The major response on the court's part to its increased workload, however, has been simply to work much harder than before. During 1975 the court disposed of 299 cases. In 1978 the court disposed of 560 cases, nearly double the dispositions during 1975. The following table shows the number of dispositions from 1975 through 1978.

TABLE II

	Total Dispositions*
1975	299
1976	335
1977	450
1978	560

*Includes voluntary dismissals.

Another indicator of the court's increased workload is the number of opinions published. During 1975 the court published a total of 122 opinions, or an average of 24 opinions per justice. During 1978 the court published 237 opinions, or an average of 47 per justice.[2] Table III shows the number of opinions published by the court from 1975 through 1978.

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[2]Retired Justice John Dimond authored 14 opinions during 1978 while on pro tem status. If these are deducted from the total, the five justices authored an average of 45 opinions each.

TABLE III

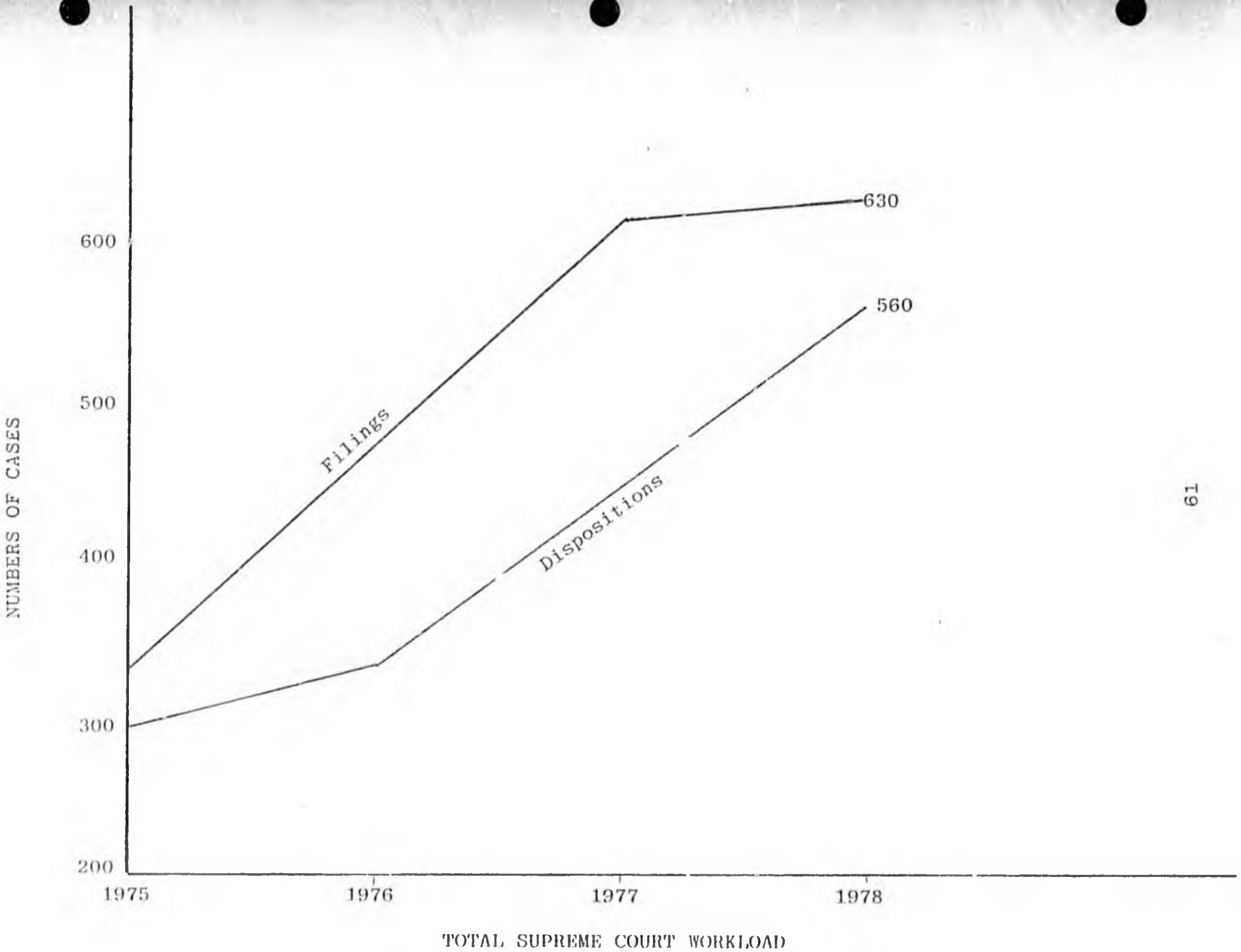
	Opinions Published	Average Per Justice
1975	122	24
1976	142	23
1977	189	38
1978	237	47

Not surprisingly, the number of cases pending at the end of each year has also increased substantially. Table IV shows the number of cases pending at the end of each year commencing with December 31, 1975.

TABLE IV

	Cases Pending on December 31
1975	258
1976	391
1977	554
1978	624

The chart on the next page shows the court's disposition rate as compared with the rate of increase in filings. While the disposition rate has generally kept up with the filing rate, the number of dispositions are still fewer than filings each year and the court continues to fall behind. There are also strong indications that the court has reached its saturation point in terms of the number of cases it can handle in a year without seriously sacrificing the quality of the work product.



TOTAL SUPREME COURT WORKLOAD

First, disposition times are increasing, and are beyond the point that should be acceptable to the citizens of Alaska. The average disposition times for civil, criminal, and sentence appeals for 1977 and 1978 are as follows:

TABLE V

	1976	1977	1978
Civil Appeals	437 days	485 days	533 days
Criminal Appeals	(not avail-	593 days	612 days
Sentence Appeals	able)	304 days	358 days

Under the Court's internal operating procedures, a case should take no longer than 280 days total, from notice of appeal to mandate.[3] Included within that total is a maximum recommended time of 120 days from submission of a case on briefs or following oral argument until publication of an opinion. The chart on the following page shows that the average time that a civil appeal is under submission has increased sharply over the past several years. During 1976, the Court took an average of 196 days following submission of a civil case until publication of an opinion. During 1978 this stage of the appellate process was averaging 296 days for civil appeals, or an increase of nearly 60 percent.

