, no specific recommendations were made as to the jurisdiction of the proposed intermediate appellate court. However, at its meeting on July 26, 1977, the committee decided to include a definite jurisdictional statement in its final report, and that statement is expected to receive final committee approval on September 16, 1977. Carol Bianchi, Administrative Director of the Courts for the State of Idaho, telephone conversation on July 29, 1977.

> Every level and division of appellate court should have authority to hear all types of cases; appellate courts of specialized subject-matter jurisdiction should not be established. An appellate court should have jurisdiction of original proceedings for mandamus, prohibition, injunction, and similar remedies, comparable but subordinate to that of the Supreme Court, to protect its supervisory authority.59/

The primary reason stated in the Commentary for not establishing courts of specialized subject-matter jurisdiction is that "the appellate court function of developing the law cannot be performed in a coherent and consistent way if jurisdictional divisions compel the law's fabric to be made in a decisional patchwork."60/

Another issue which must be resolved is how appeals should be lodged with the intermediate court. The American Bar Association standard on this point reads as follows:

> Appellate review should be initiated by a single filing procedure effective for the appellate court as a whole. Docketing of cases within the appellate court and transfer of cases between levels or divisions of the court should be by simple motion or order.61/

In line with the American Bar Association recommendations, a one-filing/one-fee procedure has been recommended for the proposed intermediate appellate court in Idaho.62/

59/ ABA Standards on Court Organization at 33.

60/ Id. at 37.

61/ Id. at 33.

62/ Draft Idaho Appellate Court Report, supra, note 16, at 41-42.

Still another matter about which decisions must be made is the process of appealing cases from the intermediate appellate court to the supreme court. The American Bar Association standard on this point reads as follows:

> Appeal as of right should be to the intermediate appellate court only. Review by the Supreme Court should be available only at the discretion or with the permission of that court, by certiorari or similar procedure, including discretion to allow an appeal directly from the trial court in cases of great emergency and importance.63/

The Commentary explains the rationale for this position:

> [A] litigant should have only one appeal of right, to the intermediate appellate court. Review by the highest appellate court is designed to serve the general public in the proper administration and development of the law and only secondarily the interest of litigants in having their cases considered by the highest judicial authority. Accordingly, review by the highest appellate court should be available only with its permission. There should be no category of cases in which such review is mandatory, even--as is now required in some states--in capital cases. At the same time, the highest court should have authority to permit an appeal to bypass the intermediate appellate court where there is urgent public necessity to do so--for example in litigation involving impending elections or deadlocked disputes as to the authority of government officials.64/

The Idaho committee approved this concept of discretionary appeals with this comment: "If a court system provides for automatic

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63/ ABA Standards on Court Organization at 33.

64/ Id. at 37.

review both at an intermediate level and before the court of last resort, no useful purpose is served by an intermediate appellate court."65/

Other matters which also would require attention are the number of judges on an intermediate court, how those judges would be selected, and what staff would be required for an intermediate court.

The clear advantage of establishing an intermediate appeals court is that it permits the Supreme Court to control its caseload via the exercise of discretionary review. The following table is an excerpt from a report provided by the Arizona Supreme Court, and illustrates how that court has kept pace from 1965 to the present, while during the same period experiencing an increase in filings of nearly 300%:66/

	FILINGS	DISPOSITIONS				
		OPINIONS			TERM. W/O	CASES
YEAR	FILED	WRITTEN	MEMORANDUM	TOTAL	WRITTEN OPINIONS	PENDING DEC. 31
1965	321	176	0	176	262	462
1966	449	192	0	192	313	373
1967	448	158	0	158	401	258
1968	531	164	0	164	347	269
1969	575	205	0	205	360	320
1970	709	224	0	224	493	331
1971	688	186	0	186	482	383
1972	701	191	0	191	528	385
1973	714	230	56	286	478	341
1974	713	210	109	319	437	350
1975	799	222	68	290	659	307
1976	921	185	84	269	774	327

65/ Draft Idaho Appellate Court Report, supra, note 17, at 42.

66/ The Arizona Court of Appeals was established in 1965.

An intermediate court of appeals will bring long term and substantial relief to the Supreme Court's workload problems. The cost of establishing an intermediate court of appeals consisting of three judges, and including two law clerks and a secretary for each judge would be $440,000 for the first year and $425,000 for each year thereafter.67/

III. CONCLUSIONS AND RECOMMENDATIONS

If the appellate caseload continues to increase at the rate of recent years, an intermediate court of appeals is the most desirable long term solution. Panels may provide some short term relief, but as the report demonstrates, the workload reductions are probably not going to be as significant in practice as they appear to be in theory. Further, while the effect of the dilution of the law-making function cannot be quantified, it is nonetheless a serious concern and should not be set aside lightly. And as noted in the report, the procedures suggested for meeting this concern (by permitting individual justices to transfer any case from a panel to the full court) not only diminish the overall advantages of using panels, but are likely to result in an increase in the amount of work spent on a case that is considered once by a panel and again by the full court.

67/ These figures do not take space requirements into account.

Based on the National Center's appellate project, it is safe to conclude that the use of central research staff will contribute to the more efficient and expeditious dispatch of the court's business, whether combined with one or more of the other suggested solutions discussed, or by itself. Unfortunately, the workload reductions that can be expected from the use of central staff cannot be quantified, as can the use of panels, without some experience to draw upon. Similarly, until this experiential base can be established, the optimum size of central staff cannot be determined or related statistically to caseload figures. While the court might understandably choose to experiment with panels because of the estimates of workload reduction are to some degree quanitifiable rather than await the results of the use of central staff, the use of panels cannot be recommended as a desirable solution.

As a final note, the solutions discussed in the report are not mutually exclusive, and obviously a large variety of compatible combinations of solutions could be considered. (For example, it would be possible to increase the size of the court as well as institute panels, and this combination might be instituted either with or without a central research staff.) However, because of the number of such combinations, and in order to keep the report a manageable size, we have dealt with each solution individually. The recommendations that follow do assume that combinations of solutions will be chosen.

Recommendations

1. The Supreme Court should not seek to increase the size of the court.

2. The Court should not establish a panel system. However, if the Court chooses to establish panels, it is recommended:

(a) For ease of administration, five panels should be used rather than ten unless the court believes it is important to have all possible combinations of justices sitting on the panels.

