

963 HU SB 104 (FILES NO. 3 and 4)

February 2, 1979

decision will continue to rise and the already significant delay in obtaining a decision on appeal will increase even further, even if appellate filings do not increase. Litigants will find themselves waiting not months, but years, for a decision.

A recent study by this office moreover, shows that there will undoubtedly be an increase in appellate filings over the next ten years. This study found an extremely high historical correlation between population growth and increases in appellate filings. Using the most conservative estimates for population growth (*i.e.*, assuming there is no gas pipeline construction, no increase in litigation from the criminal code, etc.), the appellate filings in the supreme court are projected as follows:

	<u>Expected</u>	<u>High</u>
1981	673	844
1982	729	800
1983	784	856
1984	843	915
1985	906	979
1986	969	1043
1987	1013	1106
1988	1098	1174

Clearly the supreme court cannot handle these anticipated future increases.

We have also recently compared the Alaska Supreme Court's current workload with that of several other supreme courts in the nation at the time that those courts sought and obtained legislation in their states to establish intermediate appellate courts. Although such comparisons are less than totally accurate because courts tend not to measure precisely the same things, it does appear that our supreme court is in very close to the same circumstances as these other courts.

For example, Arizona's intermediate appellate court was established in 1965. During 1964, the Arizona Supreme Court had total appellate filings of 672, slightly more than our court's during 1978. However, the Arizona court, with five justices, terminated only 473 cases in 1964, many fewer than the 560 terminated by our court, and wrote only 177 opinions compared to 237 opinions by the Alaska court last year. Similarly, New Mexico's intermediate court was also established in 1965. During 1964 the New Mexico Supreme Court, also with five justices, disposed of 163 cases by written opinion and terminated a total of 435 cases.

Letter to Honorable Robert H. Ziegler, Sr.
Page 4
February 2, 1979

Although the supreme court clerk's office is still completing its 1978 statistical report, we have attached some preliminary 1978 figures and should have a more complete report shortly. Also attached are reports showing the court's activity during recent years, and a report showing a breakdown of how the 1978 case filings would have been distributed between the proposed court of appeals and the supreme court, based on the proposed criminal jurisdiction of the court of appeals.

The final point of discussion concerning the creation of the court of appeals is its cost versus its benefit to litigants. The projected startup expense for this court for the six month period of January 1, 1980 to June 30, 1980, is \$325,000. The annual operating expense is projected at \$555,000.

Other than the judicial positions and immediate supporting staff, no additional positions are needed, as the clerk's office of the court of appeals will be combined with that of the supreme court.

To a large extent the additional expense associated with the court of appeals will be minimized through cost savings in the supreme court and trial courts. For example, the reduction in workload in the supreme court will eliminate the need for the additional legal research personnel requested in the Fiscal Year 1980 budget. By expediting the appeal process, litigants will experience savings in direct expenses as well as benefiting from the prompt final determination of their cases.

We appreciate very much your assistance with the court of appeals bill. If you wish further information, please let us know.

Sincerely,

Arthur H. Snowden, II

AS/pmr

April 2, 1979

The Honorable Terry Gardiner
Speaker of the House of Representatives
Alaska Legislature
Pouch V
Juneau, Alaska 99811

Re: Senate Bill 104 am

Dear Speaker Gardiner:

This correspondence probably should have stayed in my "out" basket for a few days, but I have decided to send it now because I have some apprehension that the court of appeals bill may pass this session and I wanted to be sure that I got my comments in for whatever they may be worth.

I should say that Senator Ziegler asked for my comments while the bill was still in the Senate. Unfortunately, I did not review the bill as closely as I should have. There are several provisions in that bill that are just plain bad business.

Section 22.07.020 (b) in the bill provides:

"The court of appeals has appellate jurisdiction in all actions and proceedings commenced in the district court and may, in its discretion, remand a district court matter to the superior court for a trial de novo in whole or in part."

Why in the hell shouldn't the district courts mistakes be remanded to it for correction? The superior court has to correct its own mistakes and I think the district court should too. There are already too damn many cases filed in the superior court that should be filed in district court. There is absolutely no justification for that kind of appellate jurisdiction. Normal accepted practice is for the appellate court to affirm or reverse and remand for whatever relief is necessary, including a new trial. I can conceive of no reason for those cases to be handled by the superior court on remand from the court of appeals.

On another subject, it seems to me that, given the high cost of government, the legislature ought to take a hard look at appellate jurisdiction generally. For instance, Sec. 22.15.240 provides that either party may appeal a judgement of the district court to the court of appeals "where the amount in controversy is not less than \$50.00". An appeal as of right certainly need not be available where the sum in controversy is less than \$1,000.00.

The Honorable Terry Gardiner
April 2, 1979
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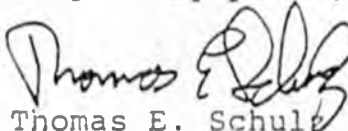
Section 22.05.010 provides that the Supreme Court may review a final decision of the court of appeals "on its own motion or on application of a party under AS 22.07.030." Again, I can see no reason for the Supreme Court to be reviewing cases "on its own motion." If all the parties are satisfied, the court system ought to just "butt-out."

Section 22.05.015(b) provides that the Supreme Court may take jurisdiction of a case pending before the court of appeals if either one of two conditions exist. One of the main justifications for this bill is that the Supreme Court is over-worked. It seems to me that if there is a substantial lack of confidence that the court of appeals can do the job, we ought to look for a new solution. This one, as presently constituted, is just going to add to the merry-go-round. Any appeal from the court of appeals to the Supreme Court ought to be strictly discretionary. Section(c) ought to be eliminated altogether. It is entirely possible for the appellate process to get so screwed up over which court has jurisdiction over which case, that not even the judges will know what is going on.

Section 9(b) provides that a defendant may appeal his sentence in any case where the imprisonment exceeds forty-five days (45) (down from 180). Section 24(a) gives the same right of appeal in cases from superior court (45 days, down from one year). Again, one of the main justifications for this legislature was that the Supreme Court could not keep up with the existing caseload. The answer to that appears to have been to add another level to the court system and increase the workload. With all due respect, Mr. Speaker, that is bullshit.

You will do the public in this State a great service if you can find a committee where this bill can reside comfortably until it dies a natural death or is substantially re-written.

Very truly yours,


Thomas E. Schulz

TES/kod

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

August 21, 1979

SUBJECT: Distinction between a "legislative court" and a
"constitutional court" (Work Order 7307)

TO: Charles Parr, Chairman
House Judiciary Committee

FROM: Richard A. Bradley *B*
Legislative Counsel

The Judiciary Committee has asked that I explain the difference, if any, between a "legislative court" and a "constitutional court". The Committee is concerned with the question whether a legislative court possesses the same inherent powers as a constitutional court. Finally, the Committee asked that the various existing courts be characterized as either constitutional or legislative. [These questions may be asked in the context of SB 104, the "court of appeals" bill, but they do not depend upon the content of that bill for their meaning.]

I. The Differences.

The constitutional frameworks present in the United States and in the States of the Nation typically establish courts; the constitutions also typically grant to the legislature the authority to establish other courts.

Under the Federal Constitution, judges of constitutional courts, who exercise "the judicial Power of United States", are appointed under Art. III, §1. Judges of legislative courts are appointed under the power granted to Congress by Art I, §8, ¶9 to constitute tribunals inferior to the Supreme Court. On limited occasions Congress blends its authority and the "judicial power of the United States" is conveyed to courts established under Art I. 1/ The Territorial courts

1/ Since the "judicial power of the United States" is not granted to courts established under Art. I, the full logic of Federal cases does not apply to the Alaska situation. Compare Art. IV, §1 of the Alaska Constitution.

in Alaska prior to Statehood were courts of this blended character. American Insurance Company v. Canter, 1 Pet. (U.S.) 511 (1828).

The Alaska Constitution contains similar though different concepts. Thus, Art. IV, §1 of the Alaska Constitution provides:

The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. 2/

A constitutional court is, then, a court established in the constitution in specific particulars; a legislative court is one where its establishment and responsibilities are discretionary with the legislature. An implied corollary of this principle recognizes that the constitutional courts very likely will enjoy constitutional protections which may or may not be extended to other courts not established in the Constitution. Art. IV has a number of provisions reflecting this principle.

Thus, Supreme Court justices and Superior Court judges shall be

"citizens of the United States and of the State, [and] licensed to practice law in the State.

Judges of the constitutional courts [the Supreme and Superior Courts] must be nominated by the judicial council and appointed from those nominees by the governor. Art. IV, §5. These judges are subject to electoral confirmation on a nonpartisan ballot under §6. They are retired under the provisions of §11 and they may be removed only by impeachment under §12 [or by rejection under §6]. Their compensation is protected under §11. They are restricted in their activities during the time they hold office by §14.

2/ Notwithstanding this suggestion that the jurisdiction of courts shall be prescribed "by law", it seems that in a broad sense, the constitution of the state establishes the jurisdiction of the Supreme court ["the highest court of the State, with final appellate jurisdiction." Art. IV, §2(a)] and of the Superior court ["the trial court of general jurisdiction." Art. IV, §3].

In opposition to all this judges of legislatively established courts [all courts except for the Supreme and Superior Courts]

shall be selected in a manner, for terms, and with qualifications prescribed by law. Art. IV, §4.

I think it is significant to note that the determination whether the constitutional protections are extended to judges not specified in the constitution is, in the constitutional framework, not accidental. The constitution could well have extended these listed protections to any member of the judiciary, whether or not the court on which the member sits is constitutionally defined. 3/

The history of the District Court since Statehood is perhaps the best example of this principle at work. The court was established in 1959 by Ch. 184. Initially it was described as the "district magistrate court". Ch. 24, SLA 1966 shortened the name to its present form. Initially, a district magistrate was appointed by a superior court judge, served at the judge's pleasure, and was not required to be an attorney. Under present law, a district judge is appointed under a legislative formulation that follows the constitutional formula of Art. IV, §5 for judges of the supreme and superior courts. And the procedure has received constitutional review and approval in Delahay v. State, 476 P.2d 908 (1970). The judge is subject to retention elections which parallels the provisions of Art. IV, §6.

And while the question is presently academic, it is likely that the legislature could in its discretion abolish the present scheme for the district judges without constitutional problems. While the legislature may embellish, clarify, and interpret the general framework established in the constitution for the Supreme and the Superior courts, it seems clear

3/ Another way of stating this conclusion is that I resist the suggestion implied, perhaps, in your request, that there is any general doctrine of law applicable to constitutional courts. Rather, any discussion of the implications of these terms simply raises questions of constitutional interpretation which are unique to each jurisdiction. If the matter is covered in the constitution, its statements establish the law. If the matter is not stated in the constitution, the legislature may prescribe the law.

that these courts themselves may not have their character altered in a fashion inconsistent with the constitutional provisions.

These then are the differences between the two kinds of courts. For a constitutional court, the legislature is limited in its ability to experiment by the character of the framework established in the constitution.

For a legislative court, the legislature may follow a constitutional pattern in its establishment of legislative courts, but it is under no obligation to do so. Thus, the legislature may establish a court and provide that the members of the court serve for life, at the pleasure of the governor, are confirmed by the legislature, are elected on partisan, competitive ballots, may have their compensation reduced during tenure. Judges can be attorneys or non-attorneys; can be full-time or part-time.

In short, the legislature may exercise broad discretion in its establishment of legislative courts. Lopez v. Anchorage, P.2d___ (No. 1863, Alaska, June 22, 1979).

II. Inherent powers.

The Committee asked whether a legislative court would possess the same inherent powers as a constitutional court.

The answer to the question must be viewed as somewhat tentative because of certain ambiguities in the constitution as well as in the question itself.

The constitution is somewhat ambiguous. It provides that "the jurisdiction of [all] courts shall be prescribed by law". Art. IV, §1. This phrase would otherwise suggest that the powers of the court, inherent or otherwise, derive from legislative enactment.

At the same time, the constitution establishes the larger part of the Supreme and Superior court jurisdiction: "The supreme court shall be the highest court of the State, with final appellate jurisdiction." [Art. IV, §2(a)]. "The superior court shall be the trial court of general jurisdiction...." [Art. IV, §5].

AS 22.05 and AS 22.10 contain very few provisions not directly implied in the constitutional provisions relating to the Supreme and Superior Court. As a result, the Alaska Constitution is the primary source of the jurisdiction of the two courts.

The question itself is ambiguous because many of the powers of a court that are viewed by attorneys as inherent to a court's basic operation are the result of statute. Thus the power of the courts to issue writs in aid of their jurisdiction would logically be implied if it did not exist by statute. However, it does exist by statute [AS 22.05.010(a); 22.10.020(a)] and is therefore arguably not an inherent power.

There are a number of concerns of a court that may be viewed as inherent.

1. Finality of judgement. In Hayburn's Case, 2 Dall. 409 (1792), the Federal courts refused to act on a petition for a pension since the Act of Congress granting the responsibility to the district courts allowed the Secretary of War and the Congress to review the decision. This review function was viewed as making the administration of the law non-judicial in nature and therefore not within the "judicial power of the United States".

To a large extent the question of granting non-judicial powers to courts is politically moot; I am unaware of any law invalidated or left unenforced by the Alaska courts because of this requirement.

Note that Art. IV, §1 grants the judicial power not only to the Supreme and Superior courts, but also to courts established by the legislature. I assume that a legislative court would therefore possess this requirement.