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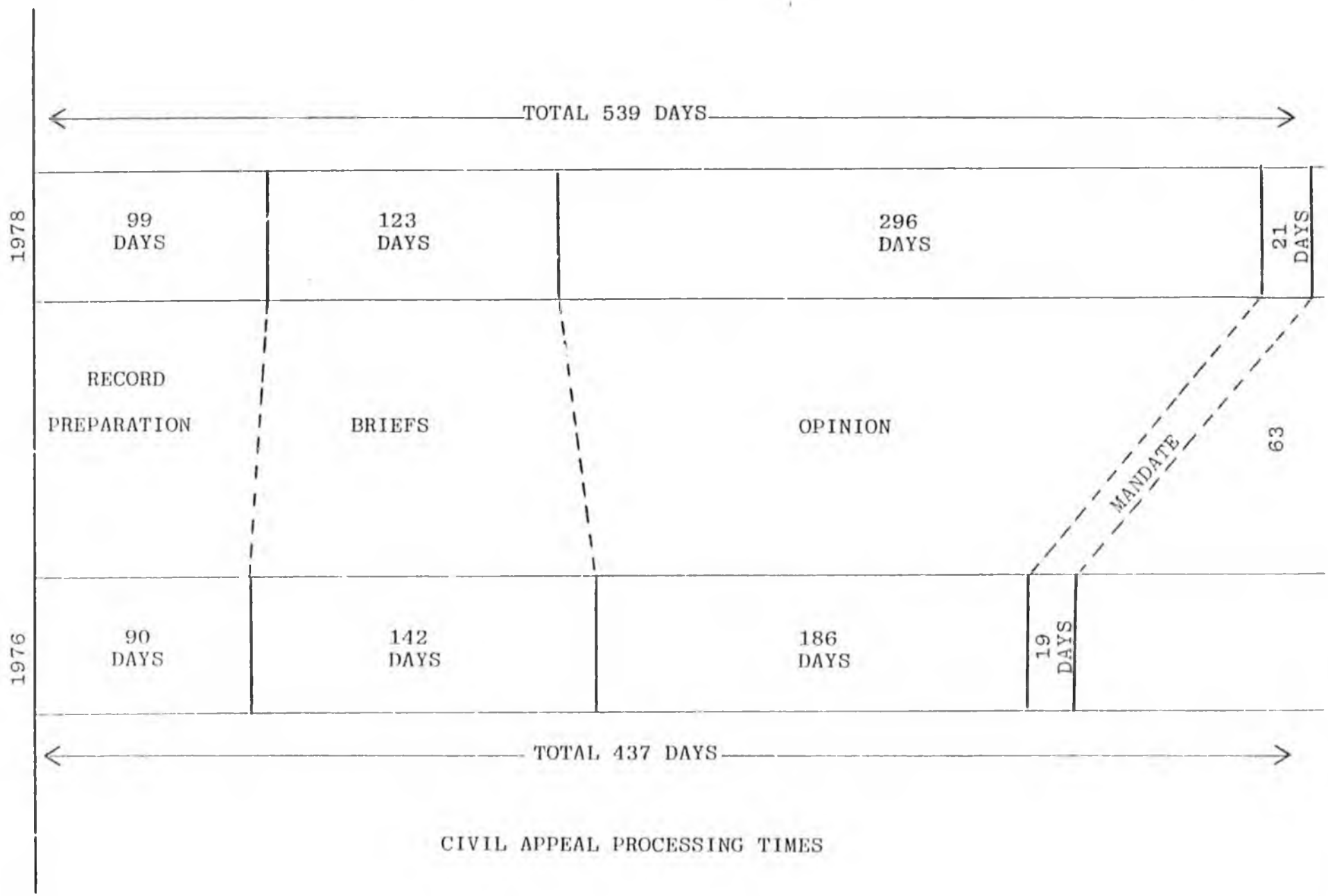
[3]This total includes 40 days for record preparation, 30 days for appellant's brief, 30 days for appellee's brief, 20 days for a reply brief, 30 days for placing the case on the argument calendar, 90 days for preparation of a first draft opinion, and 30 days for the other justices to vote upon and make suggested revisions to the opinion for final publication, and 10 days for the issuance of the mandate.



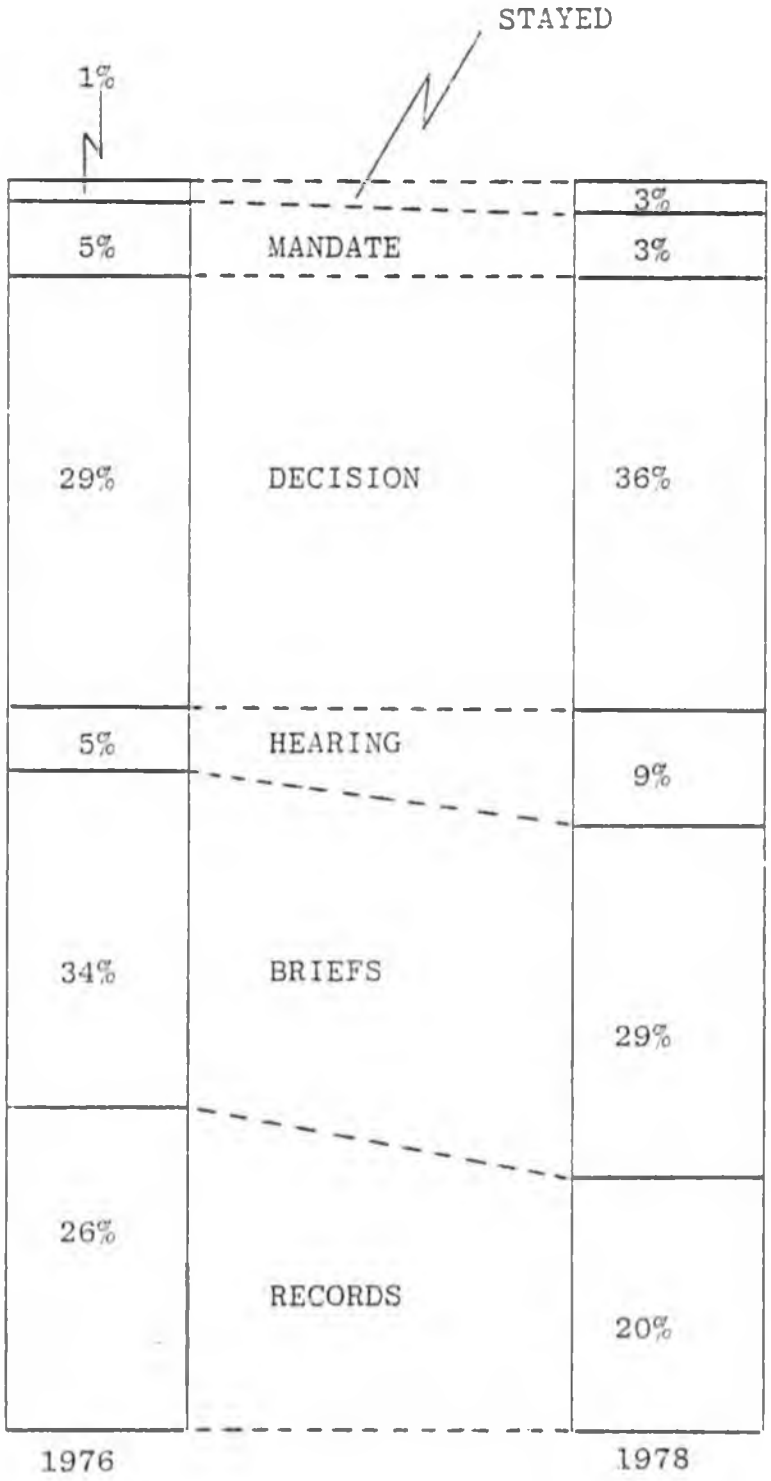
CIVIL APPEAL PROCESSING TIMES

Perhaps the most alarming figure is the increasing number of cases under submission and awaiting a first draft opinion. On December 31, 1978, there were 129 cases in this category. One month later there were 152 cases awaiting a first draft opinion. Translating this number into the workload facing the justices, it means that if the internal operating guidelines were followed, which recommend the circulation of a first draft within 90 days after submission of the case, each justice would have to write 30 draft opinions over the next 90 days, or 10 opinions per month. Also, by law a justice may not receive a paycheck if he has not circulated a first draft opinion in a case within six months after submission of the case to the court for decision. Thus, in order for the justices to receive uninterrupted compensation, each justice will certainly be required to write 30 opinions within the next six months, or an average of five opinions each per month. (Nor does it seem an equitable alternative for a justice to be denied compensation because the workload, over which he has no control, has grown beyond his capacity to handle within the six month limit.)