(b) For the reasons discussed earlier in the report, superior court judges should not be used initially on the panels except when necessary to replace a disqualified justice. If experience demonstrates that the panels are considering a fair number of cases that involve no significant new statements of law, then superior court judges might appropriately be assigned to panels for these types of cases.

(c) To insure maximum benefit in workload reductions from the use of panels, the Court should not implement the system until it has developed standards for identifying cases that should be heard by panels and until the newly established central research position has developed its screening capabilities.

(a) The Court should establish procedures for transferring cases from the panels to the full court and include these in the previously adopted internal operating procedures.

3. The Court should not seek to limit the right of appeal. However, the Court should consider adoption of the following:

(a) a rule amendment to permit the parties to stipulate to a disposition without opinion, subject to the Court's approval;

(b) a rule amendment limiting the right to oral argument in routine cases (along the lines of the procedure followed by the First District Court of Appeals of California);

(c) a firm policy of awarding substantial attorney fees to the prevailing appellee in a frivolous appeal.

4. The Clerk of the Supreme Court should carefully monitor the work of the newly established central research position and attempt to develop a quantifiable measure of the workload reductions achieved by the position. Preferably, such a measure should be calculated in a way that the number of central staff positions needed can be directly related to caseload.

5. The Court should request the Administrative Director to begin planning for the establishment of an intermediate court of appeals as soon as possible. Recommendations should be prepared for the Court's consideration concerning the following matters:

(a) The number of justices and personal staff required;

(b) Jurisdiction of the intermediate court and the supreme court;

(c) Requirements relating to the clerk's office staff, including recommendations for consolidated versus separate offices;

(d) Facilities requirements and alternatives for providing necessary space;

(e) Transitional measures to deal with cases already filed in the supreme court when the intermediate court is ready to begin operations; and

(f) A detailed analysis of the fiscal impact of the recommendations and any alternative recommendations.

APPENDIX I

Louisiana Survey on Number of Appellate Judges

STATE	TRIAL COURT	INTERMEDIATE APPEALS COURT	COURT OF LAST RESORT	TRL JDG PER 100,000 POP	APP JDG PER 100,000 POP	APP JDG PER 100 TRL JDG
ALABAMA	108 0	8 0	9 0	3.0	0.4	15.7
ALASKA	37 0	0 0	5 0	5.4	1.5	27.8
ARIZONA	72 0	12 0	5 0	3.4	0.8	23.6
ARKANSAS	56 0	0 0	7 0	2.7	0.3	12.5
CALIFORNIA	520 0	56 0	7 0	2.5	0.3	12.1
COLORADO	94 0	10 0	7 0	3.8	0.6	18.0
CONNECTICUT	40 0	4 0	6 0	1.3	0.3	25.0
DELAWARE	18 0	4 0	3 0	3.1	1.2	38.8
FLORIDA	287 0	25 0	7 0	3.7	0.4	11.1
GEORGIA	91 0	9 0	7 0	1.9	0.3	17.5
HAWAII	18 0	0 0	5 0	2.1	0.6	27.7
IDAHO	27 0	0 0	5 0	3.5	0.6	18.5
ILLINOIS	610 0	34 0	7 0	5.4	0.3	6.7

STATE	TRIAL COURT	INTERMEDIATE APPEALS COURT	COURT OF LAST RESORT	TRL JDG PER 100,000 POP	APP JDG PER 100,000 POP	APP JDG PER 100 TRL JDG
INDIANA	248 0	9 0	5 0	4.6	0.2	5.6
IOWA	92 0	5 0	9 0	3.1	0.4	15.2
KANSAS	131 0	7 0	7 0	5.7	0.6	10.6
KENTUCKY	87 0	14 0	7 0	2.6	0.6	24.1
LOUISIANA	152 0	30 CIV 0	7 0	4.0	0.9	24.3
MAINE	14 0	0 0	7 0	1.3	0.6	50.0
MARYLAND	90 0	13 0	7 0	2.2	0.4	22.2
MASSACHUSETTS	0 0	0 0	0 0	0.0	0.0	0.0
MICHIGAN	512 0	18 0	7 0	5.6	0.2	4.8
MINNESOTA	215 0	0 0	9 0	5.5	0.2	4.1
MISSISSIPPI	65 0	0 0	9 0	2.8	0.3	13.8
MISSOURI	115 0	22 0	7 0	2.4	0.6	25.2
MONTANA	29 0	0 0	5 0	4.0	0.6	17.2

STATE	TRIAL COURT	INTERMEDIATE APPEALS COURT	COURT OF LAST RESORT	TRL JDG PER 100,000 POP	APP JDG PER 100,000 POP	APP JDG PE 100 TRL JD
NEBRASKA	45 0	0 0	7 0	2.9	0.4	15.5
NEVADA	26 0	0 0	5 0	4.7	0.9	19.2
NEW HAMPSHIRE	13 0	0 0	5 0	1.6	0.6	38.4
NEW JERSEY	271 0	21 0	7 0	3.6	0.3	10.3
NEW MEXICO	0 0	0 0	0 0	0.0	0.0	0.0
NEW YORK	0 0	0 0	0 0	0.0	0.0	0.0
NORTH CAROLINA	55 0	9 0	7 0	1.0	0.3	29.0
NORTH DAKOTA	19 0	0 0	5 0	2.9	0.7	26.3
OHIO	184 0	38 0	7 0	1.7	0.4	24.4
OKLAHOMA	143 0	6 0	9 CIV 3 CRI	5.3	0.6	12.5
OREGON	70 0	6 0	7 0	3.1	0.5	18.5
PENNSYLVANIA	0 0	0 0	0 0	0.0	0.0	0.0
PUERTO RICO	187 0	0 0	8 0	6.3	0.2	4.2

STATE	TRIAL COURT	INTERMEDIATE APPEALS COURT	COURT OF LAST RESORT	TRL JDG PER 100,000 POP	APP JDG PER 100,000 POP	APP JDG PER 100 TRL JDG
RHODE ISLAND	17 0	0 0	5 0	1.7	0.5	29.4
SOUTH CAROLINA	25 0	0 0	5 0	0.9	0.1	20.0
SOUTH DAKOTA	0 0	0 0	0 0	0.0	0.0	0.0
TENNESSEE	117 0	18 0	5 0	2.8	0.5	19.6
TEXAS	261 0	42 CIV 0	9 CIV 5 CRI	2.2	0.4	21.4
UTAH	24 0	0 0	5 0	2.0	0.4	20.8
VERMONT	19 0	0 0	5 0	4.0	1.0	26.3
VIRGINIA	107 0	0 0	7 0	2.2	0.1	6.5
WASHINGTON	101 0	12 0	9 0	2.9	0.6	20.7
WEST VIRGINIA	57 0	0 0	5 0	3.1	0.2	8.7
WISCONSIN	0 0	0 0	0 0	0.0	0.0	0.0
WYOMING	15 0	0 0	5 0	4.2	1.4	33.3
WASHINGTON DC	44 0	0 0	9 0	5.9	1.2	20.4