2. The contempt power. It seems that it is unarguable that all courts in Alaska possess by their nature the power to sanction contempts. Civil Rule 90 suggests this conclusion.

And if there is any doubt on the question, venerable language of the U.S. Supreme Court is instructive:

The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power." Ex parte Robinson, 19 Wall. (U.S.) 505 (1874). 4/

3. Issuance of writs. In Federal courts, the power to issue writs has historically been granted by Congress. Section 13 of the 1789 Judiciary Act was the original source. While the Act gave the power to issue writs under common law principles, the Federal courts have traditionally concurred in the view that an act of Congress is necessary to confer the judicial power to issue writs.

Note that the Supreme court and the Superior court are specifically granted the power to issue writs. AS 22.05.010(5) and 22.10.020(a) both authorize the issuance of "all writs" necessary to the courts' jurisdiction. The district court is implicitly denied the authority to issue writs by the denial to it of equitable jurisdiction. AS 22.15.050(2).

4. Admission and discipline of attorneys. The generally recognized principle of the common law holds that "it rests exclusively with the Court to determine who is qualified to become one of its officers, as an attorney and counsellor, and for what cause he ought to be removed." Chief Justice Taney in Ex parte Secombe, 19 How. (U.S.) 9, 13 (1857).

In Alaska, the Supreme Court has the "inherent and final power and authority to determine standards for admission to the practice of law in this State". In re Stephenson, 511 P.2d 136 (Alaska 1973). Only that court has the power to suspend an attorney from the practice of law. Weaver v. Superior

4/ The power of contempt in the Federal system has had statutory derivation since §17 of the Judiciary Act of 1789, 1 Stat. 73, 83. In Michaelson v. United States, 266 U.S. 42 (1924), Justice Sutherland questioned the authority of the Congress to qualify the contempt power: "the attributes which inhere in that power and are inseparable from it can neither be abrogated [by Congress] nor rendered [by it] practically inoperative." (Bracketed material added.)

Court, 572 P.2d 425 (Alaska 1977); Esch v. Superior Court 577 P.2d 1039, 1043-1044 (Alaska 1978). The control that the Supreme Court and other courts in Alaska have over those appearing before them is the power of contempt. There is no question whether any state court possesses this power, supra.

III. Status of present courts.

The Supreme Court and the Superior Court in Alaska are constitutional courts as that phrase has been used in this memorandum.

They are the only two courts that can ever claim that designation under the present provisions of Art. IV of the Constitution.

Any other court presently in existence or hereafter created in the context of existing constitutional provisions will necessarily be a legislative court. The district court established under AS 22.15 is a legislative court and the proposal for an intermediate appellate court -- the court of appeals -- will be a legislative court.

RAB:slk

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465.3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 30, 1979

SUBJECT: Constitutionality of court of appeals bill
 (SB 104)

TO: Representative Charles H. Parr, Chairman
 House Judiciary Committee

FROM: Billy G. Berrier *BGB*
 Director
 Division of Legal Services

You have asked whether a constitutional amendment is needed to create a court of appeals and whether there is a constitutional right of appeal to the Supreme Court.

The legislature has the constitutional power to establish courts in addition to the supreme court and the superior court which are established by the constitution. This right is clearly recognized in Section 1, Article IV of the constitution which provides:

SECTION 1. The judicial power of the State is vested in a supreme court, a superior court and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law. (Emphasis added.)

Therefore no constitutional amendment is necessary to establish the court.

Under the United States Constitution, appellate review in state courts is not required. In Griffin v. Illinois, 351 US 12, 100 L ed 891, 76 S Ct 585 (1956), a leading case by the United States Supreme Court holding that while appellate review is not required, if granted at all it may not be limited so that some persons because of poverty may not effectively exercise the right of appeal of a criminal conviction, the court stated:

"It is true that a state is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all."

In a concurring opinion, Justice Frankfurter elaborated on this saying:

The admonition of de Tocqueville not to confuse the familiar with the necessary has vivid application to appeals in criminal cases. The right to an appeal from a conviction for crime is today so established that this leads to the easy assumption that it is fundamental to the protection of life and liberty and therefore a necessary ingredient of due process of law. "Due process" is, perhaps, the least frozen concept of our law -- the least confined to history and the most absorptive of powerful social standards of a progressive society. But neither the unfolding content of "due process" nor the particularized safeguards of the Bill of Rights disregard procedural ways that reflect a national historic policy. It is significant that no appeals from convictions in the federal courts were afforded (with roundabout exceptions negligible for present purposes) for nearly a hundred years; and, despite the civilized standards of criminal justice in modern England, there was no appeal from convictions (again with exceptions not now pertinent) until 1907. Thus, it is now settled that due process of law does not require a State to afford review of criminal judgments.

Nor does the equal protection of the laws deny a State the right to make classifications in law when such classifications are rooted in reason. "The equality at which the 'equal protection' clause aims is not a disembodied equality. The Fourteenth Amendment enjoins 'the equal protection of the laws,' and laws are not abstract propositions." . . . Again, "the right of appeal may be accorded by the State to the accused upon such terms as in its wisdom may be deemed proper." McKane v. Durston, 153 US 684, 687, 688, 38 L ed 867, 686, 14 S Ct 913. The States have exercised this discriminating power. The different States and the same State from time to time have conditioned criminal appeals by fixing the time within which an appeal may be taken,

by delimiting the scope of review, by shaping the mechanism by which alleged errors may be brought before the appellate tribunal, and so forth.

The clause in our constitution that is the equivalent of the Sixth Amendment is Section 11 of Article I which provides:

"SECTION 11. In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury of twelve; except that the legislature may provide for a jury of not more than twelve nor less than six in courts not of record. The accused is entitled to be informed of the nature and cause of the accusation; to be released on bail, except for capital offenses when the proof is evident or the presumption great; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

The Alaska Supreme Court has taken the position that it is not limited by decisions of the United States Supreme Court or the United States Constitution when it expounds the Alaska Constitution since our constitution may have broader safeguards than the minimum federal standards. It applied this rule of construction to the Sixth Amendment in Baker v. City of Fairbanks, 471 P.2d 386 (1970).

There are, of course, no decisions directly on point in Alaska. Corpus Juris Secundum States:

"In criminal prosecutions an appeal or a writ of error will not lie from an intermediate appellate court to the higher court except in cases in which it is authorized by constitution or statute"

citing numerous cases supporting that rule. In Baker the court said:

"What is ultimately persuasive to us is the strong indication by other courts that fundamental fairness under the Fourteenth Amendment requires the extension of procedural safeguards in the administration of criminal justice to an area of crimes once deemed outside the pale of protection."

Representative Charles H. Parr
Page 4
March 30, 1979

The right at question here is being able to appeal, as a matter of right, to the final appellate court in the court from a decision of an intermediate appellate court. Review by the Supreme Court still exists under the bill but the review is in the discretion of the Supreme Court.

Fundamental fairness clearly does not require appeal as a matter of right in all cases to the final appellate court of a state.

BGB:jdn

Appeals court bill faces floor fight

By JEAN KIZER
Associated Press Writer

JUNEAU—Senate-passed legislation to create a state court of appeals cleared the House Finance Committee Thursday, but the bill appears headed for a battle on the floor over a key issue.

The controversy centers on the question of whether some criminal defendants should give up their current right to two appeals.

The legislation, which passed the Senate last session, calls for creation of a court of appeals to handle all criminal appeals. With establishment of the new court, the Supreme Court would handle only civil cases.

Three justices would sit on the appeals court, which would cost the state an estimated \$619,000 a year to operate,

according to Art Snowden, administrative director of the court system.

"In essence aren't we really establishing two Supreme Courts, one to deal with civil cases and one to deal with criminal cases," asked Rep. Joe Montgomery, R-Anchorage, during a Finance Committee meeting on the bill Thursday.

The legislation would allow criminal cases to be appealed only as far as the proposed court of appeals, making it

the top court for criminal cases.

But Rep. Charlie Parr, D-Fairbanks and chairman of the Judiciary Committee which spent long hours rewriting the Senate bill, said that in a few specific cases where the appeals court certifies a constitutional issue is involved the case could go to the Supreme Court.

The area where several committee members voiced disagreement concerns misdemeanors.

Al Remington and Lois Remington
dba
CLEARWATER LODGE

Appeals bill heads for

Associated Press

Juneau — Senate-passed legislation to create a state court of appeals cleared the House Finance Committee Thursday, but the bill appears headed for a battle on the floor over a key issue.

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MONTGOMERY

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PARR

CONT.

battle on House floor

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The area where several committee members voiced disagreement concerns misdemeanors.

Under the bill, if a person is convicted for a misdemeanor, such as drunk driving, he could appeal only to the Superior Court. He would not have an automatic right to appeal to the new court, whereas currently he has the right to appeal twice — first to the Superior Court and then to the Supreme Court.

That means a person convicted of a misdemeanor could appeal only from a single-judge court to another single-judge court.

Several committee members said

they think that is wrong, but they agreed to fight the issue on the House floor.

Snowden said the Supreme Court also is opposed to the one-appeal provision. "We feel people should have the right to appeal to a tribunal," Snowden said.

Regardless of the outcome of that issue, the bill appears headed for a free conference committee because of other changes the House made in the Senate version.

Snowden told the committee the bill is badly needed because the Supreme Court's workload has increased substantially over the past few years and a large backlog of cases has resulted.

"I frankly fear for the quality of the Supreme Court decisions," Snowden said. He said that during the past year he continually has had to cut off paychecks of justices on the high court because they have exceeded the time limit for opinions.

State law requires that a draft opinion be in circulation within six months. If the opinion is not, the salary of the justice assigned to write the opinion is withheld.

Snowden said the court system has two major objections to the bill: allowing only one appeal for misdemeanor offenders and requiring five years of residency for District Court judges.

SB

104

#4 - INTERMEDIATE
COURT OF APPEALS

2 billion
Statewide new by GC assets Fin
Recent new
320,000,000 ← Cap.
180,000,000 Bonds
1 [450,000,000] op. budget 110,000,000

2.9 billion \$
May 20, June 1, op. budget
June 1, reply June 1
June 23, 1980

May 27, 1980 adj. Charles
May 20, Anderson
June 1, Phillips
May 17, Bruchhelt

10011

SB 104

~~Letters~~: Correspondence

- 1) from Ralph Holman
Oregon Supreme Court Justice
January 25, 1979
- 2) from Billy Berrier
Director, Division of Legal Services
March 30, 1979
- 3) from Susan Burke
~~Acting~~ Deputy Administrative Director
April 2, 1979
- 4) from Arthur Snowden
Administrative Director
~~Feb~~ February 2, 1979
- 5) from Senator John Seefeld
April 24, 1979
- 6) from Alaska Bar Association Poll
- 7) from Alaska Academy of Trial Lawyers
April 4, 1979
- 8) from Alaska Public Utilities
April 20, 1979 Commission

9)

Kenai Bar Assoc.
Ken Cusack Pres.
April 17, 1979

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- 4) U.S.
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- 5) Special Report
S.C. Workload:
Analysis of Proposed Solutions
w/
- 6) Fiscal Note

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Cavalry Statistics

X census

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X \$ note

To: (H) JUDICIARY COMMITTEE CHAIR AND MEMBERS.

From: Peggy Berck, Staff Counsel

Date: April 26, 1979

4-30-79

Introduced: 2/2/79
Referred: Judiciary and Finance

Judiciary Committee
BY ZIEGLER, BRADLEY, MELAND, RODEY,
STIMSON AND STURGLEWSKI

IN THE SENATE

House CS FOR SENATE BILL NO. 104 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing the court of appeals; and providing for an effective date."

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

* Section 1. AS 22 is amended by adding a new chapter to read:

CHAPTER 07. THE COURT OF APPEALS.

Sec. 22.07.010. ESTABLISHMENT. There is established the court of appeals, consisting of three judges. ~~The court of appeals is a court of record.~~

Sec. 22.07.020. JURISDICTION. (a) The court of appeals has appellate jurisdiction in actions and proceedings commenced in the superior court involving:

- (1) criminal prosecution;
- (2) post-conviction relief;
- (3) waiver of children's court jurisdiction over a minor

under AS 47.10:

- (4) extradition;
- (5) habeas corpus;
- (6) revocation of probation or parole; ~~AND~~
- (7) bail ~~and~~ .

~~(8) appeal to the superior court from a decision of an administrative agency.~~

(b) The court of appeals has appellate jurisdiction in all actions and proceedings commenced in the district court and may, in its discretion, remand a district court matter to the superior court for a trial in whole or in part.

(c) The court of appeals has appellate jurisdiction of all actions and proceedings commenced before, and all final orders or decisions of administrative agencies. However, the court of appeals may in its discretion, remand an administrative appeal matter to the superior court for a trial in whole or in part.

(d) ~~←~~ The court of appeals may issue injunctions, writs and all other process necessary for the complete exercise of its jurisdiction.

(E) ~~←~~ The court of appeals has jurisdiction to hear appeals of sentences of imprisonment imposed by the superior court or the district court on the grounds that the sentence is excessive or too lenient and, in the exercise of this jurisdiction, may modify the sentence as provided by law and the state constitution.

(f) ~~←~~ An appeal to the court of appeals is a matter of right in all actions and proceedings within its jurisdiction, except that

~~(1) there is no right of appeal to the court of appeals in a case for which direct review by the supreme court has been provided by rule, and~~

~~(2) the state has no right of appeal in criminal cases except to test the sufficiency of the indictment or information or to appeal a sentence on the ground it is too lenient under (e) of this section.~~

→ (3) ~~Sec. 22.07.030. REVIEW BY SUPREME COURT. A party may apply to the supreme court for review of a final decision of the court of appeals in accordance with AS 22.05.010 and rules adopted by the supreme court.~~ In this section, "final decision" means a decision or order other than a dismissal by consent of all parties that closes a matter in the court of appeals.