If this pace were maintained throughout the year, each justice would be required to write 60 opinions per year. This number seems clearly beyond the capacity of a justice of a court of last resort, particularly when the relative complexity of many of the appeals that arise in Alaska is taken into account and when one considers that drafting opinions is only a small part of the work facing the Court. In addition to preparing drafts in cases

assigned to him, a justice must review and vote upon the draft opinions prepared by the other justices, decide complex motions and petitions for review, consider revisions to the rules of procedure, and participate in administrative policy decisions affecting the entire court system.

The chart on the following page shows that a much higher percentage of the Court's pending docket at the end of 1978 were awaiting decision than at the end of 1976. Only 29 percent of the cases pending before the court at the end of 1976 were awaiting decision compared to 36 percent at the end of 1978. This is one more indication that the court has in fact reached its dispositional capacity.



PERCENT OF CASES

PENDING OF STAGE

A recent study by the Administrative Office 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 population growth estimates available (that is, assuming there is no gas pipeline construction or other major impacts on population growth), the appellate filings in the supreme court are forecast as follows:

TABLE VI

	Expected	High
1981	673	844
1982	729	800
1983	784	856
1984	843	915
1985	906	979
1986	969	1,043
1987	1,013	1,106
1988	1,098	1,174

II. POSSIBLE SOLUTIONS TO WORKLOAD PROBLEM

The solutions which come most readily to mind and which have been used by other states to cope with increasing appellate caseloads are the following:

1. Increase the size of the supreme court.
2. Establish panels of the supreme court.
3. Limit appeals of right to the supreme court.
4. Establish central research and screening staff.
5. Establish intermediate court of appeals.

This report will review each of these solutions.

1. Increase the size of the supreme court. In many ways court expansion appears to be the simplest solution to the caseload problem. Increasing the number of justices on the court would obviously divide the workload among more people, so that the opinion writing burden on each person is reduced -- one of the important goals of any change in the appellate system. Court expansion is an attractive solution also in that it would not necessitate any change in appellate procedures.

The use of either a seven-justice of five-justice court would be compatible with the American Bar Association Standards relating to Court Organization, which state in part:

> A supreme court should be constituted of an odd number of judges, so the decisions can be reached by majority vote. The number most common and generally satisfactory is seven. This number facilitates the working relationships required to establish concurrence of opinion on difficult legal questions, while at the same time being large enough to provide breadth of viewpoint and the manpower to prepare the opinions that are the principal work product of appellate courts. Nevertheless, some appellate courts have operated effectively with five judges[4]. . . . . [EMPHASIS ADDED]

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[4]American Bar Association Standards Relating to Court Organization, Standard 1.13, at 34 [hereinafter cited as ABA Standards on Court Organization].

A change in the size of the court could be achieved by an amendment to A.S. 22.05.020, which establishes the composition of the court.[5] No constitutional amendment would be necessary, since article IV, section 2(a), of the Alaska Constitution, authorizes the legislature to increase the number of justices upon the request of the supreme court.[6]

However, the efficacy of court expansion as a solution to the caseload problem may be illusory. As stated in the American Bar Association Standards on Court Organization, "Adding additional judges to a highest court may actually slow down its operation rather than speeding it up."[7] The additional justices would certainly make it possible for the court to increase its output of opinions, but, at the same time, each case might take somewhat longer to decide because there would be additional points of view to be dealt with and more justices among whom draft opinions and memoranda would have to circulate. Additionally, each justice would

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[5] A.S. 22.05.020 provides: "Composition and general powers. The supreme court is a court of record and consists of three justices including the chief justices. On December 1, 1968, the total number of justices shall be increased to five. The supreme court is vested with all power and authority necessary to carry into complete execution all its judgments, decrees and determinations in all matters within its jurisdiction, according to the constitution, the laws of the state, and the common law. It may prescribe by rule the fees to be charged by all courts for judicial services.

[6] Alaska Constitution, article IV, section 2(a) provides: "The supreme court shall be the highest court of the State with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court."

[7] ABA Standards on Court Organization at 35.

still have to review each draft opinion. Assuming that seven justices would produce more opinions in a given year than would five, the workload on each justice with respect to the opinion review function would actually increase with seven justices. One commentator has described the situation as follows:

> [W]hatever added work can be done by the extra judges is dissipated by the increased consultation time, by the difficulties inherent in drafting opinions to accommodate multiple points of view, and by the administrative problems involved in increased personnel.[8]

Increasing the size of the supreme court, moreover, has not been a widely used method of dealing with appellate caseload problems.

2. Establish panels of the supreme court. Another possible solution to the caseload problem is to divide the supreme court into panels of three. The advantage of sitting in panels is that, while three judges are hearing arguments or deliberating on or writing opinions relating to certain cases, the other two justices would be free to tend to other work of the court. The use of panels would necessitate some change in the internal procedures of the supreme court, but this solution does have the advantage of not requiring procedural changes for the attorneys or litigants.

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[8]Hufstedler, Constitutional Revision and Appellate Court Decongestants, 44 Wash. L. Rev. 577, 594 (1969), quoted in Donaldson, A Crisis in the Idaho Court System: An "Appealing" Remedy, 13 Idaho L. Rev. 1, 4 (1976).

There is no constitutional, statutory or administrative requirement that the supreme court sit en banc,[9] and Appellate Rule 16 does provide that three justices shall constitute a quorum.[10]

It therefore appears that the change to panels could be made by internal administrative action, without the necessity of constitutional amendment or legislative action.

The commentators, however, are uniformly opposed to the use of panels by a state's highest appellate court. The American Bar Association Standards on Court Organization, for example, contend that the use of panels dilutes the appellate function, "particularly that of developing the law."[11] The American Bar Association Standards Relating to Appellate Courts state a more emphatic position against the use of panels. The Standard itself reads as follows:

> 3.01 Internal Organization of Appellate Courts.
>
> (a) Supreme Court. In hearing and determining the merits of cases before it, the supreme court should sit en banc. Except for

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[9] A.S. 22.05.010(b) does include the following provision: "For the purpose of considering appeals of sentences on [the grounds that the sentence is excessive or too lenient], the supreme court may sit in divisions." [Emphasis added.]

[10] Appellate Rule 16(a) provides: "A quorum shall consist of a minimum of 3 justices or judges designated to sit on the supreme court."

[11] ABA Standards on Court Organization at 35.

> those who may be disqualified for cause or unavoidably absent, all members of the court should participate in the decision of each case. The court should not sit in panels or divisions, whether fixed or rotating or delegate its deliberative and decisional functions to officers such as commissioners.[12]

The Commentary explains the rationale behind this position.