APPENDIX II

Comparative Data on Workloads

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

APPEALS (Including Sentence Appeals)		
Pending at Start		241
Filed		364
Terminated		241
**Opinions Filed	123	
Other Dispositions	118	
	241	

Petitions for Review and Original Proceedings		
Pending at Start		17
Filed		102
Terminated		94
**Opinions Filed	25	
Review Denied	52	
Other Dispositions	17	
	94	

***Motions and Petitions for Rehearing	
Pending at Start	Not Available
Filed and Terminated	340

*Source: Clerk of the Alaska Supreme Court

**Opinions filed include total of 16 per curium opinions and 2 cases disposed of by special summary order of the Court. The total number opinions filed in 1976 was 133. The total shown here is greater because of the separate ~~Court~~ of cross-appeals disposed of by same opinion as the first appeal.

***Estimated. Excludes approximately 500 routine motions for extension of time, etc.

Count

25
123
148

HAWAII SUPREME COURT
July 1, 1975-June 30, 1976*

APPEALS		
Pending at start		218
Filed		253
Terminated		155
Opinions Filed	84	
Withdrawn or dis-continued	50	
Dismissed on Motion	14	
Other	7	
	155	
ORIGINAL PROCEEDINGS		
Pending at start		3
Filed		12
Terminated		11
Opinion Filed	5	
Other	6	
	11	
MOTIONS/PETITIONS FOR REHEARING		
Pending at start		7
Filed		375
Terminated		354
Opinion Filed	6	
Other	348	
	354	

*Source: Hawaii 1976 Annual Report

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

APPEALS		
Pending at start		312
Filed		295
Terminated		
Opinions filed (Includes 29 P.C.'s)	136	228
Other	92	
	228	
ORIGINAL PROCEEDINGS		
Pending at start		3
Filed		32
Terminated		20
Opinion filed	4	
Other	16	
MOTIONS/PETITIONS FOR REH		
Pending at start		823
Filed		794
Terminated		Not Available

*Source: Idaho Administrative Director of Courts

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

APPEALS		
Pending at start		246
Filed		262
Terminated		236
Opinion (Includes 11 P.C. and 2 "advisory" opinions)	168	
Dismissed	68	
	236	

ORIGINAL PROCEEDINGS
Not available

MOTIONS/PETITIONS FOR REHEARING
Not available

*Source: State of Maine, Administrative Office of Courts, 1977 Annual Report.

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

APPEALS		
Pending at start		256
Filed		607
Terminated**		
ORIGINAL PROCEEDINGS		
Pending at start		(Included in 256 above)
Filed		120
Terminated**		
MOTIONS/PETITIONS FOR REHEARING		
Pending at start		(Included in 256 above)
Filed		59
Terminated**		
TOTAL DISPOSITIONS		803
By order of court	535	
By opinion	252	
Consolidated cases	16	
	803	

*Source: Statistics provided by Nevada Supreme Court

**The number of each type of proceedings terminated was not broken out from total dispositions.

NEW HAMPSHIRE SUPREME COURT
July 11, 1974-June 30, 1975*

APPEALS	
Pending at start	Not Available
Filed	Not Available
Terminated by opinion	205
Includes 38 P.C.	
15 Memorandum	
15 "Opinions of Justices"	

ORIGINAL PROCEEDINGS
Not Available

MOTIONS/PETITIONS FOR REH.
Not Available

*Source: 17 New Hampshire Bar Journal 3 (1976)

NORTH DAKOTA SUPREME COURT
January 1, 1975-December 31, 1975*

APPEALS		
Pending at start		0
Filed		128
Terminated		128
Opinion	93	
Dismissed	10	
Other	25	
	128	

ORIGINAL PROCEEDINGS
(Original Proceedings are included in the appeals.)

MOTIONS/PETITIONS FOR REHEARING		
(Includes only Petitions for Rehearing)		
Pending at start		0
Filed		20
Terminated		20
(Denied apparently without opinion)	20	

*Source: National Center for State Courts--Williamsburg Project.

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

APPEALS		
Pending at start		286
Filed		351
Terminated		346
Opinion (Includes 21 P.C.)	141	
Withdrawn or Discontinued	112	
Dismissed on motion	93	
Other	-	
	346	
ORIGINAL PROCEEDINGS		
Pending at start		1
Filed		15
Terminated		14
Opinion (Includes 2 P.C.)	3	
Withdrawn	1	
Dismissed by Court	10	
	14	
MOTIONS/PETITIONS FOR REHEARING**		
Pending at start		3
Filed		12
Terminated		15

*Source: "Judicial Statistics, State of Vermont," Office of the Court Administrator 1976.

**Includes Petitions for Rehearing only.

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

APPEALS		
Pending at start		Not Available
Filed		138
Terminated		116
By Opinion	75	
Dismissed	34	
Other	7	
	116	

ORIGINAL PROCEEDINGS
Not Available

MOTIONS/PETITIONS FOR REHEARING
Not Available

*Source: National Center for State Courts - Williamsburg Project.

APPENDIX III

Recruitment Bulletin for Staff Attorney Position

ALASKA COURT SYSTEM

AN EQUAL OPPORTUNITY EMPLOYER

RECRUITMENT BULLETIN

JOB TITLE	SALARY	LOCATION
SUPREME COURT STAFF ATTORNEY	$2,296./mo. to start (Range 20/22*)	JUNEAU

Job Duties:

Under the general direction of the Clerk of the Supreme Court performs legal research related to cases and other matters filed in Supreme Court. Reviews all appeals which have been fully briefed. Recommends consolidation for argument of appeals which involve similar legal issues. Proposes possible disposition of routine cases. Reviews Petitions for Review, requiring extensive legal research and preparation of memoranda recommending appropriate disposition. Reviews, researches and makes preliminary analysis of complex motions presented to the court. Reviews and researches the briefs and records in sentence appeals and prepares memoranda for the Court concerning possible disposition. Assists Clerk of Court in scheduling expedited, complicated appeals before the Supreme Court. Works with the Clerk of Court in the preparation of complicated records on appeal. Develops appropriate systems for efficiently accomplishing the duties of the position.