Sec. 22.07.040. QUALIFICATIONS OF JUDGES. A judge of the court of appeals shall be a citizen of the United States and of the state, a resident of the state for ~~three~~ ^{five} years immediately preceding his appointment, have been engaged for not less than eight years immediately preceding his appointment in the active practice of law, and at the time of appointment be licensed to practice law in the state. For purposes of this section, the active practice of law shall be the same as defined for the justices of the supreme court in AS 22.55.070. ^{All judges}

(9) A final decision of the court of appeals is binding on the superior courts and the district courts unless the decision is superseded by a decision of the supreme court.

1 Sec. 22.07.050. OATH OF OFFICE. Each judge of the court of
2 appeals, upon entering office, shall take and subscribe to an oath of ^{or affirmation}
3 office required of all officers under the constitution, ~~and such further~~
4 ~~oath or affirmation as may be prescribed by law.~~

5 Sec. 22.07.060. APPROVAL OR REJECTION. Each judge of the court of
6 appeals is subject to approval or rejection as provided in the Alaska
7 Election Code (AS 15). The judicial council shall conduct an evaluation
8 of each judge before his retention election and shall provide to the
9 public information about the judge and may provide a recommendation
10 regarding his retention or rejection. The information and any recommen-
11 dation shall be made public at least 30 days before the election. The
12 judicial council shall also provide the information and any recommenda-
13 tion to the office of the lieutenant governor in time for publication in
14 the election pamphlet under AS 15.57.025. If a majority of those voting
15 on the question rejects the candidacy of a judge, he may not for a
16 period of four years thereafter be appointed to fill a vacancy in the
17 supreme court, the court of appeals, ~~or the superior court,~~ ^{or the district court} or the state.

18 Sec. 22.07.070. VACANCIES. (a) The governor shall fill a vacancy
19 or appoint a successor to fill an impending vacancy in the office of
20 judge of the court of appeals within 45 days after receiving nominations
21 from the judicial council, by appointing one of two or more persons
22 nominated by the council for each actual or impending vacancy. An
23 appointment to fill an impending vacancy becomes effective upon the
24 actual occurrence of the vacancy.

25 (b) The office of a judge of the court of appeals becomes vacant
26 30 days after the election at which he is rejected by a majority of
27 those voting on the question or for which he fails to file his declara-
28 tion of candidacy to succeed himself. Upon the occurrence of (1) an
29 actual vacancy; (2) the certification of rejection following an elec-

tion; or (3) the failure of a judge to file a declaration of candidacy to succeed himself, the judicial council shall meet within 45 days and submit to the governor the names of two or more persons qualified for the judicial office; however, the 45-day period may be extended by the judicial council with the concurrence of the supreme court. In the event of an impending vacancy other than by reason of rejection or failure to file a declaration of candidacy, the judicial council may meet at any time within the 90-day period immediately preceding the effective date of the vacancy and submit to the governor the names of two or more persons qualified for the judicial office.

Sec. 22.07.080. RESTRICTIONS. A judge of the court of appeals while holding office may not practice law, or engage in the conduct of any other profession, vocation or business for profit or compensation, which conduct would interfere with his performance of his judicial duties, nor may he hold office in political party, or hold any other office or position of profit under the United States, the state or its political subdivisions. A judge of the court of appeals filing for other than delegate to a constitutional convention of the state or the United States another elective public office forfeits his judicial position.

Sec. 22.07.090. COMPENSATION. (a) Each judge of the court of appeals is entitled to receive annual compensation prescribed in accordance with AS 39.23. The compensation of a judge may not be diminished during his term of office, unless by general law applying to all salaried officers of the state.

(b) A salary warrant may not be issued to a judge of the court of appeals until he has filed with the state officer designated to issue salary warrants an affidavit that no matter referred to the judge for opinion or decision has been incompletely or undecided by him for a period of more than six months.

1 in the name of the State of Alaska, signed by the clerk of the court or
2 his deputy, dated when issued, sealed with the seal of court, and made
3 returnable according to rule prescribed by the supreme court.

4 * Sec. 2. AS 22.05.010 is repealed and re-enacted to read:

5 Sec. 22.05.010. JURISDICTION. (a) The supreme court has final
6 appellate jurisdiction in all actions and proceedings. However,
7 a party has only one appeal as a matter of right from an action
8 or proceeding commenced in either the district court or the superior
9 court, or from an administrative agency decision.

10 (b) Appeal to the supreme court is a matter of right only in those
11 actions and proceedings from which there is no right of appeal to
12 the court of appeals under AS 22.07.020.

13 (c) The supreme court may in its discretion review a final deci-
14 sion of the court of appeals ~~on its own motion or~~ on application of a
15 party under AS 22.07.030. *In this section "FINAL decision" MEANS a*
16 *decision or order other than a dismissal by*
17 *consent of all parties that closes a matter in the court of appeals.*

18 (d) The supreme court may issue injunctions, writs and all other
19 process necessary to the complete exercise of its jurisdiction.

20 * Sec. 3. AS 22.05 is amended by adding a new section to read:

21 Sec. 22.05.015. TRANSFER OF APPELLATE CASES. (a) The supreme
22 court may transfer to the court of appeals for decision a case pending
23 before the supreme court if the case is within the jurisdiction of the
24 court of appeals.

25 (b) The supreme court may take jurisdiction of a case pending
26 before the court of appeals if the court of appeals certifies to the
27 supreme court that the case involves a significant question of law under
28 the Constitution of the United States or under the constitution of the
29 state or involves an issue of substantial public interest that should be
30 determined by the supreme court.

31 ~~system~~

32 ~~4. The supreme court may provide by rule that review of an appeal~~
33 ~~to the superior court from an administrative case be by the supreme~~

~~court rather than by the court of appeals under AS 22.07.020(b).~~

(C) (d) A case filed in the supreme court or in the court of appeals may not be dismissed by one court on the sole ground that it is within the jurisdiction of the other court. The case shall be transferred to the proper court.

* Sec. 4. AS 22.05.060 is amended to read:

Sec. 22.05.060. SEALS OF COURT. The seal of the supreme court is a vignette of the official flag of the state with the words "Seal of the Supreme Court of the State of Alaska" surrounding the vignette. The supreme court shall prescribe by rule the seals of court for the court of appeals and for the superior and district courts.

* Sec. 5. AS 22.05.100 is amended to read:

Sec. 22.05.100. APPROVAL OR REJECTION. Each supreme court justice is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each justice before his retention election and shall provide to the public information about that justice and may provide a recommendation regarding his retention or rejection. Such information and any recommendation shall be made public at least 30 days before the retention election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not be appointed to fill any vacancy in the supreme court, court of appeals or superior courts or district courts of the state for a period of four years.

* Sec. 6. AS 22.10.010(a) is amended to read:

(a) The superior court is the trial court of general jurisdiction, with original jurisdiction in all civil and probate matters, including

1 but not limited to probate and guardianship of minors and incompetents.
2 The jurisdiction of the superior court extends over the whole of the
3 state. The superior court and its judges may issue injunctions, writs
4 of review, mandamus, prohibition, habeas corpus and all other writs
5 necessary or proper to the complete exercise of its jurisdiction. A
6 writ of habeas corpus may be made returnable before any judge of the
7 superior court. ~~[The superior court has jurisdiction in all matters~~
8 ~~appealed to it from an (A SUBORDINATE COURT OR) administrative agency~~
9 ~~where appeal is provided by law. Appeals are subject of right], BUT NO~~
10 APPEAL FROM A SUBORDINATE COURT MAY BE TAKEN BY THE DEFENDANT IN A
11 CRIMINAL CASE AFTER A PLEA OF GUILTY, EXCEPT ON THE GROUND THAT THE
12 SENTENCE WAS EXCESSIVE, AS FURTHER PROVIDED BY THIS SECTION. NO APPEAL
13 MAY BE TAKEN BY THE STATE, EXCEPT TO TEST THE SUFFICIENCY OF AN INDICT-
14 MENT OR INFORMATION. AN APPEAL TO THE SUPERIOR COURT MAY BE TAKEN ON
15 THE GROUND THAT A SENTENCE OF IMPRISONMENT OF 180 DAYS OR MORE WAS
16 EXCESSIVE AND THE SUPERIOR COURT IN THE EXERCISE OF THIS JURISDICTION
17 HAS THE POWER TO MODIFY THE SENTENCE APPEALED FROM UPWARD OR DOWNWARD].
18 ~~The hearings on appeal from a final order or judgment of an (A SUBOR-~~
19 ~~DATE COURT OR) administrative agency shall be on the record unless the~~
20 ~~superior court, in its discretion, grants a trial de novo, in whole or~~
21 ~~in part.]~~

22 Sec. 7. AS 22.10.150 is amended to read:

23 Sec. 22.10.150. APPROVAL OR REJECTION. Each superior court judge
24 is subject to approval or rejection as provided in the Alaska Election
25 Code (AS 15.05 - 15.60). The judicial council shall conduct an evalua-
26 tion of each judge before his retention election and shall provide to
27 the public information about the judge and may provide a recommendation
28 regarding his retention or rejection. Such information and any recom-
29 mendation shall be made public at least 30 days before the retention

30 AS 22.10.150

election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the supreme court, court of appeals or superior courts of the state.

* Sec. 8. AS 22.15.195 is amended to read:

Sec. 22.15.195. APPROVAL OR REJECTION. Each district court judge is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide to the public information about the judge and may provide a recommendation regarding his retention or rejection. Such information and the recommendation shall be made public at least 30 days before the election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the supreme court, court of appeals, superior courts or district courts of the state.

AS 22.15.2-0 is amended to read:

Sec. 22.15.2-0. APPEAL. (a) Either party may appeal a judgment of the district court in a civil action to the court of appeals (SUPERIOR COURT) when the sum in controversy is not less than \$50,000 for the recovery of personal property of value of not less than \$50,000 or in cases in either case, except when the sum is otherwise specified, or for want of an answer.

(b) The defendant may appeal a judgment of the district court in the

1 district court in a criminal action to the court of appeals [SUPERIOR
2 COURT]. When the judgment is given on a plea of guilty, no appeal may
3 be taken by the defendant except on the ground that a sentence of im-
4 prisonment of ¹⁸⁰~~180~~ days or more was excessive; however, ~~the supreme~~
5 ~~court by rule may further provide for review of a judgment given on a~~
6 ~~plea of guilty.~~ The state has no right of appeal in criminal actions
7 for which judgment is given in the district courts, except to test the
8 sufficiency of the information.

9 (c) An appeal from the district court shall be taken within 30
10 days from the date of entry of the judgment. All appeals shall be on
11 the record [UNLESS THE SUPERIOR COURT, IN ITS DISCRETION, GRANTS A TRIAL
12 DE NOVO, IN WHOLE OR IN PART].

13 (d) The supreme court shall prescribe further rules for the pro-
14 cedure for appeals from district courts.

15 * Sec. 10. AS 22.20.010 is amended to read:

16 Sec. 22.20.010. JUDICIAL OFFICER DEFINED. The term "judicial
17 officer" means a supreme court justice, including the chief justice,
18 a judge of the court of appeals, a judge of the superior court, a dis-
19 trict judge and a magistrate.

20 * Sec. 11. AS 22.20.110 is amended to read:

21 Sec. 22.20.110. DUTY OF THE COMMISSIONER IN THE COURT OF APPEALS,
22 THE SUPERIOR COURT AND DISTRICT COURTS. When required by the supreme
23 court, the commissioner shall serve and execute all process issued by
24 the court of appeals, the superior court and the district courts, attend
25 to and wait upon grand and petit juries, maintain order, attend the
26 sittings of the courts, and ~~and~~ ~~and~~ ~~and~~ perform the duties
27 concerning all matters within the jurisdiction of the courts as may be
28 assigned to him. The commissioner is the executive officer of the court
29 of appeals, the superior court and district courts.

1 * Sec. 12. AS 22.25.010(g) is amended to read:

2 (g) The word "justice" means a supreme court justice, and the word
3 "judge," unless the context clearly indicates otherwise, means a judge
4 of the court of appeals, a superior court judge or district court judge.

5 * Sec. 13. AS 22.30.080(2) is amended to read:

6 (2) "judge" means a justice of the supreme court, a judge of
7 the court of appeals, a judge of the superior court, or a judge of the
8 district court who is the subject of an investigation or proceeding
9 under sec. 10, art. IV, Constitution of the State of Alaska and this
10 chapter.

11 * Sec. 14. AS 11.56.900(2) is amended to read:

12 (2) "judicial officer" means a supreme court justice, in-
13 cluding the chief justice, a judge of the court of appeals, a judge of
14 the superior court, a district court judge, or a magistrate;

15 * Sec. 15. AS 15.15.030(10) is repealed and re-enacted to read:

16 (10) A separate nonpartisan judicial ballot shall be desig-
17 nated for each judicial district in which a justice or judge is seeking
18 to succeed himself. The ballot shall be divided into four parts and
19 each part shall bear a heading indicating the court to which the candi-
20 date is seeking approval. Within each part the question of whether the
21 justice or judge shall be approved or rejected shall be set out in
22 substantially the following manner: (A) "Shall be re-
23 tained as justice of the supreme court for 10 years?"; (B) "Shall . . .
24 be retained as judge of the court of appeals for eight years?";
25 "Shall be retained as judge of the superior court for
26 10 years?"; or (D) "Shall be retained as judge of the
27 district court for four years?" Provision shall be made for marking
28 "yes" or "no".