> The internal organization of an appellate court should be designed to permit the court to fulfill its functions in the court system. The primary responsibility of a supreme court is that of developing and maintaining the consistency of the law to be applied in subordinate courts in the system... In deliberating upon and deciding the legal questions that come before it, the supreme court's entire membership should participate so that its collective professional and intellectual resources are brought to bear in the development of the law. To the extent that such a court subdivides itself into panels or divisions, it creates possibilities of conflict or inconsistency in its decisions, which can be resolved only through en banc hearings.
>
> In some states having no intermediate appellate court, the supreme court sits in divisions in order to cope with a caseload which would be too large to handle if the court were to sit en banc in every case. This arrangement has often been used as a means of transition to the establishment of an intermediate appellate court. The result of such an arrangement is that the court functions simultaneously as a court of intermediate review when it sits in divisions and as a court of subsequent review when it sits en banc. If the court's docket in such a

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[12] American Bar Association Standards Relating to Appellate Courts, Standard 3.01, at 7-8 [hereinafter cited as ABA Standards on Appellate Courts]

> system is carefully administered, so that important or difficult cases are identified before being heard and assigned directly for en banc hearing, a single supreme court can handle the system's appellate responsibilities in an effective way. Experience indicates, however, that such an arrangement may persist long after the point has been reached when an intermediate appellate court should have been established.
>
> Moreover, internal inconsistency in the court's decisional product may be ignored or tolerated to an excessive degree in the hope of avoiding the cost of establishing an intermediate court.[13]

The blue-ribbon committee which recently studied appellate caseload problems in Idaho[14] considered the possibility of using panels of the supreme court, but the committee finally rejected that alternative:

> [T]here seemed to be more arguments against the use of panels than arguments in favor: both of the "outside experts" who testified before the committee, Chief Judge Schwab and Chief Justice Cameron, urged that any Supreme Court has a law-stating function, and that this function is weakened by the operation of panels within a supreme court. Other committee members felt that decisions by panels should be final only if they are unanimous --meaning that a panel which developed disagreement would then have to return an appeal to the entire appellate body or to another panel causing further delay. Other committee members felt that panels placed too much emphasis on the luck of the draw, and that panels are not appropriate for decisions of a

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[13] Id. at 8-9

[14] An Investigation into the Problems Created by the Growing Appellate Caseload in Idaho, September 16, 1977, hereafter cited as "Idaho Report".

> court of last resort, although they would be useful for an intermediate appellate court. Committee members seemed to take the view that the function of a court of last resort is to take a broad and balanced view of the law and the needs of society, and that dividing any court of last resort into smaller units of decision would interfere with this basic role. The committee finally determined that the use of panels, either in connection with increasing the size of the Supreme Court or within the present structure, is not desirable.[15]

With the assistance of the Clerk of the Supreme Court, we have attempted to determine how panels might actually operate and to quantify to some extent the reduction in workload that a panel system could be expected to produce.

By use of a standard mathematical formula, it was determined that in order to have the five justices sit in all possible combinations of three justices each, a total of ten panels would be required. The composition of each panel would be as follows:

Panel 1:	A/B/C
Panel 2:	B/C/D
Panel 3:	C/D/E
Panel 4:	D/E/A
Panel 5:	E/A/B
Panel 6:	A/C/D
Panel 7:	C/E/A
Panel 8:	E/B/D
Panel 9:	D/B/A
Panel 10:	E/C/B

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[15] Idaho Report, supra, note 14, at 29-30.

It must be remembered that even if panels are used, each justice will still have the responsibility for drafting the same number of opinions each year as he would if panels were not used. The two areas in which the use of panels would reduce the workload of individual justices are in preparation for oral argument and review of draft opinions from other justices. Since each justice will not be participating in four of the ten panels, the time he spends presently on preparation for oral argument and on reviewing drafts would be reduced by a maximum of 40 percent. Assuming for purposes of illustration that a justice devotes 40 percent of his total time to these two tasks, then the panel system would theoretically reduce his overall workload by 16 percent.[16]

In practice, however, the 40 percent reduction figure is unrealistically high when applied to total workload because a certain percentage of the total appeals will be heard by the Court en banc. For example, if the Court had an annual caseload of 200 appeals, and 50 of the 200 were heard en banc, then the workload reduction in the preparation and review functions would be diminished from the maximum 40 percent to 30 percent.[17] Again assuming that a justice devotes 40 percent of his total time to these two tasks, the overall savings in

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[16]This figure is arrived at by multiplying the 40% reduction by the percent of total time spent on preparation for argument and review of opinions.

[17]If only 150 of the total 200 cases are heard by panels, then each justice would not be required to participate in 40% of the 150 panel cases, or 60 cases. These 60 cases represent 30% of the total 200.

workload for that justice would be 12 percent, or 4.8 hours per 40 hour week. And as the ratio of en banc cases to panel cases increases, the workload reductions are further diminished.

Even if the philosophical objections were set aside, the use of panels is generally agreed to be a temporary solution to the workload problem at best. The following chart illustrates that if the caseload continues to increase, then the actual workload of each justice under a panel system will approach and finally increase beyond the present actual workload within a relatively short period of time.

Year One

It is assumed that 200 cases will be filed, ready for argument, and decided during the year. It is also assumed that 25% of the total, or 50 cases, will be heard en banc[18]

Each justice must write opinions in 40 cases

Each justice must fully participate in 140 cases*

*50 cases en banc plus 90 cases in panels

Year Two

It is assumed that the caseload increeases by 25%, for a total of 250 cases. 25% of the total, or 63 cases, will be heard en banc.

Each justice must write opinions in 50 cases

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[18]The estimate of 25% en banc cases was somewhat arbitrary, since a more accurate figure could not be determined. It does, however, take into account the 1976 experience of dissenting opinions filed in 17% of the opinions, with the additional 8% intended to reflect those cases involving important questions of law requiring full court participation. It may be that the estimate is too low to adequately take into account the number of these cases.

Each justice must fully participate in 175 cases*

*63 cases en banc plus 112 cases in panels.

Year Three

It is assumed that the caseload will again increase by 25%, for a total of 325 cases. 25% of the total, or 81 cases, will be heard en banc.

Each justice must write opinions in 65 cases

Each justice must fully participate in 227 cases*

*81 cases en banc plus 146 cases in panels.

Thus after two years, the actual number of cases that each justice must fully participate in will exceed the number of total cases from the hypothetical "Year One."

This chart also illustrates the problems attending the adoption of a solution that is geared toward percentage reductions in workload as is the panel system. At some point along the graph of caseload increase, a court will reach its saturation point. A justice has time to write only a certain number of opinions each year and can participate fully in only a certain number of cases each year without seriously sacrificing the quality of the court's work product. When the saturation point is reached, it hardly matters in practical terms that next year's workload will be reduced by 15 or 20 percent by the use of panels if the actual workload will exceed the capacity of the justices. The court will continue to fall behind, whether panels are utilized or not. At the trial court level, when a court reaches this saturation point, the solution is to add another judge so that judicial capacity is increased. It has been suggested that the panel system will provide real relief only if pro tempore appointments of superior

court judges are included on the panels. The inclusions of pro tem justices on panels could be accomplished in at least two different ways.