Minimum Requirements:

Graduation from an accredited law school and either membership in a state bar or current active pursuit of membership. Previous legal experience would be valuable.

* This position is flexibly-staffed, salary range 20/22. The successful applicant will be hired at salary range 20. After six months of successful job performance and admission to the Alaska Bar Association the employee may be promoted to a salary range 22.

Selection Process:

Applicants must meet the minimum requirements as stated above. The most qualified applicants will be invited to a personal interview.

How to Apply:

Applicants should submit an Alaska Court System application to the Personnel Office at 303 "K" Street, Anchorage, Alaska 99501. Applications may also be submitted to the Personnel Clerk, Room 241 at the Juneau court building. Applications must be filed no later than July 5, 1977.

APPLICATIONS FROM MINORITIES ARE ENCOURAGED

Date of Bulletin: 6/24/77

APPENDIX IV

Summaries of Articles

APPELLATE COURT REFORM
45 Mississippi Law Journal 121 (1974)

The function of the highest court of any state is to fold: To correct errors made in the determination of the rights of the litigants and, more importantly, to determine the standards by which persons within the jurisdiction are to conduct their affairs. Where such a court is delayed in the performance of these two duties, the ends of justice are not served. Increases in the workload of a highest court of a jurisdiction either reduce the amount of time which may be spent on a case or increase the time required to dispose of all cases before the court. An increase in appellate workload ultimately causes delay which is regarded by most judicial reformers as inherently evil.

The workload of nearly every high court has substantially increased and shows no signs of subsiding. Two methods of reducing the workload and congestion of appellate courts are: (1) Those which increase the efficiency of the court and (2) those which reduce the amount of work required of the judges of the highest court.

I. INCREASE IN EFFICIENCY

Efficiency of the court can be dramatically improved by the use of a professional court administrator. This is a generally accepted technique and is utilized by the majority of all of the states. Another method is for the highest court to exercise its

rulemaking power in order to increase the efficiency of judicial operation. Controlling oral arguments and the expeditious use of law clerks are also means of increasing the efficiency of the high court. Other methods are the reduction in the size of records and briefs and use of merit selection in judges.

II. REDUCTION IN THE WORKLOAD PER JUSTICE

Another solution to case overload problems is to reduce the number of cases handled by each justice. This can be accomplished by: (1) Increasing the number of justices on the court; (2) hearing cases in panels; (3) using court commissioners; (4) taking legislative action to reduce the number of cases eligible for appeal. All of the above methods have numerous disadvantages but with modifications can be used in certain circumstances.

III. CREATION OF A PERMANENT LOWER APPELLATE COURT

The most permanent and effective way of reducing the workload of a highest level of a state court system is the creation of a lower appellate court. As of 1971, at least 23 states had a lower appellate level in their court system. This method of workload reduction is greatly favored by both judges and commentators. The benefits of introduction of a lower appellate court into a court system are: (1) The lower appellate court can reduce the workload of the highest appellate court thus allowing an improved work product; (2) it allows a division of the workload

between the lower and highest appellate court keeping both from being overworked; (3) it allows the traditional American concept of the right to one appeal in every case to be retained; and (4) in some cases allows the appellate court to accommodate more litigants. Objectionable characteristics to the creation of an intermediate appellate court are: (1) Increased expense to the taxpayer for additional courts; (2) instances of double appeals causing increased delay and expense to the litigants and (3) the creation of additional work for the highest level in settling disputes over original appellate jurisdiction.

CONCLUSIONS AND RECOMMENDATION

Many of the measures which were discussed to relieve court congestion have been implemented and are helpful, however they have not proven to be solutions but merely forestall the burden under which the courts labor. The establishment of a lower appellate court could greatly relieve the congestion in the appellate system.

CONSTITUTIONAL REVISION AND APPELLATE COURT DECONGESTANTS
(Shirley M. Hufstedler 44 Washington Law Review 577 (1969)

The most venerable criticism of the courts is delay. Delay is the offspring of court congestion caused by surging urban population growth, by inadequate court systems, by cumbersome and archaic judicial and administration procedures, and by the rising expectation of all of our people about the availability and quality of justice.

Successful judicial reformation comes in two packages, constitutional revision and implementing legislation. A judicial article should include no more than is absolutely necessary to create the essential structure of the judicial system. All details should be filled in by statutes and rules which are more easily changed when the need arises.

Individuals studying state judicial articles have generally devoted their attention to three major topics: (1) The structure of the judicial system; (2) selection, tenure and removal of judges; and (3) court administration. The structure of the judicial system considers such questions as whether there should be one trial court or two, should there be a single appellate court or should there be a court of last resort and an intermediate appellate court. Plans for the selection, tenure and removal of judges are generally divided into two categories: (1) Those in which a panel of nominees is initially selected by a commission, from whose number the governor must appoint and (2) those

in which the nominees are selected by the governor who thereafter submits their name to a council which has a veto power. Tenure of judges varies from lifetime appointments, to short term, partisan, terms of office. The creation and maintenance of an adequate and efficient system of court administration is essential for the effective administration of justice. Not only should the courts be subject to the same management standards as industry, but judges should not have to spend their time on non-judicial duties.

APPELLATE COURT DECONGESTANTS

The capacity of an appellate court to handle its caseload depends upon the number of cases docketed in a given year, the number of judicial hours which must be devoted to each case, and the number of judicial hours available during the year. Reducing a backlog and thus reducing court congestion requires treatment of the following: (1) The size of the docket, (2) the judicial time expended per case, and (3) the judicial time available.

Dockets can be reduced directly by cutting off or limiting the right to appeal and indirectly, by creating a series of procedural impediments to discourage appeals. However, as appellate courts exist to formulate policy and precedent, to assure uniformity in the administration of justice, and to provide executive direction and assistance to trial courts, such is not an adequate solution.

No one has suggested that judges reduce their backlog of cases by giving less than an adequate time to each case. Although efficient time saving techniques should be employed by appellate court judges, they still must have adequate time to ponder and consider each case.

One solution somes states have used in order to reduce the backlog of cases is to divide the court in two departments or divisions consisting of three or more judges. However, divisional sitting only modestly increases the productive capacity of a court and may create more administrative problems which ultimately eliminate any advantage to the divisional sittings.