1 Sec. 15.35.140. APPROVAL OR REJECTION OF A JUDGE OF THE COURT OF
2 APPEALS. Each judge of the court of appeals shall be subject to
3 approval or rejection at the first general election held more than three
4 years after his appointment. If approved, he shall thereafter be sub-
5 ject to approval or rejection in a like manner every eighth year.

6 Sec. 15.35.150. FILING DECLARATION BY JUDGE OF THE COURT OF
7 APPEALS. Each judge of the court of appeals seeking to succeed himself
8 in office shall file with the lieutenant governor a declaration of
9 candidacy not less than 90 days before the date of the general election
10 at which approval or rejection is requisite.

11 Sec. 15.35.160. REQUIREMENT OF FILING FEE FOR COURT OF APPEALS.
12 At the time the declaration is filed, each candidate shall pay a filing
13 fee to the lieutenant governor. The filing fee for a candidate for the
14 court of appeals is \$100.

15 Sec. 15.35.170. PLACING NAME OF JUDGE OF THE COURT OF APPEALS ON
16 BALLOT. The lieutenant governor shall place the name of a judge of the
17 court of appeals who has properly filed a declaration of candidacy on
18 the judicial ballot in each judicial district of the state for the
19 general election at which approval is sought.

20 Sec. 17. AS 15.57.025 is amended to read:

21 Sec. 15.57.025. INFORMATION AND RECOMMENDATIONS ON JUDICIAL
22 OFFICERS. No later than 60 days before the applicable state election,
23 the judicial council shall file with the lieutenant governor a statement
24 containing information about each supreme court justice, court of appeals
25 judge, superior court judge, and district court judge who will be sub-
26 ject to a retention election, following the evaluation of each such
27 justice or judge conducted by the judicial council according to law.
28 Each such statement may not exceed 100 words.

29 Sec. 17. AS 15.57.025 is amended to read:

1 (2) judicial officer other than supreme court justice or
2 court of appeals judge, \$50 each.

3 * Sec. 19. AS 24.55.330(2) is amended to read:

4 (2) "agency" includes a department, office, institution,
5 corporation, authority, organization, commission, committee, council or
6 board of a municipality or in the executive, legislative or judicial
7 branches of the state government, and a department, office, institution,
8 corporation, authority, organization, commission, committee, council or
9 board of a municipality or of the state government independent of the
10 executive, legislative and judicial branches; it also includes an
11 officer, employee or member of an "agency" acting or purporting to act
12 in the exercise of his official duties, but does not include the gover-
13 nor, lieutenant governor, a member of the legislature, justice of the
14 supreme court, judge of the court of appeals, a superior court judge,
15 [OR] district court judge, magistrate, member of a city council or
16 borough assembly, elected city or borough mayor, or a member of an
17 elected school board;

18 * Sec. 20. AS 39.20.310(1) is amended to read:

19 (1) members of the state legislature, the governor, the
20 lieutenant governor, and justices and judges of the supreme and superior
21 courts and of the court of appeals, but nothing in AS 39.20.220 -
22 39.20.330 may be construed to diminish the salaries fixed by law for
23 these officers by reason of absence from duty on account of illness or
24 disability;

25 * Sec. 21. AS 39.20.310(2) is

26 (2) "judiciary" means justices of the supreme court and
27 judges of the court of appeals, the superior court and the district
28 court (SUPERIOR AND DISTRICT COURTS).

(vi) justices of the supreme court or judges of the court of appeals or of the superior or district courts of Alaska;

* Sec. 23. AS 39.50.200(2) is amended to read

(2) "judicial officer" means a person appointed as a justice to the supreme court or as a judge to the court of appeals, superior court, district court, or magistrate court.

* Sec. 24. AS 12.55.120(a) is amended to read:

(a) A sentence of imprisonment lawfully imposed by the superior court for a term or for aggregate terms of ~~9 days or more (EXCEPTING ONE YEAR)~~ ^{or 1 year or more} may be appealed to the court of appeals [SUPREME COURT] by the defendant on the ground that the sentence is excessive. By appealing a sentence under this section, the defendant waives the right to plead that by a revision of the sentence resulting from the appeal he has been twice placed in jeopardy for the same offense.

* Sec. 25. AS 12.55.120(b) is amended to read:

(b) A sentence of imprisonment lawfully imposed by the superior court may be appealed to the court of appeals [SUPREME COURT] by the state on the ground that the sentence is too lenient, however, when a sentence is appealed by the state and the defendant has not appealed the sentence, the court is not authorized to increase the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion. ~~SEE LEGAL REPORT AT END OF BILL~~

* Sec. 30. A judge of the court of appeals is entitled to receive annual compensation equal to 95 per cent of the annual compensation of a supreme court justice, payable in equal monthly installments, from the date upon which he takes office until superseded by payment of compensation resulting from the first salary recommendations made under AS 39.25 for judges of the court of appeals.

1 * Sec. 31. Notwithstanding the effective date of this Act, operations of
2 the court of appeals shall commence on a date determined by the supreme court
3 after all judges of the court of appeals have taken office.

4 * Sec. 32. The superior court has concurrent appellate jurisdiction with
5 the court of appeals in actions and proceedings commenced in the district
6 court and filed in the superior court before the date on which operations of
7 the court of appeals commence. The supreme court may transfer to the court
8 of appeals an appellate matter involving an action or proceeding commenced in
9 the district court which is pending in the superior court on the date on
10 which operations of the court of appeals commence, including a matter filed
11 before the effective date of this Act. An appellate matter not so trans-
12 ferred shall be decided by the superior court. Before commencement of opera-
13 tions in the court of appeals, a decision of the superior court under this
14 section may be appealed to the supreme court and thereafter to the court of
15 appeals.

16 *Sec. 33. Cases pending in the supreme court on the date
17 on which the operations of the court of appeals begin
18 which have been heard or submitted to the supreme court
19 on the briefs, on or before that date shall be retained
20 by the supreme court for decision. The supreme court
21 may transfer to the court of appeals all other pending
22 cases within the jurisdiction of the court of appeals.

23 * Sec. 34. It is the intent of the legislature that the court of appeals
24 commence operations as soon as possible after the effective date of this Act.
25 The administrative director of courts shall immediately take necessary action
26 to provide suitable facilities for the court of appeals. When advised by the
27 supreme court, the judicial council shall call and submit nominations to the
28 governor for all initial vacancies for judge of the court of appeals.

29 * Sec. 35. Section 14 of this Act takes effect January 1, 1980. The
30 same shall take effect July 1, 1979.

* Sec. 26. AS 44.62.560 is amended to read:

Sec. 44.62.560. Judicial review. (a) Judicial review ~~of the superior court, or by the court of appeals~~ of a final administrative order may be had by filing a notice of appeal in accordance with the applicable rules of court governing appeals in civil matters. Except as otherwise provided in this section, the notice of appeal shall be filed within 30 days after the last day on which reconsideration can be ordered, and served on each party to the proceeding. The right to appeal is not affected by the failure to seek reconsideration before the agency.

(b) The complete record of the proceedings, or parts of it which the appellant designates, shall be prepared by the agency. A copy shall be furnished to all parties participating in the appeal. The original shall be filed in ~~the superior court, or the court of appeals,~~ within 30 days after the appellant pays the estimated cost of preparing the complete or designated record or files a certificate with respect to the estimated cost.

(c) The complete record includes: (1) the pleadings, (2) all notices and orders issued by the agency, (3) the proposed decision by a hearing officer, (4) the final decision, (5) a transcript of all testimony and proceedings, (6) the proposed record of objections, (7) the hearing transcript, and (8) all other documents in the case.

INSERTS con't.

(d) Upon order of the superior court, or the court of appeals/ appeals may be taken on the original record or parts of it. The record may be typewritten or duplicated by any standard process. Analogous rules of court governing appeals in civil matters shall be followed where this chapter is silent, and when not in conflict with this chapter.

e) The superior court, or the court of appeals, may enjoin agency action in excess of constitutional or statutory authority at any stage of an agency proceeding. If agency action is unlawfully withheld or unreasonably withheld, the superior court, or the court of appeals, may compel the agency to initiate action.

Sec. 27. AS 14.62.370(a) is amended to read:

a) An appeal shall be heard by the superior court, or the court of appeals, sitting without a jury.

4-21-79

Long draft
(Malone)

Work Order #6161
Pegues

Original sponsors: Ziegler, Bradley,
Meland, et al

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 104

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to courts; establishing the court of
7 appeals; and providing for an effective date."

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

9 * Section 1. AS 22 is amended by adding a new chapter to read:

10 CHAPTER 07. THE COURT OF APPEALS.

11 Sec. 22.07.010. ESTABLISHMENT. There is established the court of
12 appeals, consisting of three judges.

13 Sec. 22.07.020. JURISDICTION. (a) The court of appeals has
14 appellate jurisdiction in actions and proceedings commenced in the
15 superior court or the district court involving:

- 16 (1) criminal prosecution;
- 17 (2) post-conviction relief;
- 18 (3) extradition;
- 19 (4) habeas corpus;
- 20 (5) probation or parole; and
- 21 (6) bail.

22 (b) The court of appeals may issue injunctions, writs and all
23 other process necessary for the complete exercise of its jurisdiction.

24 (c) The court of appeals has jurisdiction to hear appeals of
25 sentences of imprisonment imposed by the superior court or the district
26 court on the grounds that the sentence is excessive or too lenient and,
27 in the exercise of this jurisdiction, may modify the sentence as pro-
28 vided by law and the state constitution.

29 (d) An appeal to the court of appeals is a matter of right in all

1 actions and proceedings within its jurisdiction, except that the state
2 has no right of appeal in criminal cases except to test the sufficiency
3 of the indictment or information or to appeal a sentence on the ground
4 it is too lenient under (c) of this section.

5 Sec. 22.07.030. REVIEW BY SUPREME COURT. A party may apply to the
6 supreme court for review of a final decision of the court of appeals in
7 accordance with AS 22.05.010(c). In this section, "final decision"
8 means a decision or order other than a dismissal by consent of all
9 parties that closes a matter in the court of appeals.

10 Sec. 22.07.040. QUALIFICATIONS OF JUDGES. A judge of the court of
11 appeals shall be a citizen of the United States and of the state, a
12 resident of the state for three years immediately preceding his appoint-
13 ment, have been engaged for not less than eight years immediately pre-
14 ceding his appointment in the active practice of law, and at the time of
15 appointment be licensed to practice law in the state. For purposes of
16 this section, the active practice of law shall be the same as defined
17 for the justices of the supreme court in AS 22.05.070.

18 Sec. 22.07.050. OATH OF OFFICE. Each judge of the court of
19 appeals, upon entering office, shall take and subscribe to an oath of
20 office required of all officers under the constitution and such further
21 oath or affirmation as may be prescribed by law.

22 Sec. 22.07.060. APPROVAL OR REJECTION. Each judge of the court of
23 appeals is subject to approval or rejection as provided in the Alaska
24 Election Code (AS 15). The judicial council shall conduct an evaluation
25 of each judge before his retention election and shall provide to the
26 public information about the judge and may provide a recommendation
27 regarding his retention or rejection. The information and any recommen-
28 dation shall be made public at least 30 days before the election. The
29 judicial council shall also provide the information and any recommenda-

1 tion to the office of the lieutenant governor in time for publication in
2 the election pamphlet under AS 15.57.025. If a majority of those voting
3 on the question rejects the candidacy of a judge, he may not for a
4 period of four years thereafter be appointed to fill a vacancy in any
5 court of the state.

6 Sec. 22.07.070. VACANCIES. (a) The governor shall fill a vacancy
7 or appoint a successor to fill an impending vacancy in the office of
8 judge of the court of appeals within 45 days after receiving nominations
9 from the judicial council, by appointing one of two or more persons
10 nominated by the council for each actual or impending vacancy. An
11 appointment to fill an impending vacancy becomes effective upon the
12 actual occurrence of the vacancy.

13 (b) The office of a judge of the court of appeals becomes vacant
14 90 days after the election at which he is rejected by a majority of
15 those voting on the question or for which he fails to file his declara-
16 tion of candidacy to succeed himself. Upon the occurrence of (1) an
17 actual vacancy; (2) the certification of rejection following an elec-
18 tion; or (3) the failure of a judge to file a declaration of candidacy
19 to succeed himself, the judicial council shall meet within 45 days and
20 submit to the governor the names of two or more persons qualified for
21 the judicial office; however, the 45-day period may be extended by the
22 judicial council with the concurrence of the supreme court. In the
23 event of an impending vacancy other than by reason of rejection or
24 failure to file a declaration of candidacy, the judicial council may
25 meet at any time within the 90-day period immediately preceding the
26 effective date of the vacancy and submit to the governor the names of
27 two or more persons qualified for the judicial office.

28 Sec. 22.07.080. RESTRICTIONS. A judge of the court of appeals
29 while holding office may not practice law, or engage in the conduct of

1 any other profession, vocation or business for profit or compensation,
2 which conduct would interfere with his performance of his judicial
3 duties, nor may he hold office in a political party, or hold any other
4 office or position of profit under the United States, the state or its
5 political subdivisions. A judge of the court of appeals filing for
6 another elective public office forfeits his judicial position.