If an extra judicial position were assumed to exist on the Supreme Court (to be filled each time with a different pro tem justice), then the judicial capacity for use on panels would increase from 5 to 6. By using the same mathematical formula discussed above, 20 panels would be required to have the six positions combined into panels of three without repeating a combination. While this would certainly augment any workload reductions that would otherwise be achieved by panels, it would be administratively too unwieldy with existing clerks's office staff to attempt to manage 20 panels. If additional pro tempore assistance were to be used in concert with the panel system, it would preferable to keep the same ten panels described above, and substitute a pro tem justice for each of the five sitting justices periodically and on a rotating basis.

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

There is also a limit to the amount of time that a superior court judge can be expected to divert from his trial court duties. In this vein, it must be remembered as well that the pro tem justice cannot work as efficiently as a full time justice. He may have limited law clerk assistance, and will not have the level of assistance for preparation of pre-argument memoranda and draft opinions that a sitting justice has. Further, he lacks the advantage of being able to devote full time to appellate matters and thereby develop a routine for efficient disposition of these types of cases.

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

As another means of safeguarding the law-making function, it has been suggested that before argument, a single justice on a panel should be empowered to order any case before the panel moved to the en banc calendar. Again, this would provide some additional safeguards. However, while it is impossible, without some experience to draw upon, to predict how frequently this prerogative might be exercised, it would certainly be

exercised to some extent, and this would result in further diminishing the overall percentage workload reduction that a panel system might achieve.

Finally, in order for a panel system to operate efficiently, there must be a mechanism for identifying those cases that will be amenable to panel treatment. If unanimity on the panels is required, this means in addition that the identification process must include the ability to predict with some accuracy those cases that will be likely to result in a unanimous decision. (Otherwise delay and duplication of effort will be increased.) It is questionable whether the two central staff attorneys would be able, without additional staff, to perform this type of screening function adequately and also provide substantial assistance to the court on motions and petitions. Additionally, the Clerk of the Supreme Court has expressed the concern that the initiation of a ten panel system would require the hiring of an additional calendar clerk to coordinate the assignments and the calendaring of cases for the ten panels and for the en banc calendars.[19]

3. Limit appeals of right to the supreme court. Since the primary goal of these changes in the appellate system is to reduce the workload of the supreme court, one direct method of dealing with the problem would be to

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

permit fewer appeals. This could be done by abolishing appeals of right to the supreme court in certain types of cases or by totally eliminating appeals of right and authorizing the supreme court to grant writs of certiorari for those cases which it wishes to hear. The primary advantage of such a system is that it would produce an immediate reduction in the caseload of the supreme court and would enable the court itself to exercise control over the size of its caseload.

Although the right to at least one appeal is traditional in the American judicial system, such a right is not conferred by the United States Constitution. The American Bar Association Standards on Court Organization include the following statement: "[I]t should be recognized that a litigant has no unqualified right to an appeal...[20]

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

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

Article IV, section 1, of the Alaska Constitution grants to the legislature the authority to prescribe the jurisdiction of courts: "The jurisdiction of courts

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[20] ABA Standards on Court Organization at 35.

shall be prescribed by law." This would seem to preclude any constitutional problems with the elimination of appeals of right.

Since no legislative attempt has been made to limit appeals of right to the supreme court, the Alaska Supreme Court obviously has had no opportunity to consider the constitutionality of such a limitation. However, if appeals of right were limited or abolished, the supreme court would retain the power to accept cases by certiorari, and the Alaska Supreme Court has indicated that the exercise of such a power is equivalent to the exercise of "final appellate jurisdiction". In State v. Browder[21] the court stated:

> We think it significant that the legislature in prescribing this court's jurisdiction specifically provided that "The supreme court may issue injunctions, writs of review, mandamus, certiorari, prohibition, habeas corpus, and all writs necessary or proper to the complete exercise of its jurisdiction." In our view this provision is a clear manifestation of the legislature's intent that the supreme court would be able to exercise its final appellate jurisdiction other than by appeal.[22]

It is likely then that the limitation or abolition of appeals of right would be construed as a legitimate exercise of the legislature's power to prescribe jurisdiction and not as an unconstitutional grant of final appellate jurisdiction to a lower court.

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21 486 p.2d 925 (Alaska 1971).

22 Id. at 930

The consensus of the commentators appears to be that limiting the right to appeal is not a desirable solution to the caseload problem. For example, Judge Shirley Hufstedler of the Ninth Circuit Court of Appeals, is strongly opposed to this approach:

> There are direct and indirect ways to trim an appellate docket. The direct way is to cut off or limit the right to appeal. The indirect way is to create a series of procedural or financial impediments which discourage appeals. We can dispose of the indirect methods summarily. Entwining the appellate process in even more red tape than there is at present or making appeals even more expensive is a vigorous step backwards. There remains the direct route. The amputation method will undoubtedly cure congestion, but the treatment may be worse than the disease.[23]

The American Bar Association Standards on Appellate Courts take the position that litigants generally should have at least one appeal of right.[24] The Commentary to Standard 3.10, Opportunity for Appellate Review, states in part:

> The right of appeal, while never held to be within the Due Process guaranty of the United States Constitution, is a fundamental element of procedural fairness as generally understood in this country. That right should be accorded an aggrieved party to a trial court proceeding.[25]

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[23] S. Hufstedler, Constitutional Revision, supra, note 8, at 586-87.

[24] ABA Standards on Appellate Courts at 14.

[25] Id. at 15.

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

> Ultimately, the suggestions that the right of appeal should be limited was rejected by the committee, but not on legal grounds. Overwhelmingly, committee members felt that in a state such as Idaho with a strong western tradition of independence, persons should have the right to at least one appeal from a trial judge's decision to allow for correction of error. Limiting the right to appeal in any way would not be popular with Idaho citizens and would be opposed. Thus, this alternative was discarded.[26]

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

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

Further, before any disincentives should be adopted as a method of reducing caseload, the Court must conclude that a substantial number of the appeals coming before

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[26] Idaho Report, supra, note 14, at 26.

it should not have been brought. And the particular disincentive chosen must be directed at discouraging only those that should not be brought. It might be appropriate, for example, to award substantial attorney fees to a prevailing appellee in a clearly frivolous appeal. Of course, the truly difficult question (and one that goes beyond the scope of this study) is whether Alaskan litigants do in fact appeal "too many" cases, and if so, why they do. For until the cases that should be appealed can be identified, and the reasons for appealing them divined, then disincentives cannot be fashioned that will discourage only these sorts of cases.

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

> (1) Monitoring and reviewing cases coming before the court to assure compliance with procedural rules, and making recommendations for disposition of routine procedural matters in accordance with criteria established by the court;
>
> (2) Preparing case summaries, including procedural history, facts, and principal issues and authorities, for the court's use in managing its caseflow and conducting its deliberations;
>
> (3) Reviewing all matters presented in propria persona and taking measures necessary to put them in correct and intelligible form;

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

(5) Acting for the court in supervising preparation of complex records....[27]

In 1971 the National Center for State Courts began the Appellate Justice Project which established experimental central research staffs in Nebraska, Virginia, New Jersey and Illinois.[28] The evidence accumulated during these projects supported the following initial hypotheses of the project:

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

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

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

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

5. That appellate staff assistance of this sort is acceptable to the practicing bar.[29]

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

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[27] ABA Standards on Appellate Courts at 98-99.