Another way to alleviate appellate court congestion is to increase the number of appellate judges. However, this has practical application only within very narrow limits. Whatever additional work can be done by the extra judges is dissipated by the increased consultation times, by the difficulties inherent in drafting opinions to accommodate multiple points of view, and by the administrative problems involved in increased personnel.

The most practical solution presently available to decongest a supreme court is to create a new tier of appellate courts to undertake the caseload. As of 1969 there were 21 states with intermediate appellate courts.

The jurisdiction of the supreme court and the intermediate courts of appeal is usually established by provisions of the judicial article of the state constitution. Certain threshhold questions need to be determined such as whether the appellate courts shall have any original jurisdiction, and whether there is an appeal to the supreme court from the appellate court as a matter of right.

The modern trend in structuring a two-tiered appellate system is to eliminate all direct appeals as a matter of right to the supreme court except in cases where the death penalty or life imprisonment has been imposed. Critics of the development of the two-tiered system have often raised the specter of the waste of judicial resource by creating the potential of double appeals. However, if the supreme court judiciously exercises its power to order transfer of causes to the supreme court, and if there is no appeal from the intermediate appeal as a matter of right, that problem is eliminated. Additionally, double appeals are by no means necessarily wasteful and it is often thought that the double appeal actually presents a better opportunity for a true consideration of the issues involved in the case.

A final consideration is the composition and structure of the intermediate appellate court. There are two general types: (1) Those in which there is more than one intermediate appellate court, each of which occupies its exclusive geographical territory and (2) those in which there is a single state-wide

appellate court. The most desirable organization is a single intermediate appellate court with state-wide jurisdiction. This not only can be more efficiently administered, but eliminates the problems of lack of uniformity within the divisions of the appellate court.

THE ROLE OF AN INTERMEDIATE APPELLATE COURT

(James D. Hopkins)
41 Brooklyn Law Review 459 (1975)

Intermediate appellate courts are initially the products of increased judicial business. Although there are various alternatives available to relieve the congested appellate court calendar such as dividing the court into panels, use of commissioners, reducing jurisdiction, and reducing the right of appeal, the method which has been most often employed and most effectively used is the two-tier system of appellate courts.

The advantage of the two-tiered system of appellate courts is that it permits an integrated procedure with supervision of the process placed in the highest appellate court. The assistance to the highest court from the appellate court assumes two forms: (1) It reduces the sheer number of appeals and (2) it releases the highest court to address itself solely to determination of questions of law with a particular view toward the development of the law as a whole.

Intermediate appellate courts have fulfilled their initial role of relieving supreme court congestion and freeing the highest court to exercise its primary rulemaking and decision making function. However, as the full flow of litigation shifts to and converges upon the intermediate appellate court, that court in turn has assumed an additional role, of: Assisting the highest court in its ultimate determination by rendering thorough expositions of the relative merits of alternative solutions to novel or controversial questions of law; and, to function as the court of last resort for the majority of cases.

APPENDIX V

Nevada Legislation Creating an Intermediate Appellate Court

NEVADA

Assembly Joint Resolution No. 2--Assemblymen Barengo, Mann, Hickey, Wagner and Schofield

FILE NUMBER-----

ASSEMBLY JOINT RESOLUTION--Proposing to amend the Nevada constitution to create an intermediate appellate court.

Resolved by the Assembly and Senate of the State of Nevada, jointly, That a new section be added to article 6 and sections 1, 4, 7, 11, 15, 20 and 21 of article 6, section 3 of article 7, and section 22 of article 17 of the constitution of the State of Nevada be amended to read respectively as follows:

1. The court of appeals consist of three judges or such greater number as the legislature may provide by law. If the number of judges is so enlarged, the supreme court shall provide by rule for the assignment of each appeal to a panel of three judges for decision.

2. Except as otherwise provided in this subsection, the judges of the court of appeals shall be elected by the qualified electors of the state, at the general election, for terms of 6 years beginning on the 1st Monday of January next after the election. The terms of the first three judges elected are 2 years, 4 years and 6 years respectively, which shall be separately specified for their election, and in any increase or reduction of the number of judges, the legislature shall provide initial terms of 6 or fewer years such that one-third of the total number of judges, as nearly as may be, is elected every 2 years.

3. The judges of the court of appeals shall elect a chief judge from among their number. The term of office of the chief judge is 2 years, beginning on the 1st Monday of January of each odd-numbered year. A chief judge may succeed himself.

4. The legislature may provide by law, or may authorize the supreme court to provide by rule, for the assignment of one or more judges of the court of appeals to devote a part of their time to service as supplemental district judges where needed.

Section 1. The Judicial power of this State [shall be] is vested in a court system, comprising a Supreme Court, a Court of Appeals, District Courts, and Justices of the Peace. The Legislature may also establish, as part of the system, Courts for municipal purposes only in incorporated cities and towns.

Section 4. The supreme court [shall] and the court of appeals have appellate jurisdiction in all [cases in equity; also in all cases at law in which is involved the title, or the right of possession to, or the possession of, real estate or mining claims, or the legality of any tax, impost, assessment, toll or municipal fine, or in which the demand (exclusive of interest) or the value of the property in controversy, exceeds three hundred dollars; also in all other civil cases not included in the general subdivisions of law and equity.] civil cases arising-in district courts, and also on questions of law alone in all criminal cases in which the offense charged is within the original jurisdiction of the district courts. [The court shall] The legislature shall apportion this jurisdiction between them by law, and shall provide for the review by the supreme court, where appropriate, of appeals decided by the court of appeals. These courts also have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus and also all writs necessary or proper to the complete exercise of [its] their appellate jurisdiction. Each of the justices [shall have] and judges has power to issue writs of habeas corpus to any part of the state, upon petition by, or on behalf of, any person held an actual custody, and may make such writs returnable [.] before himself or the [supreme] court, or before any district court in the state or before any judge of [said] those courts.

In case of the disability or disqualification, for any cause, of [the chief justice or one of the associate] one or more justices of the supreme court [, or any two of them,] or judges of the court of appeals,

the governor [is authorized and empowered to] may designate any district judge or judges to sit in the place or places of such disqualified or disabled justice, [or] justices, judge or judges, and [said] the district judge or judges so designated [shall] are entitled to receive their actual expense of travel and otherwise while sitting in [said] the supreme court[.] or court of appeals; or the governor may designate any judge of the court of appeals to sit in the place of any disabled or disqualified justice of the supreme court.