7 Sec. 22.07.090. COMPENSATION. (a) Each judge of the court of
8 appeals is entitled to receive annual compensation prescribed in accor-
9 dance with AS 39.23. The compensation of a judge may not be diminished
10 during his term of office, unless by general law applying to all
11 salaried officers of the state.

12 (b) A salary warrant may not be issued to a judge of the court of
13 appeals until he has filed with the state officer designated to issue
14 salary warrants an affidavit that no matter referred to the judge for
15 opinion or decision has been incompleted or undecided by him for a
16 period of more than six months.

17 Sec. 22.07.100. PROCESS. Process of the court of appeals shall be
18 in the name of the State of Alaska, signed by the clerk of the court or
19 his deputy, dated when issued, sealed with the seal of court, and made
20 returnable according to rule prescribed by the supreme court.

21 * Sec. 2. AS 22.05.010 is repealed and re-enacted to read:

22 Sec. 22.05.010. JURISDICTION. (a) The supreme court has final
23 appellate jurisdiction in all actions and proceedings.

24 (b) Appeal to the supreme court is a matter of right except from
25 actions and proceedings within the appellate jurisdiction of the court
26 of appeals under AS 22.07.020.

27 (c) The supreme court may review a final decision of the court of
28 appeals on application of a party under AS 22.07.030 if the supreme
29 court determines that the decision of the court of appeals

1 (1) is in conflict with a decision of the supreme court of
2 this state or of the United States;

3 (2) is in conflict with a decision of the court of appeals;

4 (3) involves a significant question of law under the Con-
5 stitution of the United States or of the state; or

6 (4) involves a legal issue of substantial public importance
7 that should be determined by the supreme court.

8 (d) The supreme court may issue injunctions, writs and all other
9 process necessary to the complete exercise of its jurisdiction.

10 * Sec. 3. AS 22.05 is amended by adding a new section to read:

11 Sec. 22.05.015. TRANSFER OF APPELLATE CASES. (a) The supreme
12 court may take jurisdiction of a case pending before the court of
13 appeals if the court of appeals certifies that

14 (1) the case involves a significant question of law under the
15 Constitution of the United States or of the state or involves a legal
16 issue of substantial public importance that should be determined by the
17 supreme court; or

18 (2) the caseload of the court of appeals is such that trans-
19 fer to the supreme court is necessary for the expeditious administration
20 of justice.

21 (b) A case filed in the supreme court or in the court of appeals
22 may not be dismissed by one court on the sole ground that it is within
23 the jurisdiction of the other court. The case shall be transferred to
24 the proper court.

25 * Sec. 4. AS 22.05.060 is amended to read:

26 Sec. 22.05.060. SEALS OF COURT. The seal of the supreme court is
27 a vignette of the official flag of the state with the words "Seal of the
28 Supreme Court of the State of Alaska" surrounding the vignette. The
29 supreme court shall prescribe by rule the seals of court for the court

1 of appeals and for the superior and district courts.

2 * Sec. 5. AS 22.05.100 is amended to read:

3 Sec. 22.05.100. APPROVAL OR REJECTION. Each supreme court justice
4 is subject to approval or rejection as provided in the Alaska Election
5 Code (AS 15.05 - 15.60). The judicial council shall conduct an evalua-
6 tion of each justice before his retention election and shall provide to
7 the public information about that justice and may provide a recommenda-
8 tion regarding his retention or rejection. Such information and any
9 recommendation shall be made public at least 30 days before the reten-
10 tion election. The judicial council shall also provide such information
11 and any recommendation to the office of the lieutenant governor in time
12 for publication in the election pamphlet under AS 15.57.015. If a
13 majority of those voting on the question rejects his candidacy, he shall
14 not be appointed to fill any vacancy in the supreme court, court of
15 appeals or superior courts of the state for a period of four years
16 thereafter.

17 * Sec. 6. AS 22.10.020(a) is amended to read:

18 (a) The superior court is the trial court of general jurisdiction,
19 with original jurisdiction in all civil and criminal matters, including
20 but not limited to probate and guardianship of minors and incompetents.
21 The jurisdiction of the superior court extends over the whole of the
22 state. The superior court and its judges may issue injunctions, writs
23 of review mandamus, prohibition, habeas corpus and all other writs
24 necessary or proper to the complete exercise of its jurisdiction. A
25 writ of habeas corpus may be made returnable before any judge of the
26 superior court. The superior court has jurisdiction in all matters
27 appealed to it from a subordinate court, or administrative agency when
28 appeal is provided by law. Appeals are a matter of right |, BUT NO
29 APPEAL FROM A SUBORDINATE COURT MAY BE TAKEN BY THE DEFENDANT IN A

1 CRIMINAL CASE AFTER A PLEA OF GUILTY, EXCEPT ON THE GROUND THAT THE
2 SENTENCE WAS EXCESSIVE, AS FURTHER PROVIDED BY THIS SECTION. NO APPEAL
3 MAY BE TAKEN BY THE STATE, EXCEPT TO TEST THE SUFFICIENCY OF AN INDICT-
4 MENT OR INFORMATION. AN APPEAL TO THE SUPERIOR COURT MAY BE TAKEN ON
5 THE GROUND THAT A SENTENCE OF IMPRISONMENT OF 180 DAYS OR MORE WAS
6 EXCESSIVE AND THE SUPERIOR COURT IN THE EXERCISE OF THIS JURISDICTION
7 HAS THE POWER TO MODIFY THE SENTENCE APPEALED FROM UPWARD OR DOWNWARD].
8 The hearings on appeal from a final order or judgment of a subordinate
9 court or administrative agency shall be on the record unless the
10 superior court, in its discretion, grants a trial de novo, in whole or
11 in part.

12 * Sec. 7. AS 22.10.150 is amended to read:

13 Sec. 22.10.150. APPROVAL OR REJECTION. Each superior court judge
14 is subject to approval or rejection as provided in the Alaska Election
15 Code (AS 15.05 - 15.60). The judicial council shall conduct an evalua-
16 tion of each judge before his retention election and shall provide to
17 the public information about the judge and may provide a recommendation
18 regarding his retention or rejection. Such information and any recom-
19 mendation shall be made public at least 30 days before the retention
20 election. The judicial council shall also provide such information and
21 any recommendation to the office of the lieutenant governor in time for
22 publication in the election pamphlet under AS 15.57.025. If a majority
23 of those voting on the question rejects his candidacy, he shall not for
24 a period of four years thereafter be appointed to fill any vacancy in
25 the supreme court, court of appeals or superior courts of the state.

26 * Sec. 8. AS 22.15.195 is amended to read:

27 Sec. 22.15.195. APPROVAL OR REJECTION. Each district court judge
28 is subject to approval or rejection as provided in the Alaska Election
29 Code (AS 15.05 - 15.60). The judicial council shall conduct an evalua-

1 tion of each judge before his retention election and shall provide to
2 the public information about the judge and may provide a recommendation
3 regarding his retention or rejection. Such information and the recom-
4 mendation shall be made public at least 30 days before the election.
5 The judicial council shall also provide such information and any recom-
6 mendation to the office of the lieutenant governor in time for publica-
7 tion in the election pamphlet under AS 15.57.025. If a majority of those
8 voting on the question rejects his candidacy, he shall not for a period
9 of four years thereafter be appointed to fill any vacancy in the supreme
10 court, court of appeals, superior courts or district courts of the
11 state.

12 * Sec. 9. AS 22.15.240(b) is amended to read:

13 (b) The defendant may appeal a judgment of conviction given in the
14 district court in a criminal action to the court of appeals [SUPERIOR
15 COURT]. When the judgment is given on a plea of guilty, no appeal may
16 be taken by the defendant except on the ground that a sentence of im-
17 prisonment of 180 days or more was excessive; however, the supreme court
18 by rule may further provide for review of a judgment given on a plea of
19 guilty. The state has no right of appeal in criminal actions for which
20 judgment is given in the district courts, except to test the sufficiency
21 of the information.

22 * Sec. 10. AS 22.20.010 is amended to read:

23 Sec. 22.20.010. JUDICIAL OFFICER DEFINED. The term "judicial
24 officer" means a supreme court justice, including the chief justice,
25 a judge of the court of appeals, a judge of the superior court, a dis-
26 trict judge and a magistrate.

27 * Sec. 11. AS 22.20.110 is amended to read:

28 Sec. 22.20.110. DUTY OF THE COMMISSIONER IN THE COURT OF APPEALS,
29 THE SUPERIOR COURT AND DISTRICT COURTS. When required by the supreme

1 court, the commissioner shall serve and execute all process issued by
2 the court of appeals, the superior court and the district courts, attend
3 to and wait upon grand and petit juries, maintain order, attend the
4 sessions of the courts, and exercise the power and perform the duties
5 concerning all matters within the jurisdiction of the courts as may be
6 assigned to him. The commissioner is the executive officer of the court
7 of appeals, the superior court and district courts.

8 * Sec. 12. AS 22.25.010(g) is amended to read:

9 (g) The word "justice" means a supreme court justice, and the word
10 "judge," unless the context clearly indicates otherwise, means a judge
11 of the court of appeals, a superior court judge or district court judge.

12 * Sec. 13. AS 22.30.080(2) is amended to read:

13 (2) "judge" means a justice of the supreme court, a judge of
14 the court of appeals, a judge of the superior court, or a judge of the
15 district court who is the subject of an investigation or proceeding
16 under sec. 10, art. IV, Constitution of the State of Alaska and this
17 chapter.

18 * Sec. 14. AS 11.56.900(2) is amended to read:

19 (2) "judicial officer" means a supreme court justice, in-
20 cluding the chief justice, a judge of the court of appeals, a judge of
21 the superior court, a district court judge, or a magistrate;

* Sec. 15. AS 15.15.030(10) is repealed and re-enacted to read:

1 tained as justice of the supreme court for 10 years?"; (B) "Shall . . .
 2 be retained as judge of the court of appeals for eight years?";
 3 (C) "Shall be retained as judge of the superior court for
 4 six years?"; or (D) "Shall be retained as judge of the
 5 district court for four years?" Provision shall be made for marking
 6 each question "Yes" or "No".

7 * Sec. 16. AS 15.35 is amended by adding new sections to read:

8 Sec. 15.35.140. APPROVAL OR REJECTION OF A JUDGE OF THE COURT OF
 9 APPEALS. Each judge of the court of appeals shall be subject to
 10 approval or rejection at the first general election held more than three
 11 years after his appointment. If approved, he shall thereafter be sub-
 12 ject to approval or rejection in a like manner every eighth year.

13 Sec. 15.35.150. FILING DECLARATION BY JUDGE OF THE COURT OF
 14 APPEALS. Each judge of the court of appeals seeking to succeed himself
 15 in office shall file with the lieutenant governor a declaration of
 16 candidacy not less than 90 days before the date of the general election
 17 at which approval or rejection is requisite.

18 Sec. 15.35.160. REQUIREMENT OF FILING FEE FOR COURT OF APPEALS.
 19 At the time the declaration is filed, each candidate shall pay a filing
 20 fee to the lieutenant governor. The filing fee for a candidate for the
 21 court of appeals is \$100.

22 Sec. 15.35.170. PLACING NAME OF JUDGE OF THE COURT OF APPEALS ON
 23 BALLOT. The lieutenant governor shall place the name of a judge of the
 24 court of appeals who has properly filed a declaration of candidacy on
 25 the judicial ballot in each judicial district of the state for the
 26 general election at which approval is sought.

27 * Sec. 17. AS 15.57.025 is amended to read:

28 Sec. 15.57.025. INFORMATION AND RECOMMENDATIONS ON JUDICIAL OFFI-
 29 CERS. No later than 60 days before the applicable state election, the

1 judicial council shall file with the lieutenant governor a statement
2 including information about each supreme court justice, court of appeals
3 judge, superior court judge, and district court judge who will be sub-
4 ject to a retention election, following the evaluation of each such
5 justice or judge conducted by the judicial council according to law.
6 Each such statement may not exceed 300 words.

7 * Sec. 18. AS 15.57.040(2) is amended to read:

8 (2) judicial officer other than supreme court justice or
9 court of appeals judge, \$50 each.

10 * Sec. 19. AS 24.55.330(2) is amended to read:

11 (2) "agency" includes a department, office, institution,
12 corporation, authority, organization, commission, committee, council or
13 board of a municipality or in the executive, legislative or judicial
14 branches of the state government, and a department, office, institution,
15 corporation, authority, organization, commission, committee, council or
16 board of a municipality or of the state government independent of the
17 executive, legislative and judicial branches; it also includes an offi-
18 cer, employee or member of an "agency" acting or purporting to act in
19 the exercise of his official duties, but does not include the governor,
20 lieutenant governor, a member of the legislature, justice of the supreme
21 court, judge of the court of appeals, a superior court judge, [OR]
22 district court judge, magistrate, member of a city council or borough
23 assembly, elected city or borough mayor, or a member of an elected
24 school board;

25 * Sec. 20. AS 39.20.310(1) is amended to read:

26 (1) members of the state legislature, the governor, the
27 lieutenant governor, and justices and judges of the supreme and superior
28 courts and of the court of appeals, but nothing in AS 39.20.220 - 39.20.
29 330 may be construed to diminish the salaries fixed by law for these

1 officers by reason of absence from duty on account of illness or other-
2 wise;

3 * Sec. 21. AS 39.23.130(2) is amended to read:

4 (2) "judiciary" means justices of the supreme court and
5 judges of the court of appeals, the superior court and the district
6 court [THE SUPERIOR AND DISTRICT COURTS].