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

[29] Id. at 163

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

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

3. That adding a central staff would allow more judge time to be devoted to difficult cases.[30]

The report on the project emphasizes that the project did not disprove these unsupported hypotheses; it only failed to verify them.[31] The conclusion of the report which is most pertinent to this study is the following:

> Among the positive showings perhaps the most important point is that central staff lawyers do contribute to appellate productivity and expedition. A staff allows a court to handle a heavier caseload than the court could handle without it. Precisely how much a staff can step up the court's capacity depends on a number of variables, including the size of the staff and the court's internal procedures for deciding the staff processed cases.[32]

There are currently two central staff attorneys working under the supervision of the Clerk of the Supreme Court. The duties of the central staff include the following.

1. Perform legal research on matters filed with the supreme court.

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[30] Id. at 163-64.

[31] Id. at 164.

[32] Id.

2. Review all appeals once all briefs are in and propose possible disposition of routine cases.

3. Recommend consolidation of appeals for arguments.

4. Review petitions for review and prepare memoranda recommending appropriate disposition.

5. Review and research complex motions presented to the court.

6. Review and research briefs and records in sentence appeals and prepare memoranda recommending possible disposition.

7. Assist clerk in scheduling expedited appeals before the court.

8. Assist clerk in preparing complicated records on appeal.

9. Develop systems for operation of the central staff.

10. Review circulating draft opinions and prepare index of subject matter for internal use.

11. Assist clerk in research concerning rule revisions and administrative matters.

The establishment of these positions has contributed to the administrative efficiency of the court's operations, and has increased significantly the court's capacity to process cases.[33]

But there is a danger in relying too heavily on law clerks to solve the caseload problem, and that is that

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[33] It is unlikely that the court could have disposed of as many cases as it did during 1976 without the central staff assistance.

the staff may assume judicial responsibilities which properly should be performed by the justices. The Commentary to the ABA Standards on Appellate Courts.

> The problem created by use of a central legal staff is that judicial responsibility may be diffused among the staff to the detriment of the appellate process. Where a court employs a central staff, it must be continually alert to the risk of internal bureaucratization and guard against any tendency to rely on staff for decisions that should be made only by judges personally. Some arrangements involving central staff....seem to involve excessive delegation to staff.[34]

Certainly the use of central staff for researching and making recommendations for disposition in petitions for review, complex motions, sentence appeals, and other routine appeals will free the justices' personal law clerks for work on draft opinions and bench memoranda. There is also an advantage to be gained from a permanent central staff in terms of both experience and the development of an efficient routine. But the court must be exceedingly careful that the dangers noted above are avoided. Additionally, augmenting central staff will not achieve a long term solution to an increasing caseload. Each case must be decided by the justices, and the time available to these five justices is a finite quantity.

It has been suggested that the Court may wish to consider pooling five of the ten existing personal law clerk positions and relocating these five positions in

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[34] ABA Standards on Appellate Courts at 100.

the central staff, leaving each justice with one personal law clerk. While this suggestion may have merit, it cannot be said conclusively that this would permit the Court to handle its caseload more effectively. As noted above, the National Center's Appellate Justice Project failed to demonstrate that the addition of central staff would increase productivity more than additional law clerks. Further, five additional attorneys are probably more than this Court requires for a central staff, although internal procedures could be designed to re-distribute some existing law clerk functions to such an augmented central staff.[35]

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

5. Establish intermediate appellate court. The commentators are uniformly in agreement that the most desirable method of dealing with increasing appellate caseloads is the establishment of an intermediate court of appeals. Several recent articles have advocated this

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[35] For example, the augmented central staff might be assigned all bench memoranda, leaving the personal law clerks only with the tasks of assisting in the drafting of opinions and preparing substantive and technical comments. A major disadvantage of this approach is that it is more efficient if the person who prepares the bench memorandum on a case also assists in drafting the opinion.

solution,[36] and the American Bar Association Standards on Court Organization are emphatic in their support of this solution:

> Where a supreme court by reason of workload is unable to perform both its principal functions, some additional mechanism of appellate review becomes necessary. This situation has long since prevailed in states with large population, and is becoming increasingly prevalent in states of smaller population. The immediate necessity for an intermediate appellate court may be met or postponed by such devices as use of per curiam and memorandum decisions in cases having limited general significance, by limiting oral argument in appropriate circumstances, and by improved efficiency in management of the highest appellate court's work.. Since there seems little prospect for a long run decline in the volume of appellate litigation, once the surge of appellate cases has been felt in a state having only one appellate court, steps should be taken forthwith to establish an intermediate appellate court rather than temporizing with substitute arrangements. [EMPHASIS ADDED.][37]

In addition to being the solution most often advocated by the commentators, the creation of an intermediate appellate court is the solution which has been chosen most frequently to relieve congestion in a single appellate court.[38] Twenty-nine states now have inter-

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36 See e.g., Hopkins, The Role of an Intermediate Appellate Court, 41 Brooklyn L. Rev. 459 (1975); Hufstedler, Constitutional Revision and Appellate Court Decongestants, 44 Washington L. Rev., 577 (1969); and Appellate Court Reform, 45 Miss. L. J. 121 (1974).

37 ABA Standards on Court Organization at 35.

38 Hopkins, supra, note 48, at 462.

mediate appellate courts, and several states are studying their need for such a court.[39] The following table[40] indicates the status of intermediate appellate courts in the western states:

INTERMEDIATE APPELLATE COURTS IN WESTERN STATES

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

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

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

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39 Idaho Report, supra note 14, at 23.

40 Id. at 24.

appellate jurisdiction by lower courts. Since no intermediate appellate court exists in Alaska, the Alaska Supreme Court obviously has had no opportunity to consider the question of the jurisdiction which may be exercised by such a court under the constitution, so the primary source of authority is in the language of the constitution itself.

Article IV, sec. 1, provides in part:

> 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. [EMPHASIS ADDED.]

The only constitutional language that may be viewed as limiting the Legislature's authority to establish courts is the language of Article IV, sec. 2, which provides in part that the supreme court shall be the "highest court of the State, with final appellate jurisdiction". This language would preclude the establishment of a state court with jurisdiction to review supreme court decisions. There is no other language in the constitution that would appear to preclude the establishment of an intermediate appellate court.

It has been suggested that the constitution's placement of "final appellate jurisdiction" in the supreme court would require the supreme court to exercise that jurisdiction in all cases decided by an intermediate court of appeals. However, in State v. Browder, the court strongly suggested that it may properly exercise its final appellate jurisdiction not only through appeals, but through discretionary review as well. The specific question in that case was whether the statute limiting

the state's right to appeal in criminal cases also precluded the state from invoking the supreme court's discretionary review jurisdiction. The court held that the state was not barred from invoking the court's discretionary review jurisdiction, first because the statutory limitation appeared to govern only appeals and not an application for discretionary review. Second, the court reasoned that if the statute were construed as barring the state from invoking such review, it would be in conflict with the constitution's grant of "final appellate jurisdiction" to the supreme court.