Section 7. The times of holding the Supreme Court and District Courts shall be as fixed by law. The terms of the Supreme Court shall be held at the seat of Government unless the Legislature otherwise provides by law, except that the Supreme Court may hear oral argument at other places in the state. The terms of the Court of Appeals shall be held where provided by law. The terms of the District Courts shall be held at the County seats of their respective countries; Provided, that in case any county shall be hereafter divided into two or more districts, the Legislature may by law, designate the places of holding Courts in such Districts.

Section 11. The justices of the supreme court, the judges of the court of appeals and the district judges [shall be] are ineligible to any office, other than a judicial office, during the term for which they [shall] have been elected or appointed; and all elections or appointments of any such judges by the people, legislature, or otherwise, during [said] that period, to any office other than judicial, [shall be] are void.

[Sec:] Section 15. The Justices of the Supreme Court, the Judges of the Court of Appeals and District Judges [shall each] are each entitled to receive for their services a compensation to be fixed by law and paid in the manner provided by law, which shall not be increased or diminished during the term for which they [shall] have been elected, unless a Vacancy occurs, in which case the successor of the former incumbent [shall] is entitled to receive only such salary as may be provided by law at the time of his election or appointment; and provision shall be made by law for setting apart from each year's revenue a sufficient amount of Money, to pay such compensation.

Section 20. 1. When a vacancy occurs before the expiration of any term of office in the supreme court or the court of appeals or among the district judges, the governor shall appoint a justice or judge from among three nominees selected for such individual vacancy by the commission or judicial selection.

2. The term of office of any justice or judge so appointed expires on the first Monday of January following the next general election.

3. Each nomination for the supreme court or the court of appeals shall be made by the permanent commission, composed of:

(a) The chief justice or an associate justice designated by him;
(b) Three members of the State Bar of Nevada, a public corporation created by statute, appointed by its board of governors; and
(c) Three persons, not members of the legal profession, appointed by the governor.

4. Each nomination for the district court shall be made by a temporary commission composed of:

(a) The permanent commission;
(b) A member of the State Bar of Nevada resident in the judicial district in which the vacancy occurs, appointed by the board of governors of the State Bar of Nevada; and
(c) A resident of such judicial district, not a member of the legal profession, appointed by the governor.

5. If at any time the State Bar of Nevada ceases to exist as a public corporation or ceases to include all attorneys admitted to practice before the courts of this state, the legislature shall provide by law, or if it fails to do so the court shall provide by rule, for the appointment of attorneys at law to the petitions designated in this section to be occupied by members of the State Bar of Nevada.

6. The term of office of each appointive member of the permanent commission, except the first members, is 4 years. Each appointing authority shall

appoint one of the members first appointed for a term of 2 years. If a vacancy occurs, the appointing authority shall fill the vacancy for the unexpired term. The additional members of a temporary commission shall be appointed when a vacancy occurs, and their terms shall expire when the nominations for such vacancy have been transmitted to the governor.

7. An appointing authority shall not appoint to the permanent commission more than:

(a) One resident of any county.
(b) Two members of the same political party.

No member of the permanent commission may be a member of a commission on judicial discipline.

8. After the expiration of 30 days from the date on which the commission on judicial selection has delivered to him its list of nominees for any vacancy, if the governor has not made the appointment required by this section, he shall make no other appointment to any public office until he has appointed a justice or judge from the list submitted. [If a commission on judicial selection is established by another section of this constitution to nominate persons to fill vacancies on the supreme court, such commission shall serve as the permanent commission established by subsection 3 of this section.]

Section 21. 1. A justice of the supreme court, a judge of the court of appeals or a district judge may, in addition to the provision of article 7 for impeachment, be censured, retired or removed by the commission on judicial discipline. A justice or judge may appeal from the action of the commission to the supreme court, which may reverse such action or take any alternative action provided in this subsection.

2. The commission is composed of:

(a) Two justices or judges appointed by the supreme court;
(b) Two members of the State Bar of Nevada, a public corporation created by statute, appointed by its board of governors; and
(c) Three persons, not members of the legal profession, appointed by the governor.

The commission shall elect a chairman from among its three lay members.

3. If at any time the State Bar of Nevada ceases to exist as a public corporation or ceases to include all attorneys admitted to practice before the courts of this state, the legislature shall provide by law, or if it fails to do so the court shall provide by rule, for the appointment of attorneys at law to the positions designated in this section to be occupied by members of the State Bar of Nevada.

4. The term of office of each appointive member of the commission, except the first members, is 4 years. Each appointing authority shall appoint one of the members first appointed for a term of 2 years. If a vacancy occurs, the appointing authority shall fill the vacancy for the unexpired term. An appointing authority shall not appoint more than one resident of any county. The governor shall not appoint more than two members of the same political party. No member may be a member of a commission on judicial selection.

5. The supreme court shall make appropriate rules for:

(a) The confidentiality of all proceedings before the commission, except a decision to censure, retire or remove a justice or judge.
(b) The grounds of censure.
(c) The conduct of investigations and hearings.

6. No justice or judge may by virtue of this section be:

(a) Removed except for willful misconduct, willful or persistent failure to perform the duties of his office or habitual intemperance; or
(b) Retired except for advanced age which interferes with the proper performance of his judicial duties and which is likely to be permanent in nature.

7. Any person may bring to the attention of the commission any matter relating to the fitness of a justice or judge. The commission shall, after preliminary investigation, dismiss the matter or order a hearing to be held before it. If a hearing

is ordered, a statement of the matter shall be served upon the justice or judge against whom the proceeding is brought. The commission in its discretion may suspend a justice or judge from the exercise of his office pending the determination of the proceedings before the commission. Any justice or judge whose removal is sought is liable to indictment and punishment according to law. A justice or judge retired for disability in accordance with this section is entitled thereafter to receive such compensation as the legislature may provide.

8. If a proceeding is brought against a justice of the supreme court, no justice may sit on the commission for that proceeding. If a proceeding is brought against a judge of the court of appeals, no judge of that court may sit on the commission for that proceeding. If a proceeding is brought against a district judge, no judge from the same judicial district may sit on the commission for that proceeding. If an appeal is taken from an action of the commission to the supreme court, any justice who sat on the commission for that proceeding is disqualified from participating in the consideration or decision of the appeal. When any member of the commission is disqualified by this subsection, the supreme court shall appoint a substitute from among the eligible judges.