7 * Sec. 22. AS 39.35.680(21)(C)(vi) is amended to read:

8 (vi) justices of the supreme court or judges of the
9 court of appeals or of the superior or district courts of
10 Alaska;

11 * Sec. 23. AS 39.50.200(2) is amended to read:

12 (2) "judicial officer" means a person appointed as a justice
13 to the supreme court or as a judge to the court of appeals, superior
14 court, district court, or magistrate court.

15 * Sec. 24. AS 12.55.120(a) is amended to read:

16 (a) A sentence of imprisonment lawfully imposed by the superior
17 court for a term or for aggregate terms exceeding one year may be
18 appealed to the court of appeals [SUPREME COURT] by the defendant on the
19 ground that the sentence is excessive. By appealing a sentence under
20 this section, the defendant waives the right to plead that by a revision
21 of the sentence resulting from the appeal he has been twice placed in
22 jeopardy for the same offense.

23 * Sec. 25. AS 12.55.120(b) is amended to read:

24 (b) A sentence of imprisonment lawfully imposed by the superior
25 court may be appealed to the court of appeals [SUPREME COURT] by the
26 state on the ground that the sentence is too lenient; however, when a
27 sentence is appealed by the state and the defendant has not appealed the
28 sentence, the court is not authorized to increase the sentence but may
29 express its approval or disapproval of the sentence and its reasons in a

1 written opinion.

2 * Sec. 26. A judge of the court of appeals is entitled to receive annual
3 compensation equal to 95 per cent of the annual compensation of a supreme
4 court justice, payable in equal monthly installments, from the date upon
5 which he takes office until superseded by payment of compensation resulting
6 from the first salary recommendations made under AS 39.23 for judges of the
7 court of appeals.

8 * Sec. 27. Notwithstanding the effective date of this Act, operations of
9 the court of appeals shall commence on a date determined by the supreme court
10 after all judges of the court of appeals have taken office.

11 * Sec. 28. The superior court has concurrent appellate jurisdiction as
12 provided under AS 22.07.020 with the court of appeals in actions and pro-
13 ceedings commenced in the district court and filed in the superior court
14 before the date on which operations of the court of appeals commence. The
15 supreme court may transfer to the court of appeals an appellate matter within
16 the jurisdiction of the court of appeals relating to an action or proceeding
17 commenced in the district court which is pending in the superior court on the
18 date on which operations of the court of appeals commence, including an
19 appellate matter filed before the effective date of this Act. An appellate
20 matter not so transferred shall be decided by the superior court. Before
21 commencement of operations in the court of appeals, a decision of the
22 superior court under this section may be appealed to the supreme court and
23 thereafter to the court of appeals.

24 * Sec. 29. The supreme court may transfer to the court of appeals any
25 matter within the jurisdiction of the court of appeals which is pending in
26 the supreme court on the date on which operations of the court of appeals
27 commence, including matters filed in the supreme court before the effective
28 date of this Act.

29 * Sec. 30. It is the intent of the legislature that the court of appeals

1 commence operations as soon as possible after the effective date of this Act.
2 The administrative director of courts shall immediately take necessary action
3 to provide suitable facilities for the court of appeals. When advised by the
4 supreme court, the judicial council shall meet and submit nominations to the
5 governor for all initial vacancies for judge of the court of appeals.

6 * Sec. 31. Section 14 of this Act takes effect January 1, 1980. The
7 remainder of this Act takes effect July 1, 1979.

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work
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Original sponsors: Ziegler, Bradley
Meland, et al

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 104
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the court of appeals amending the
7 law relating to the supreme court; and providing for an
8 effective date."

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

10 * Section 1. AS 22 is amended by adding a new chapter to read:

11 CHAPTER 07. THE COURT OF APPEALS.

12 Sec. 22.07.010. ESTABLISHMENT. There is established the court of
13 appeals, consisting of three judges.

14 Sec. 22.07.020. JURISDICTION. (a) The court of appeals has
15 appellate jurisdiction in civil actions and proceedings commenced in the
16 superior court.

17 (b) The court of appeals has appellate jurisdiction of superior
18 court decisions resulting from appeals to the superior court

- 19 (1) from the district court; and
- 20 (2) from administrative agencies.

21 (c) The court of appeals may issue injunctions, writs and all
22 other process necessary for the complete exercise of its jurisdiction.

23 (d) An appeal to the court of appeals is a matter of right in all
24 actions and proceedings in its jurisdiction.

25 (e) A final decision of the court of appeals is binding on the
26 superior court and the district courts unless that decision is super-
27 seded by a decision of the supreme court.

28 Sec. 22.07.030. REVIEW BY SUPREME COURT. A party may apply to the
29 supreme court for review of a final decision of the court of appeals in

1 accordance with AS 22.05.010 ~~and rules adopted by the supreme court.~~
2 Review is in the discretion of the supreme court as set out in AS 22.05.
3 010(c). In this section, "final decision" means a decision or order
4 other than a dismissal by consent of all parties that closes a matter in
5 the court of appeals.

6 Sec. 22.07.040. QUALIFICATIONS OF JUDGES. A judge of the court of
7 appeals shall be a citizen of the United States and of the state, a
8 resident of the state for three years immediately preceding his appoint-
9 ment, have been engaged for not less than eight years immediately pre-
10 ceding his appointment in the active practice of law, and at the time of
11 appointment be licensed to practice law in the state. For purposes of
12 this section, the active practice of law is the same as defined for the
13 justices of the supreme court in AS 22.05.070.

14 Sec. 22.07.050. OATH OF OFFICE. Each judge of the court of
15 appeals, upon entering office, shall take and subscribe to an oath of
16 office required of all officers under the constitution.

17 Sec. 22.07.060. APPROVAL OR REJECTION. Each judge of the court of
18 appeals is subject to approval or rejection as provided in the Alaska
19 Election Code (AS 15). The judicial council shall conduct an evaluation
20 of each judge before his retention election and shall provide to the
21 public information about the judge and may provide a recommendation
22 regarding his retention or rejection. The information and any recommen-
23 dation shall be made public at least 30 days before the election. The
24 judicial council shall also provide the information and any recommenda-
25 tion to the office of the lieutenant governor in time for publication in
26 the election pamphlet under AS 15.57.025. If a majority of those voting
27 on the question rejects the candidacy of a judge, he may not for a
28 period of four years thereafter be appointed to fill a vacancy in the
29 court, the court of appeals, or the superior court of the state.

1 Sec. 22.07.070. VACANCIES. (a) The governor shall fill a vacancy
 2 or appoint a successor to fill an impending vacancy in the office of
 3 judge of the court of appeals within 45 days after receiving nominations
 4 from the judicial council, by appointing one of two or more persons
 5 nominated by the council for each actual or impending vacancy. An
 6 appointment to fill an impending vacancy becomes effective upon the
 7 actual occurrence of the vacancy.

8 (b) The office of a judge of the court of appeals becomes vacant
 9 90 days after the election at which he is rejected by a majority of
 10 those voting on the question or for which he fails to file his declara-
 11 tion of candidacy to succeed himself. Upon the occurrence of (1) an
 12 actual vacancy; (2) the certification of rejection following an elec-
 13 tion; or (3) the failure of a judge to file a declaration of candidacy
 14 to succeed himself, the judicial council shall meet within 45 days and
 15 submit to the governor the names of two or more persons qualified for
 16 the judicial office. However, the 45-day period may be extended by the
 17 judicial council with the concurrence of the supreme court. In the
 18 event of an impending vacancy other than by reason of rejection or
 19 failure to file a declaration of candidacy, the judicial council may
 20 meet at any time within the 90-day period immediately preceding the
 21 effective date of the vacancy and submit to the governor the names of
 22 two or more persons qualified for the judicial office.

23 Sec. 22.07.080. RESTRICTIONS. A judge of the court of appeals
 24 while holding office may not practice law, or engage in the conduct of
 25 any other profession, vocation or business for profit or compensation,
 26 which conduct would interfere with his performance of his judicial
 27 duties, nor may he hold office in a political party, or hold any other
 28 office or position of profit under the United States, the state or its
 29 political subdivisions. A judge of the court of appeals filing for

1 another elective public office forfeits his judicial position.

2 Sec. 22.07.090. COMPENSATION. (a) Each judge of the court of
3 appeals is entitled to receive annual compensation prescribed in accor-
4 dance with AS 39.23. The compensation of a judge may not be diminished
5 during his term of office, unless by general law applying to all
6 salaried officers of the state.

7 (b) A salary warrant may not be issued to a judge of the court of
8 appeals until he has filed with the state officer designated to issue
9 salary warrants an affidavit that no matter referred to the judge for
10 opinion or decision has been incompleated or undecided by him for a
11 period of more than six months.

12 Sec. 22.07.100. PROCESS. Process of the court of appeals shall be
13 in the name of the State of Alaska, signed by the clerk of the court or
14 his deputy, dated when issued, sealed with the seal of court, and made
15 returnable according to rule prescribed by the supreme court.

16 * Sec. 2. AS 22.05.010 is repealed and re-enacted to read:

17 Sec. 22.05.010. JURISDICTION. (a) The supreme court has final
18 appellate jurisdiction in all actions and proceedings. However, a party
19 has only one appeal as a matter of right from an action, proceeding or
20 appeal commenced in the superior court.

21 (b) Appeal to the supreme court is a matter of right only in those
22 actions and proceedings from which there is no right of appeal to the
23 court of appeals under AS 22.07.020;

24 (c) The supreme court may in its discretion review a final deci-
25 sion of the court of appeals ~~on its own motion or~~ on application of a
26 party under AS 22.07.030. In this section "final decision" means a
27 decision or order other than a dismissal by consent of all parties that
28 closes a matter in the court of appeals.

29 (d) The supreme court may issue injunctions, writs and all other

The north wing of the house is a projection
from the main part of the house. The ground
is level in front.

1 process necessary to the complete exercise of its jurisdiction.

2 * Sec. 3. AS 22.05 is amended by adding a new section to read:

3 Sec. 22.05.015. TRANSFER OF APPELLATE CASES. (a) The supreme
4 court may transfer to the court of appeals for decision a case pending
5 before the supreme court if the case is within the jurisdiction of the
6 court of appeals.

7 (b) The supreme court may take jurisdiction of a case pending
8 before the court of appeals if the court of appeals certifies to the
9 supreme court that the case involves a significant question of law under
10 the Constitution of the United States or under the constitution of the
11 state or involves an issue of substantial public interest that should be
12 determined by the supreme court.

13 (c) A case filed in the supreme court or in the court of appeals
14 may not be dismissed by one court on the sole ground that it is within
15 the jurisdiction of the other court. The case shall be transferred to
16 the proper court.

17 * Sec. 4. AS 22.05.060 is amended to read:

18 Sec. 22.05.060. SEALS OF COURT. The seal of the supreme court is
19 a vignette of the official flag of the state with the words "Seal of the
20 Supreme Court of the State of Alaska" surrounding the vignette. The
21 supreme court shall prescribe by rule the seals of court for the court
22 of appeals and for the superior and district courts.

23 * Sec. 5. AS 22.05.100 is amended to read:

24 Sec. 22.05.100. APPROVAL OR REJECTION. Each supreme court justice
25 is subject to approval or rejection as provided in the Alaska Election
26 Code (AS 15.05 - 15.60). The judicial council shall conduct an evalua-
27 tion of each justice before his retention election and shall provide to
28 the public information about that justice and may provide a recommenda-
29 tion regarding his retention or rejection. Such information and any

1 recommendation shall be made public at least 30 days before the reten-
 2 tion election. The judicial council shall also provide such information
 3 and any recommendation to the office of the lieutenant governor in time
 4 for publication in the election pamphlet under AS 15.57.025. If a
 5 majority of those voting on the question rejects his candidacy, he shall
 6 not be appointed to fill any vacancy in the supreme court, court of
 7 appeals or superior courts of the state for a period of four years
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9
 10 Sec. 22.10.150. APPROVAL OR REJECTION. Each superior court judge
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 16 mendation shall be made public at least 30 days before the retention
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 20 of those voting on the question rejects his candidacy, he shall not for
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 22 the supreme court, court of appeals or superior courts of the state.

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2 The judicial council shall also provide such information and any recom-
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7 court, court of appeals, superior courts or district courts of the
8 state.

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11 officer" means a supreme court justice, including the chief justice,
12 a judge of the court of appeals, a judge of the superior court, a dis-
13 trict judge and a magistrate.

14 * Sec. 9. AS 22.20.110 is amended to read:

15 Sec. 22.20.110. DUTY OF THE COMMISSIONER IN THE COURT OF APPEALS,
16 THE SUPERIOR COURT AND DISTRICT COURTS. When required by the supreme
17 court, the commissioner shall serve and execute all process issued by
18 the court of appeals, the superior court and the district courts, attend
19 to and wait upon grand and petit juries, maintain order, attend the
20 sessions of the courts, and exercise the power and perform the duties
21 concerning all matters within the jurisdiction of the courts as may be
22 assigned to him. The commissioner is the executive officer of the court
23 of appeals, the superior court and district courts.

24 * Sec. 10. AS 22.25.010(g) is amended to read:

25 (g) The word "justice" means a ~~supreme~~ court justice, and the word
26 "judge" unless the context clearly indicates otherwise, means a judge
27 of the court of appeals, a superior court judge or district court judge.