Implicit in this holding is the proposition that the Legislature may limit the right to direct appeal to the supreme court[41] and this limitation will be constitutional so long as the supreme court retains discretionary review authority in all cases, (excluding criminal cases where review may involve double jeopardy). If the right to appeal to the supreme court from decisions of an intermediate court of appeals is retained in all cases, no constitutional question would arise. However, the primary purpose of establishing an intermediate court of appeals would be to reduce the caseload of the supreme court, and retention of appeals of right to the supreme court in all cases would defeat that purpose.

The primary benefits which can be expected to result from the creation of an intermediate court of appeals are a reduction in the court's backlog of cases and a reduction in the elapsed time between the submission of

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[41] The Alaska Constitution does not grant a right to appeal to the supreme court or to any other court. Nor has a right to appeal ever been held to be a requirement under the U.S. Constitution.

briefs and final disposition. In Oregon, for example, the average number of days from submission of briefs to a final decision in the Oregon Supreme Court dropped from 221 days to 130 days following the creation of an intermediate appellate court in 1969.

The reason for this is that establishing an intermediate appeals court permits the Supreme Court to control its caseload via the exercise of discretionary review.

The following table is an excerpt from a report provided by the Arizona Supreme Court, and illustrates how that court has kept pace from 1965 through 1976, while during the same period experiencing an increase in filings of nearly 200%:[42]

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

[42]The Arizona Court of Appeals was established in 1965.

An intermediate appellate court appears to be the one solution to existing and future workload problems that will bring long term assistance to the supreme court. In addition, an intermediate appellate court will not interfere with the supreme court's exercise of its law making function, and its establishment will insure that each case heard by the supreme court is given full and careful consideration by the justices and is handled within an acceptable period of time.

III. STATISTICAL COMPARISON OF ALASKA WITH OTHER STATES

Although the statistical information discussed earlier in this report provides strong evidence by itself of the critical workload problems facing the supreme court, a statistical comparison of the Alaska Supreme Court with supreme courts in other states shows that the Alaska court's workload is among the highest of similarly constituted supreme courts in the country.

This section of the report must begin with a word of caution. Because courts do not always measure precisely the same things, it is very difficult to draw conclusions from the data from other states with absolute confidence. Every effort has been made to compare only those figures which appear to be truly comparable, but at best the comparative figures are a "good approximation" of the facts. Finally, some concern has been expressed about the relationship of the size and number of appellate courts to the population of the state. Information concerning this relation-

ship provides an interesting backdrop to the other statistical comparisons that follow.

The Court Administrator in Louisiana recently surveyed 52 jurisdictions (50 states plus Puerto Rico and the District of Columbia) to obtain data on the number of appellate judges in relation to population. The corrected[43] data on Alaska is as follows:

Trial judges per 100,000 population	4.46
Appellate judges per 100,000 population	1.24
Appellate judges per 100 trial judges	27.77

These ratios are based on the following figures:

Trial court judges (general jurisdiction in 1975)	18
Intermediate appellate court judges	0
Supreme court justices	5
Population (estimated 1975)	403,000

Of the 46 jurisdictions for which data is available, Alaska ranks tenth from the highest for trial judges per 100,000 population.[44] Alaska is in a three-way tie for second place for appellate

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[43]The ratios calculated by Louisiana were based on an incorrect number of trial court judges (37) and on an incorrect population figure (330,000).

[44]The states ranking higher than Alaska are Illinois (5.4), Indiana (4.6), Kansas (5.7), Michigan (5.6), Minnesota (5.5), Nevada (4.7), Oklahoma (5.3), Puerto Rico (6.3), and the District of Columbia (5.9). Because a few jurisdictions, like the District of Columbia, have only one level of trial courts, these comparisons may not be entirely accurate.

judges per 100,000 population[45]. Alaska ranks sixth, along with Hawaii, for appellate judges per 100 trial judges.[46]

These figures indicate that Alaska already ranks among those states with the highest number of appellate judges in relation to the population. If Alaska should increase the number of appellate judges, either by increasing the size of the supreme court or by creating a new intermediate appellate court, it, of course, would rank even higher. For example, if the size of the supreme court were increased to seven justices, the number of appellate judges per 100,000 population would be 1.73, rather than the current 1.24. Alaska would then have more appellate judges in relation to its population than any of the other 45 jurisdictions for which data is available. If the supreme court remained as it is with five justices and a three judge intermediate appellate court were created, the ratio would be even higher -- 1.98 per 100,000 rather than the current 1.24.

It is obvious that the unusually small population of Alaska skews

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[45]Alaska is tied with Delaware and the District of Columbia. Only Wyoming ranks higher (1.4).

[46]The states ranking higher than Alaska and Hawaii are Delaware (38.8), Maine (50), New Hampshire (38.4), North Carolina (29) and Wyoming (33.3).

these ratios to some extent, but it is equally obvious that, by any standards, Alaska already has a high number of appellate judges in relation to the population.

Such a high ratio may not be inappropriate, however, if the number of appellate judges is not high in relation to the amount of litigation in the state. For example, in 1976 in Alaska, 364 new appeals were filed with the supreme court. This is a ratio of 90.32 appeals per 100,000 population. In Idaho for the same period, 295 new appeals were filed, which is a ratio of only 38.26 appeals per 100,000 population. The ratio of appeals in Alaska to the population was more than twice the ratio in Idaho for 1976. While the ratio of appellate judges in Alaska to population is about twice the ratio in Idaho, the disparity is offset by the higher ratio of appeals to population.

Data for 1977 compiled for the National Conference of Appellate Court Clerks[47] shows that Alaska is third highest in the nation for appellate filings per population. During 1977, one appeal was filed in Alaska for every 589 residents. The only jurisdictions with higher ratios were Nevada with one appeal per 536

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[47]W. J. Kramer, "Comparative Outline of Basic Appellate Court Structure and Procedure in the United States," National Center for State Courts (1978). The 1976 and 1977 caseload figures used in this section of the report are taken from this publication.

residents and the District of Columbia, with one appeal per 556 residents. This ratio of filings to population is nearly four times the national average of one filing per 2034 state residents.

Some tentative conclusions may be drawn from these figures First, although the number of appellate judges in Alaska when compared to other states appears to be extremely high in relation to the population, the number is not so high when the amount of litigation in the state is taken into consideration. Secondly, the amount of litigation in Alaska is relatively large in relation to the size of the population.

Without regard to population figures, the following table presents comparative data on the workloads of the supreme court in Alaska and in eight other states for 1976 and 1977.[48] These particular states were selected for comparison because, like Alaska, they have no intermediate appellate court, and each of them has a five justice court except for Maine, which has six justices.

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[48]Data for 1978 for these courts was not available at the time this report was being prepared.

TABLE VII

TOTAL APPELLATE FILINGS

	1976	1977
Alaska	466	613
Hawaii	265	316
Idaho	338	373
Maine	269	326
Nevada	704	1022
New Hampshire	256	319
North Dakota	169	218
Vermont	361	364
Wyoming	138	145

During 1976 and 1977, only Nevada reported having more case filings than Alaska; and during 1977 Alaska had significantly more case filings than Idaho, the court having the third highest filings in that year.