9. The commission may:

(a) Designate for each hearing an attorney or attorneys at law to act as counsel to conduct the proceeding;
(b) Summon witnesses to appear and testify under oath and compel the production of books, papers, documents and records;
(c) Grant immunity from prosecution or punishment when the commission deems it necessary and proper in order to compel the giving of testimony under oath and the production of books, papers, documents and records; and
(d) Exercise such further powers as the legislature may from time to time confer upon it.

[Sec:] Section 3. For any reasonable cause to be entered on the journals of each House, which may [,] or may not be sufficient grounds for impeachment, the [Chief

Justice and Associate] Justices of the Supreme Court, Judges of the Court of Appeals and Judges of the District Courts shall be removed from Office on the vote of two thirds of the Members elected to each branch of the Legislature, and the Justice or Judge complained of [,] shall be served with a copy of the complaint against him [,] and shall have an opportunity of being heard in person or by counsel in his defense, Provided, that no member of either branch of the Legislature shall be eligible to fill the vacancy occasioned by such removal.

[Sec:] Section 22. In case the office of any Justice of the Supreme Court, Judge of the Court of Appeals, District Judge or other State officer [shall become] becomes vacant before the expiration of the regular term for which he was elected, the vacancy may be filled by appointment by the Governor until it-[shall be] is supplied at the next general election, when it shall be filled by election for the residue of the unexpired term.

and be it further

Resolved, That the secretary of state shall assign a number to the new section added to article 6 according to the number of section contained in that article when the addition of the new section becomes effective.

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

3/23/90
Date

COMMITTEE REPORT

SENATE

FURTHER:

EX
2/22/80

Date: 5-5-80

Mr. President:

The Committee on FINANCE has had SB 110
availability of an abstract of a driver's record

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[✓] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

Withdrawn by Public Safety

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CSSB 110
Title Act relating to the availability of an abstract of a driver's record
Requested by Senator John Sackett Date 2=20=80

II. FISCAL DETAIL
Agency Affected Department of Public Safety
Program Category Affected Life and Property Protection
BRU, Program, or Subprogram(s) Affected Driver Services
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80 *	FY 81	FY 82+	FY 83+	FY 84+	FY 85 +
100 PERSONAL SERVICES		19.0	19.0	19.0	19.0	19.0
200 TRAVEL		0	0	0	0	0
300 CONTRACTUAL		8.3	8.3	8.3	8.3	8.3
400 COMMODITIES		.5	.5	.5	.5	.5
500 EQUIPMENT		0	0	0	0	0
600 LAND & STRUCTURES		0	0	0	0	0
700 GRANTS, CLAIMS, ETC.		0	0	0	0	0
TOTAL		27.8	27.8	27.8	27.8	27.8

FY80*=Bill has immediate effective date - FY80 cost would be 1/12 of FY81 per month after effective date.
FY82/83/84/85+= Cost of living increase not included.

FUNDING (Thousands of Dollars)

GENERAL FUND		27.8	27.8	27.8	27.8	27.8
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		1	1	1	1	1
PART TIME						
TEMPORARY						

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

A: Each request for driving record must be accompanied by release authorization card unless request is from driver.

B: 100 - One position, Document Processing Clerk I, to review all requests (approx. 72,000 annually), and return all without authorization cards. Must then film authorizations and update microfilm index.
Salary - $15,156; Benefits - $3,789 = $18,945

300 - Print forms for release authorization (100,000) - $350
Postage $1,100
Terminal to update microfilm: terminal lease 2,040
DP Chargeback 4,800
$8,290

400 - Microfilm and office supplies $500

IV. DATE 2-21-80 PREPARED BY Bill Brown
AGENCY Motor Vehicles, Public Safety
PHONE 465-4335

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSSB 110

Title Act relating to the availability of an abstract of a driver's record

Requested by Senator John Sackett Date 2=20=80

II. FISCAL DETAIL

Agency Affected Department of Public Safety

Program Category Affected Life and Property Protection

BRU, Program, or Subprogram(s) Affected Driver Services

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 80 *	FY 81	FY 82+	FY 83+	FY 84+	FY 85 +
100	PERSONAL SERVICES		19.0	19.0	19.0	19.0	19.0
200	TRAVEL		0	0	0	0	0
300	CONTRACTUAL		8.3	8.3	8.3	8.3	8.3
400	COMMODITIES		.5	.5	.5	.5	.5
500	EQUIPMENT		0	0	0	0	0
600	LAND & STRUCTURES		0	0	0	0	0
700	GRANTS, CLAIMS, ETC.		0	0	0	0	0
	TOTAL		27.8	27.8	27.8	27.8	27.8

FY80*=Bill has immediate effective date - FY80 cost would be 1/12 of FY81 per month after effective date.

FY82/83/84/85+= Cost of living increase not included.

FUNDING (Thousands of Dollars)

GENERAL FUND		27.8	27.8	27.8	27.8	27.8
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		1	1	1	1	1
PART TIME						
TEMPORARY						

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

A: Each request for driving record must be accompanied by release authorization card unless request is from driver.

B: 100 - One position, Document Processing Clerk I, to review all requests (approx. 72,000 annually), and return all without authorization cards. Must then film authorizations and update microfilm index.
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IV. DATE 2-21-80 PREPARED BY Bill Brown

AGENCY Motor Vehicles, Public Safety

PHONE 465-4335

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)

CATEGORY: PUBLIC PROTECTION **AGENCY:** PUBLIC SAFETY

PROGRAM: LIFE AND PROPERTY PROTECTION **BRU(S):** DRIVER/VEHICLE SERVICES

The Driver/Vehicle Services BRU is organized into four sections: Vehicle Services, Driver Services, Field Offices, and Administration. The basic purpose of the Vehicle Services portion of this BRU is protection of ownership of vehicles by the maintenance of an official, single source record of vehicle titles. Licensing of vehicles also facilitates their recovery when stolen. The purpose of the Driver Services portion of this BRU is to restrict vehicle operation to those persons who are capable of safe operation by utilizing a system of driver testing, licensing and periodic renewal, and a "driver improvement" function to identify and help improve or suspend drivers who violate safe driving laws. The Field services component funds the operation of all the field offices where members of the public obtain their driver licenses or vehicle titles.

Driver and Vehicle identification information collected by these functions is computerized for rapid retrieval by law enforcement during investigation of criminal activities. This information is highly useful in identifying offenders.. For instance, FBI statistics show that nationwide, a motor vehicle is involved in 50% of all crimes committed.