28 * Sec. 11. AS 22.30.030(2) is amended to read:

29 (2) "judge" means a justice of the supreme court, a judge of

1 the court of appeals, a judge of the superior court, or a judge of the
 2 district court who is the subject of an investigation or proceeding
 3 under sec. 10, art. IV, Constitution of the State of Alaska and this
 4 chapter.

5 * Sec. 12. AS 11.56.900(2) is amended to read:

6 (2) "judicial officer" means a supreme court justice, in-
 7 cluding the chief justice, a judge of the court of appeals, a judge of
 8 the superior court, a district court judge, or a magistrate;

9 * Sec. 13. AS 15.15.030(10) is repealed and re-enacted to read:

10 (10) A separate nonpartisan judicial ballot shall be desig-
 11 nated for each judicial district in which a justice or judge is seeking
 12 to succeed himself. The ballot shall be divided into four parts and
 13 each part shall bear a heading indicating the court to which the candi-
 14 date is seeking approval. Within each part the question of whether the
 15 justice or judge shall be approved or rejected shall be set out in
 16 substantially the following manner: (A) "Shall be re-
 17 tained as justice of the supreme court for 10 years?"; (B) "Shall . . .
 18 be retained as judge of the court of appeals for eight years?";
 19 (C) "Shall be retained as judge of the superior court for
 20 six years?"; or (D) "Shall be retained as judge of the
 21 district court for four years?" Provision shall be made for marking
 22 each question "Yes" or "No".

23 * Sec. 14. AS 15.35 is amended by adding new sections to read:

24 Sec. 15.35.140. APPROVAL OR REJECTION OF A JUDGE OF THE COURT OF
 25 APPEALS. Each judge of the court of appeals shall be subject to
 26 approval or rejection at the first general election held more than three
 27 years after his appointment. If approved, he shall thereafter be sub-
 28 ject to approval or rejection in a like manner every eighth year.

29 Sec. 15.35.150. FILING DECLARATION BY JUDGE OF THE COURT OF

1 APPEALS. Each judge of the court of appeals seeking to succeed himself
2 in office shall file with the lieutenant governor a declaration of
3 candidacy not less than 90 days before the date of the general election
4 at which approval or rejection is requisite.

5 Sec. 15.35.160. REQUIREMENT OF FILING FEE FOR COURT OF APPEALS.
6 At the time the declaration is filed, each candidate shall pay a filing
7 fee to the lieutenant governor. The filing fee for a candidate for the
8 court of appeals is \$100.

9 Sec. 15.35.170. PLACING NAME OF JUDGE OF THE COURT OF APPEALS ON
10 BALLOT. The lieutenant governor shall place the name of a judge of the
11 court of appeals who has properly filed a declaration of candidacy on
12 the judicial ballot in each judicial district of the state for the
13 general election at which approval is sought.

14 * Sec. 15. AS 15.57.025 is amended to read:

15 Sec. 15.57.025. INFORMATION AND RECOMMENDATIONS ON JUDICIAL
16 OFFICERS. No later than 60 days before the applicable state election,
17 the judicial council shall file with the lieutenant governor a statement
18 including information about each supreme court justice, court of appeals
19 judge, superior court judge, and district court judge who will be sub-
20 ject to a retention election, following the evaluation of each such
21 justice or judge conducted by the judicial council according to law.
22 Each such statement may not exceed 300 words.

23 * Sec. 16. AS 15.57.040(2) is amended to read:

24 (2) judicial officer other than supreme court justice or
25 court of appeals judge, \$50 each.

26 * Sec. 17. AS 24.55.330(2) is amended to read:

27 (2) "agency" includes a department, office, institution,
28 corporation, authority, organization, including a committee, council or
29 board, a non-profit entity or in the case of a local government, a

1 branches of the state government, and a department, office, institution,
2 corporation, authority, organization, commission, committee, council or
3 board of a municipality or of the state government independent of the
4 executive, legislative and judicial branches; it also includes an
5 officer, employee or member of an "agency" acting or purporting to act
6 in the exercise of his official duties, but does not include the gover-
7 nor, lieutenant governor, a member of the legislature, justice of the
8 supreme court, judge of the court of appeals, a superior court judge,
9 [OR] district court judge, magistrate, member of a city council or
10 borough assembly, elected city or borough mayor, or a member of an
11 elected school board;

12 * Sec. 18. AS 39.20.310(1) is amended to read:

13 (1) members of the state legislature, the governor, the
14 lieutenant governor, and justices and judges of the supreme and superior
15 courts and of the court of appeals, but nothing in AS 39.20.220 -
16 39.20.330 may be construed to diminish the salaries fixed by law for
17 these officers by reason of absence from duty on account of illness or
18 otherwise;

19 * Sec. 19. AS 39.23.130(2) is amended to read:

20 (2) "judiciary" means justices of the supreme court and
21 judges of the court of appeals, the superior court and the district
22 court [THE SUPERIOR AND DISTRICT COURTS].

23 * Sec. 20. AS 39.35.680(21)(C)(vi) is amended to read:

24 (vi) justices of the supreme court or judges of the
25 court of appeals or of the superior or district courts of
26 Alaska;

27 * Sec. 21. AS 39.50.200(2) is amended to read:

28 (2) "judicial officer" means a person appointed as a justice
29 to the supreme court or as a judge to the court of appeals, superior

1 court, district court, or magistrate court.

2 * Sec. 22. A judge of the court of appeals is entitled to annual compen-
3 sation equal to 95 per cent of the annual compensation of a supreme court
4 justice, payable in equal monthly installments, from the date which he takes
5 office until superseded by payment of compensation resulting from the first
6 salary recommendations made under AS 39.23 for judges of the court of
7 appeals.

8 * Sec. 23. Notwithstanding the effective date of this Act, operations of
9 the court of appeals shall begin on a date determined by the supreme court
10 after all judges of the court of appeals have taken office.

11 * Sec. 24. Cases pending in the supreme court on the date on which
12 operations of the court of appeals begin which have been heard or submitted
13 to the supreme court on the briefs on or before that date shall be retained
14 by the supreme court for decision. The supreme court may transfer to the
15 court of appeals all other pending cases within the jurisdiction of the court
16 of appeals.

17 * Sec. 25. It is the intent of the legislature that the court of appeals
18 begin operations as soon as possible after the effective date of this Act.
19 The administrative director of courts shall immediately take necessary action
20 to provide suitable facilities for the court of appeals. When advised by the
21 supreme court, the judicial council shall meet and submit nominations to the
22 governor for the initial vacancies for judge of the court of appeals.

23 * Sec. 26. Section 12 of this Act takes effect January 1, 1980. The
24 remainder of this Act takes effect July 1, 1979.

25
26
27

THE SUPREME COURT OF THE STATE OF ALASKA

VICTOR L. WHARTON,)
)
 Appellant,) File No. 3380
)
 v.) OPINION
)
 STATE OF ALASKA,)
) [No. 1797 - February 16, 1979]
 Appellee.)
)

Appeal from the Superior Court of the State of
Alaska, Third Judicial District, Anchorage,
J. Justin Ripley, Judge.

Appearances: Vincent Vitale, Anchorage, for
Appellant. John A. Scukanec, Assistant
District Attorney, Joseph D. Balfe, District
Attorney, Anchorage, and Avrum M. Gross,
Attorney General, Juneau, for Appellee.

Before. Boochever, Chief Justice, Rabinowitz,
Connor, Burke and Matthews, Justices.

BOOCHEVER, Chief Justice.
BURKE, Justice, Dissenting.

In this sentence appeal, appellant Wharton chal-
lenges the superior court's imposition of sentence as being

¹
excessive. Wharton entered a plea of guilty to one count
of possession of cocaine, a violation of AS 17.10.010,²
and was sentenced to one year imprisonment with no time
suspended. We hold that Wharton's sentence is excessive.

The events leading to the appellant's arrest are
not in dispute. On October 8, 1976, at Bushy Bob's in
Alyeska's Glennallen pipeline camp, two Alaska State Trooper
investigators met an individual named Wynn³ who stated he
would sell them cocaine at \$150.00 per gram. The next
evening the investigators arrived at the camp to meet Wynn.
After finding him, the investigators were introduced to
Wharton. The investigators stated that they were still
interested in buying some cocaine. When Wynn left the room
to get the cocaine, Wharton continued conversing with the
investigators about the cocaine to be purchased and produced

1 Wharton was arrested and sentenced with Winthrop
Elliott. Elliott pled guilty to one count of sale of
heroin and was sentenced to three years imprisonment,
with no portion suspended. Elliott's sentence appeal is
the subject of Case No. 3379.

2 AS 17.10.010 provides:

Acts prohibited. It is unlawful for
any person to manufacture, possess,
have under his control, sell, pre-
scribe, administer, dispense, give,
barter, supply or distribute in any
manner, or compound any narcotic drug
except as authorized in this chapter.

3 Wynn was Winthrop Elliott. See Note 1, supra.

a small quantity. Wynn returned to the room with two packets of cocaine and the officers paid for it with three marked one hundred dollar bills. Two backup officers then entered the room and placed Wynn and Wharton under arrest.

Before we consider whether Wharton's sentence is excessive, we address an issue not raised by the parties on appeal: whether this court has jurisdiction to review a sentence of one year or less.

In Bear v. State, 439 P.2d 432 (Alaska 1968), Alaska's then three-justice supreme court held, over a dissent by Justice Rabinowitz, that we had no jurisdiction to review criminal sentences absent statutory authorization. Justice Rabinowitz concluded that in the past, the court had reviewed sentences, and that the constitutional grant to this court of "final appellate jurisdiction," Alaska Constitution art. IV, § 2, included the power to review criminal sentences. Id. at 437-41. The basic point of the dissent was that "[s]entencing is a discretionary judicial function and the judiciary itself should have the power to correct abuses of discretion." Id. at 410 [footnote omitted].

After the Bear decision, the Alaska legislature in 1969 recognized jurisdiction of the court to entertain sentence appeals. AS 22.05.010(b) states:

The supreme court has jurisdiction to hear appeals of sentences of imprisonment lawfully imposed by the superior courts on the grounds that the sentence is excessive or too lenient and, in the exercise of this jurisdiction, may modify the sentence as provided by law and by the constitution of this state. For the purpose of considering appeals of sentences on these grounds the supreme court may sit in divisions.

It is to be noted that the sentence appeal jurisdiction was not limited in any way by this provision.

At the same time, the legislature conferred on defendants a limited right to appeal sentences of imprisonment exceeding one year. ⁴ In 1976, we promulgated Appellate Rule 21(a) which provides:

4 AS 12.55.120(a) specifies:

Appeal of sentence. (a) A sentence of imprisonment lawfully imposed by the superior court for a term or for aggregate terms exceeding one year may be appealed to the supreme court by the defendant on the ground that the sentence is excessive. By appealing a sentence under this section, the defendant waives the right to plead that by a revision of the sentence resulting from the appeal he has been twice placed in jeopardy for the same offense.

Both AS 22.05.010(b) and AS 12.55.120(a) were part of the same act, being §§ 1 and 4 of Ch. 117, SLA 1969.

At the time of imposition of any sentence of imprisonment of 45 days or more, the judge shall inform the defendant . . . [t]hat the sentence may be appealed to the supreme court on the ground that it is excessive. [emphasis added]

Wharton received a sentence of one year imprisonment. If AS 12.55.120 were the only source of our authority for sentence review, Wharton would be unable to appeal because his sentence does not exceed one year. Appellate Rule 21, however, clearly permits Wharton's appeal. In promulgating Rule 21, this court accepted Justice Rabinowitz's position in Bear that review of criminal sentences is inherent in our power as the court of "final appellate jurisdiction," Alaska Constitution, art. IV, § 2.

Nevertheless, our action is not in conflict with the statute. By AS 22.05.010(b), the legislature statutorily recognized the jurisdiction of this court to hear appeals of sentences without qualification. It conferred on convicted defendants a limited right of appeal of sentences. In the exercise of this court's inherent and statutory jurisdiction

5 Further support for our power to review sentences is derived from art. I, § 12 of the Alaska Constitution: "Penal administration shall be based on the principle of reformation and upon the need for protecting the public." Sentence review insures that sentencing courts pay due regard to the goals of reformation and protection of the public.

to entertain appeals, we have expanded that right by means of Appellate Rule 21.

We now turn to whether Wharton's sentence of one year imprisonment was excessive.

At the time of the offense, Wharton was eighteen years old. He had no prior criminal record. His employment history was good. He had been in Alaska only a few months prior to this offense, working at his first full-time job since graduating from high school. Contact with authorities in Louisiana, where Wharton had previously lived, revealed Wharton's high school record. He was an average student who was not a "trouble maker" and had no serious problems. Moreover, the Louisiana probation and parole department stated that the department would be willing to supervise him if he were placed on probation.

With respect to Wharton's use of cocaine, the record indicates that it was very limited. Wharton told the author of the pre-sentence report, T. K. Furbush, that he had used cocaine on three or four occasions. Elliott--Wynn, in the transaction that led to the arrest--told Furbush that, to his knowledge, Wharton had never sold any drugs. The state did not dispute the fact that Wharton was a relative newcomer to the drug world. At the time of his arrest, Wharton had in his possession less than two-thirds of a gram of cocaine.

see dissent

BURKE, Justice, dissenting.

Article IV, section 1 of the Constitution of Alaska states that "[t]he jurisdiction of courts shall be prescribed by law." As used in that section the phrase "by law" means "by the legislature." Alaska Const. art. XII, § 11. See Proceedings of the Alaska Constitutional Convention 582, 721-29, 732, 2820-30, 2843-51, 2854-55. Exercising the power given to it by article IV, section 1, the legislature, in 1969, enacted legislation authorizing appellate review of criminal sentences under certain circumstances. Ch. 117, SLA 1969.

Such legislation came after our decision in Bear v. State, 439 P.2d 432 (Alaska 1968), wherein we held that this court "does not have jurisdiction to review and remand or to review and revise a criminal sentence for abuse of discretion." Id. at 435. Section 1 of the 1969 act amended AS 22.05.010 by adding a new subsection:

(b) The supreme court has jurisdiction to hear appeals of sentences of imprisonment lawfully imposed by the superior courts on the grounds that the sentence is excessive or too lenient and, in the exercise of this jurisdiction, may modify the sentence as provided by law and by the constitution of this state. For the purpose of considering appeals of sentences on these grounds, the supreme court may sit in divisions.

Section 2 amended AS 22.10.020(a) to allow, among other things, "[a]n appeal to the superior court . . . on the

ground that a [district court] sentence of imprisonment of 180 days or more was excessive" Pertaining to appeals from the superior court, section 4 of the act amended AS 12.55 by adding a new section, AS 12.55.120. Subsection (a) of AS 12.55.120 provides in part: "A sentence of imprisonment lawfully imposed by the superior court for a term or for aggregate terms exceeding one year may be appealed to the supreme court by the defendant upon the ground that the sentence is excessive."

To me, the language of the 1969 act clearly indicates that the legislature intended that appellate review of criminal sentences for excessiveness be available, but only where the sanction imposed exceeds certain limits, and that this court's jurisdiction to review sentences of the superior court be limited to cases involving imprisonment "for a term or for aggregate terms exceeding one year." Since Wharton's sentence is not for a term exceeding one year, I conclude that this court lacks jurisdiction to review it for excessiveness.

Whatever the situation might have been at the time of the decision in Bear, matters changed when the legislature thereafter saw fit to exercise its power under article IV, section 1. Before that time, there might have been much to recommend the view expressed by Justice Rabinowitz in his scholarly dissent in Bear, namely: that this court has

jurisdiction to review criminal sentences under the general grant of "final appellate jurisdiction" contained in article IV, section 2. However, even if we assume that Justice Rabinowitz was correct, neither his dissent in Bear nor the majority opinion in this case explains to my satisfaction how it is now possible to ignore the limitation which the legislature placed on our jurisdiction when it adopted AS 12.55.120(a). If both sections 1 and 2 of article IV are to be given effect, it seems to me that section 1 must be read as empowering the legislature to place such a limitation on the general grant of appellate jurisdiction that the majority says is contained in section 2.

trict Court so that it could enter fresh decree from which timely appeal could be taken to Court of Appeals. *Pennsylvania Public Utility Commission v. Pennsylvania R. Co.*, Pa.1935, 50 S.Ct. 423, 362 U.S. 251, 15 L.Ed.2d 224.

Since the district court evinced its realization that its ordered reapportionment could not be sustained as basis for conducting 1966 election of Alabama legislators, and avowedly intends to take some further action should reapportioned Alabama Legislature fail to enact a constitutionally valid permanent apportionment scheme in the interim, the Supreme Court affirmed the judgment and remanded the cases for further proceedings. *Reynolds v. Sims*, Ala 1964, 54 S.Ct. 1362, 377 U.S. 533, 12 L.Ed.2d 596, rehearing denied 55 S.Ct. 12, 13, 379 U.S. 570, 571, 13 L.Ed.2d 76, 77.

Where District Court erred in holding that Interstate Commerce Commission's order, establishing joint rates for through routes and apportioning such joint rates so as to assist financially weak carrier, was prohibited by section 15(4) of Title 49, preventing Commission from establishing through routes, and joint rates applicable thereto, for purpose of diverting traffic to lines of financially weak carrier, United States Supreme Court was remanded case for further proceedings without considering contention that Commission's order was not supported by essential findings or substantial evidence justifying continued operation of carrier sought to be assisted. *U. S. v. Great Northern Ry. Co.*, Minn.1952, 72 S.Ct. 985, 343 U.S. 502, 96 L.Ed. 1192, rehearing denied 73 S.Ct. 4, 344 U.S. 818, 97 L.Ed. 659.

Where District Court denied injunction abolishing segregation in South Carolina school and issued injunction to equalize educational facilities and ordered defendant school officials to report within six months the action taken to equalize facilities, and report was filed pending appeal by plaintiff Negro school children, but was not considered by District Court, Supreme Court would not consider questions raised on appeal but would vacate judgment and remand case to District Court to take whatever action might be deemed appropriate in the light of the report. *Briggs v. Elliott*, S.C.1952, 72 S.Ct. 327, 342 U.S. 350, 96 L.Ed. 1692.

Where suit by Georgia corporation to enjoin Revenue Commissioner from alleged illegal assessment of taxes was dismissed by United States District Court without consideration of corporation's contention that Commissioner was bound

by prior decree entered by District Court and affirmed by Supreme Court, upon determination that District Court did in fact have jurisdiction of cause, case would be remanded to District Court. *Georgia R. R. & Banking Co. v. Redwine*, Ga.1932, 72 S.Ct. 321, 342 U.S. 299, 96 L. Ed. 335.

Where appeal to Supreme Court from District Court for District of Columbia was unauthorized, cause was remanded in order that a new judgment might be entered from which an appeal could be perfected to Court of Appeals for District of Columbia. *U. S. v. Belt*, App.D.C.1943, 63 S.Ct. 1273, 319 U.S. 521, 57 L.Ed. 1579.

Where three-judge court heard case but such court and the Circuit Court of Appeals erroneously decided that the District Judge alone had jurisdiction, and that the judgment was appealable to the Circuit Court of Appeals, and the Supreme Court decided that case was proper one for three-judge court and vacated judgment below, at a direction to the Circuit Court of Appeals to dismiss appeal would terminate the litigation because the time within which a direct appeal might have been brought to the Supreme Court had elapsed, the Supreme Court in order to preserve right to appeal, remanded cause to the District Court for entry of a fresh judgment from which a timely appeal might be taken. *Query v. U. S.*, S.C.1942, 62 S.Ct. 1122, 319 U.S. 489, 66 L.Ed. 1616.

Where statutory three-judge court dismissed complaint in suit to enjoin en-

forcement of federal administrative regulation, and plaintiff took direct appeal to United States Supreme Court, but former section 380a of this title [now this section and sections 2191, 2252 and 2254 of this title], was inapplicable, Supreme Court would vacate the decree below and remand the cause for further proceedings to be taken independently of said section. *William Jameson & Co. v. Murgenthau*, App.D.C.1939, 59 S.Ct. 604, 307 U.S. 171, 83 L.Ed. 1189.

Where the three judges sitting in the District Court refused an injunction against the enforcement of an order of a state Corporation Commission, on the ground they had no authority to grant it, the Supreme Court, on reversing that decision, will remand the cause to the District Court for trial, since generally it is not desirable that the Supreme Court pass on such matters until they have been dealt with below. *Oklahoma Natural Gas Co. v. Russell*, Okl.1925, 43 S.Ct. 553, 261 U.S. 299, 67 L.Ed. 659.

107. Costs

Costs were awarded against appellants who erroneously brought case in District Court of three judges, and, upon adverse decree, appealed to Supreme Court, which, though without jurisdiction, vacated decree and remanded cause in order to save to appellants their proper remedies. *Oklahoma Gas & Electric Co. v. Oklahoma Packing Co.*, Okl.1934, 54 S.Ct. 732, 292 U.S. 386, 75 L.Ed. 1318.

§ 1254. Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for

decision of the entire matter in controversy. June 25, 1948, c. 646, 62 Stat. 928.

Historical and Revision Notes

Reviser's Note. Based on Title 28 U.S.C., 1940 ed., §§ 346 and 347 (Mar. 3, 1911, c. 221, §§ 259, 240, 36 Stat. 1157 [derived from Mar. 3, 1891, c. 517, § 6, 26 Stat. 828]; Feb. 13, 1923, c. 229, § 1, 43 Stat. 938; Jan. 31, 1928, c. 14, § 1, 45 Stat. 54; June 7, 1934, c. 426, 48 Stat. 926).

Section consolidates sections 346 and 347 of Title 28, U.S.C., 1940 ed.

Words "or in the United States Court of Appeals for the District of Columbia" and "or of the United States Court of Appeals for the District of Columbia" in sections 346 and 347 of title 28 U.S.C., 1940 ed., were omitted (See section 41 of this title.)

The prefatory words of this section preceding paragraph (1) were substituted for subsection (c) of said section 347.

The revised section omits the words of section 347 of Title 28, U.S.C., 1940 ed., "and with like effect as if the case had been brought there with unrestricted appeal", and the words of section 346 of such title "in the same manner as if it had been brought there by appeal". The effect of subsections (1) and (3) of the revised section is to preserve existing law and retain the power of unrestricted review of cases certified or brought up on certiorari. Only in subsection (2) is review restricted.

Changes were made in phraseology and arrangement. 80th Congress House Report No. 308.

Cross References

Appeal from courts of appeals in bankruptcy cases, see section 47 of Title 11, Bankruptcy.

Detection of suspect security risks, review by Supreme Court upon certiorari or certification as provided in this section, see section 821(d) of Title 50, War and National Defense.

Economic poisons, registration of; review by Supreme Court upon certiorari or certification, see section 135b(d) of Title 7, Agriculture.

Quorum of Supreme Court Justices, see section 2109 of this title.

Review generally, see section 2101 et seq. of this title.

Review of appeals of orders of Secretary of Health, Education, and Welfare respecting approval of construction projects for State mental retardation facilities and community mental health centers, see section 2694 of Title 42, The Public Health and Welfare.

Review of appeals of orders relating to use of pesticide chemicals on raw agricultural commodities, see section 216(a) (1) of Title 21, Food and Drugs.

Time for appeal or certiorari, and stay, see section 2101 of this title.

Vesting and liquidation of Bulgarian, Hungarian, and Rumanian property, final orders or decrees of district courts of the United States reviewable as provided in this section, see section 1631c of Title 22, Foreign Relations and Intercourse.

Writs, see section 1651 of this title.

Rules of the Supreme Court

Procedure generally on appeal, writ of certiorari, or certification of questions, see Rules of the Supreme Court.

Supersedeas on appeal and stay pending review on certiorari, see rules 19 and 27.

Federal Rules of Civil Procedure

Power of appellate court to stay proceedings not limited by Rule 62, see Rule 62(g).

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SPECIAL REPORT

SUPREME COURT WORKLOAD: ANALYSIS OF PROPOSED SOLUTIONS

INTRODUCTION

During 1976 the Alaska Supreme Court experienced a dramatic increase in appellate filings. Prior to that time there had been a steady but relatively slow rate of increase. By mid-1977 the caseload had grown even further, and the Supreme Court became seriously concerned about its ability to cope with the increases. The Administrative Office was asked to explore possible solutions to the workload problem, and a preliminary report was prepared in September of 1977, discussing possible solutions and providing some statistical comparison between the workload of the Alaska Supreme Court and other supreme courts from relatively similar states. The preliminary report concluded that among the possible solutions, the establishment of an intermediate appellate court offered the best likelihood of providing significant long term assistance to the Supreme Court in coping with its increasing workload.

Because the rate of increase in appellate filings appeared to be stabilizing by the fall of 1977, the Court decided to wait one year before making a final determination whether to seek legislation to establish an intermediate appellate court. At the end of 1978, the Court concluded that even with only a slight increase in filings, it was unlikely that the Court would be able to keep

pace adequately. Legislation was then drafted for introduction in the 1979 Legislative session to establish an intermediate appellate court.

This special report contains much of the discussion prepared for the 1977 preliminary report and includes updated statistical information relevant to the need for an intermediate appellate court for Alaska.

I. SUPREME COURT WORKLOAD: 1970 - 1978

The membership of the Alaska Supreme Court was increased in 1968 from three to five justices. Since approximately 1970, each justice has regularly employed two personal law clerks. Apart from the establishment of a central research staff, slight increases in clerical staff, and the recent employment of legal interns who earn law school course credit while spending an academic quarter working for the Supreme Court, the number of regular employees whose functions are directly related to the decision making process has not increased since 1970. The following table shows the increases in case filings in the Supreme Court from 1970 through 1978.

TABLE I

	<u>Total Case Filings</u>		<u>Total Case Filings</u>
1970	217	1975	337
1971	215	1976	466
1972	249	1977	613
1973	255	1978	630
1974	290		

Total case filings have more than doubled since 1974. The increase since 1970 is 190 percent, or almost triple.

The court's response to this increase has been varied. First, the court adopted several changes in its operating procedures to help facilitate the appellate process. Many unopposed routine motions that previously were decided by individual justices are now handled entirely by the Clerk of the Supreme Court. These routine motions include motions for extensions of time for filing briefs, for overlength briefs, to supplement or amend designations of record, and so forth.¹ The Court also established a central screening staff under the Clerk of the Court to review non-routine motions and petitions for discretionary review, and to screen appeals to identify cases that are amenable to summary disposition. There are currently two attorneys employed as central staff. The court has also begun, partly as a result of the central staff screening, to increase its use of summary orders and of per curiam and memorandum opinions. During 1978, the court disposed of a total of 54 cases on the merits by these methods.

¹See Appellate Rule 14(a). During 1978 the clerk and his deputies disposed of 796 unopposed routine motions under this rule.