The administration component includes the director's office, central support staff, and the municipal tax unit. The municipal tax unit is funded by charges assessed to municipalities which elect to levy a municipal motor vehicle tax, which is collected by the State.

In an effort to improve services to the citizens of the state, full service DMV on-line offices are being opened for the Soldotna-Kenai and Kodiak areas.

COMPONENT DESCRIPTION	79 AUTH	79 FINAL	79 ACT	80 AUTH	80 SUPL	80 RP	GOVERNOR
DRIVER SERVICES	628.7	650.8	599.6	801.8			830.2
VEHICLE SERVICES	366.1	372.7	346.5	366.9			405.6
FIELD OPERATIONS	3790.1	3963.6	3671.4	4117.7			4342.4
ADMINISTRATION	436.9	460.2	427.8	651.3			658.2
MUNICIPAL TAX UNIT	185.2	185.2	166.0				
** TOTAL	5407.0	5632.5	5211.3	5937.7			6236.4
** CHANGE VERSUS 80 AUTH							5.0%
OBJECT DESCRIPTION							
PERS. SERV.	3259.7	3390.7	3334.7	3090.6			3337.5
TRAVEL	50.5	50.5	64.0	30.7			44.1
CONTRACTUAL	1664.6	1739.6	1489.5	2443.6			2474.6
COMMODITIES	59.5	59.5	57.6	47.6			56.1
EQUIPMENT	46.6	66.1	39.8	1.0			5.2
LANDS/BLDGS	86.1	86.1	86.2	69.8			75.4
MISC.	240.0	240.0	139.5	254.4			243.5
FUNDING SOURCE							
GENERAL FUND	4881.0	5087.0	4824.0	5486.1			5809.7
PGM RECEIPTS	526.0	526.0	385.7	451.6			426.7
OTHER FUNDS		19.5	1.6				
** GENERAL FUND CHANGE VS. 80 AUTH							5.8%
POSITIONS							
FULL-TIME	135.0	125.0	125.0	134.0			134.0
TEMPORARY	4.0	4.0	4.0	4.0			
STAFF MONTHS	1668.0	1548.0	1548.0	1656.0			1659.0

From The

SENATE FINANCE COMMITTEE

SB 110

The committee substitute provides that someone designated by the driver may receive a copy of the driver's record. This caused fiscal impact because it will require a clerk to review all the authorization forms.

See fiscal note analysis. Also see attached note from K. Spalding.

2/26/80

4/23

CSSB 110 ~~Amendment~~

Keith,

The Div of Insur has asked your help in getting this passed. It's in S Fin because DMV had attached a fiscal note. They are now willing to withdraw the fiscal note.

If bill doesn't pass, insurance companies won't know high risk drivers from low risk drivers, so rates will be higher for good drivers than they are now.

Public Safety had some difficulties with the original bill but now say they can support CS with an amendment (see attached).

PE

Original sponsor: Commerce Committee

Offered: 2/18/80
Referred: Rules

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 110

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the availability of an abstract of a driver's record; and providing for an effective date."

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

* Section 1. AS 28.15.151(d) is amended to read:

(d) The department shall, upon request and payment of a fee determined by the commissioner, furnish a driver <u>or a person designated by the driver</u> with an abstract of the driver's record as provided in (c) of this section.

* Sec. 2. AS 28.15.151(e) is repealed.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-070(c).

Introduced: 2/6/79
Referred: Judiciary

IN THE SENATE BY THE COMMERCE COMMITTEE

SENATE BILL NO. 110

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the availability of an abstract of a driver's record; and providing for an effective date."

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

* Section 1. AS 28.15.151(c) is amended to read:

(c) The department shall, upon request, subject to the applicable provisions of AS 12.62 [AND (f) OF THIS SECTION] and without charging a fee, furnish a municipal, state or federal administrative or judicial agency with a certified abstract of the driving record of a driver. The abstract shall include a listing of accidents in which the driver has been determined by the department or a court of competent jurisdiction to have been liable, convictions of vehicle, driver and traffic offenses, any actions taken upon his license, and information relating to financial responsibility.

* Sec. 2. AS 28.15.151(d) is amended to read:

(d) The department shall, upon request and payment of a fee determined by the commissioner, furnish <u>any person</u> [A DRIVER] with an abstract of <u>a</u> [THE] driver's record as provided in (c) of this section.

* Sec. 3. AS 28.15.151(e) and (f) are repealed.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.10.-070(c).

Original sponsor: Commerce Committee

Offered: 2/18/80
Referred: Rules

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 110

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the availability of an abstract of a driver's record; and providing for an effective date."

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

* Section 1. AS 28.15.151(d) is amended to read:

(d) The department shall, upon request and payment of a fee determined by the commissioner, furnish a driver <u>or a person designated by the driver</u> with an abstract of the driver's record as provided in (c) of this section.

* Sec. 2. AS 28.15.151(e) is repealed.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-070(c).

B

State Farm Insurance Companies

May 8, 1980

One State Farm Plaza
Bloomington, Illinois 61701

John J. Gordon
Associate Counsel
Phone: 662-6027

John Sackett
Chairman - Senate Finance Committee
Pouch V
Juneau, AK 99811

Re: SB-110

Dear Senator Sackett:

Allow us to respectfully offer a brief comment on SB-110 as now amended because information provided by drivers' records is of vital interest to us in the proper handling of our business.

In Alaska, we have approximately 34,000 auto policies in force. In equitably pricing and placement of those policyholders, the information supplied from motor vehicle reports or drivers' records, is necessary.

If those records were not available, the driver with multiple traffic violations would be charged the same rate as the driver with no violations. This would be unfair to a great majority of the driving public, perhaps 90 percent that comply with traffic laws and rarely become involved in accidents. In short, the good risks would be subsidizing the poorer risks, because we would have no proper basis to evaluate driving habits.

Additionally, in the Alaska Insurance Plan, surcharges are added for points accumulated based on traffic violations. If information available from drivers' records were not available, that procedure could not continue and the better risks in the Plan would be subsidizing the poorer risks. Hopefully, this proposed legislation which would allow insurance carriers to purchase copies of drivers' records for their confidential use will succeed in the legislature and gain the signature of the governor.

BILL FILE
SB 110

We appreciate the opportunity to offer these comments to you in support of SB-110 as amended. A copy is being forwared to your committee members.

Very truly yours,

John A. Gordon

John Gordon
Associate Counsel

jl