During 1976, five of the other states issued more opinions than did the Alaska court, although only the Nevada and New Hampshire courts issued significantly more than Alaska's. For 1977, however, Alaska had exceeded three of those states in total opinions issued, and the difference between Alaska's total opinions and those of Nevada and New Hampshire was much less than for 1976. The following table illustrates how the Alaska Supreme Court compares during these years for total opinions published and average opinions per justice.

TABLE VIII

	TOTAL OPINIONS		AVERAGE PER JUSTICE	
	1976	1977	1976	1977
Alaska	133	189	26.6	38
Hawaii	89	87	17.8	17
Idaho	136	165	27.2	33
Maine	168	172	28	28.6
Nevada	252	223	50.4	45
New Hampshire	205	249	41	50
North Dakota	122	143	24.4	29
Vermont	141	145	28.2	29
Wyoming	75	102	15	20

It is noteworthy that during 1978 the Alaska Supreme Court published 237 opinions, an average of 47 per justice.

Of the states included in this review, six of them have supreme courts which, like Alaska's, have both administrative and rule-making authority. Of the remaining two, Nevada has no administrative responsibilities, but does have rule-making authority. The Vermont court, conversely, has administrative responsibilities, but no rule-making authority. Maine and New Hampshire courts, with both administrative and rule-making authority, issued more opinions during 1976 than did the Vermont court, which lacks rule-making authority. While we know intuitively that a court which does not exercise either administrative or rule-making authority should be able to handle a higher number of

cases than a court that does, this data does not tell us to what degree the absence of such responsibilities increases a court's capacity to handle cases.

In addition to reviewing current comparative data, we also reviewed the workloads of several other supreme courts at the time that intermediate appellate courts were created in their states. 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 the Alaska Supreme Court during 1978. However, the Arizona court, with five justices, terminated only 473 cases in 1964, many fewer than the 560 terminated by the Alaska 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 162 cases by written opinion and terminated a total of 435 cases. Finally, an intermediate appellate court was approved in the state of Washington in late 1968, commencing operations in 1969. During 1968, the Washington Supreme Court had 701 cases filed and terminated a total of 612 cases, including 336 by written opinion. Although the number of filings and the number of written opinions appears higher than Alaska's during 1978, it must be remembered that the Washington Supreme Court has nine justices rather than five. Thus, the average number of opinions written by each justice ofthe Washington court during 1968 was 37 compared to 47 for Alaska during 1978. It

therefore appears that the Alaska Supreme Court is in very close to the same circumstances now that these courts were in when intermediate appellate courts were established in their states.

IV. A COURT OF APPEALS FOR ALASKA

By the end of 1978, the Alaska Supreme Court had arrived at some tentative conclusions as to the most desirable size of an intermediate court of appeals and the most reasonable division of jurisdiction between the proposed Court of Appeals and the Supreme Court. A Court of Appeals will obviously require some additional funding from the state. In order to keep the costs to the state at a minimum, it was decided that the Court of Appeals should have the minimum number of justices and supporting staff; that is, three judges, with one law clerk and one secretary each. And because the total appellate caseload will not be large enough in the foreseeable future to warrant granting full jurisdiction in all appellate matters to the Court of Appeals, it was decided that the Court of Appeals should have limited subject matter jurisdiction.

The Supreme Court determined that the Court of Appeals should be given jurisdiction over all criminal cases appealed from the Superior Court, including cases that are ordinarily called "civil," but actually arise within the context of criminal cases. This category included habeas corpus appeals, extradition, probation and parole revocation, and certain limited juvenile cases.

In addition, the Supreme Court proposed that the Court of Appeals should hear all appeals directly from the District Court, both civil and criminal. Under existing statutes, the Superior Court first hears appeals from the District Court, with further appeal as a matter of right to the Supreme Court.

Finally, the Court recommended that the legislation for the Court of Appeals provide a mechanism whereby, at a later date and if the workload balance between the two courts warranted it, the Supreme Court could transfer appeals from administrative agencies from the Supreme Court to the Court of Appeals.

At the close of 1978, legislation was being drafted for introduction in the 1979 session of the Alaska Legislature to establish a Court of Appeals for Alaska.

Memorandum

Alaska Court System

TO: Arthur H. Snowden, II
Administrative Director

DATE : April 6, 1979

FROM: Susan Burke
Deputy Admin. Dir.

SUBJECT: Senate Bill 104 am

I have attached a copy of Senate Bill 104 am, on which I have hand-written some suggested language changes that may be of assistance in meeting some of the concerns expressed about the bill with respect to stricter limitations on court of appeals jurisdiction and on review by the supreme court of cases pending before and decided by the court of appeals.

SB

Adm. F-1
Rev. 2-73

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

BY ZIEGLER, BRADLEY, MELAND, RODEY, STIMSON AND STURGULEWSKI

IN THE SENATE

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.

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

(1) criminal prosecution;

(2) post-conviction relief;

(3) determination 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 ~~de novo in whole or in part~~.

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

(d) 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.

(e) 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~~

(1) 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 (d) of this section.

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 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 22.05.070.

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

Sec. 22.07.060. APPROVAL OR REJECTION. Each judge of the court of appeals is subject to approval or rejection as provided in the Alaska Election Code (AS 15). 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. The information and any recommendation shall be made public at least 30 days before the election. The judicial council shall also provide the 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 the candidacy of a judge, he may not for a period of four years thereafter be appointed to fill a vacancy in the supreme court, the court of appeals, or the superior court of the state.

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

(b) The office of a judge of the court of appeals becomes vacant 90 days after the election at which he is rejected by a majority of those voting on the question or for which he fails to file his declaration of candidacy to succeed himself. Upon the occurrence of (1) an 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 a 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 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 incompleted or undecided by him for a period of more than six months.

Sec. 22.07.100. PROCESS. Process of the court of appeals shall be

See attached

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

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

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

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

(c) The supreme court may ~~in its discretion~~ review a final decision of the court of appeals ~~on its own motion~~ on application of a party under AS 22.07.030 if the supreme court finds that (1) the decision is in conflict with a decision of the supreme court or the court of appeals

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

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

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

(b) The supreme court may take jurisdiction of a case pending before the court of appeals if the ~~supreme court determines~~ court of appeals certifies that

(1) the case involves a significant question of law under the Constitution of the United States or of the state or an issue of substantial public interest that should be determined by the supreme court; or

(2) the caseload of the court of appeals is such that it is necessary for the expeditious transfer, ~~will further the efficient~~ administration of justice.

~~(c) The supreme court may provide by rule that review of an appeal to the superior court from an administrative agency be by the supreme~~

* NOTE: 22.05.015.(b)(2) may also be deleted if this type of transfer is not felt to be necessary or desirable.

~~court rather than by the court of appeals under AS 22.07.020(8).~~

(f) 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 of the state for a period of four years thereafter.

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

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

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

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

Sec. 22.10.150. APPROVAL OR REJECTION. Each superior 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 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 pamplet 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 pamplet 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.

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

~~Sec. 22.15.240. 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, or for the recovery of personal property of the value of not less than $50 exclusive of costs in either case, except when the sum is given by confession or for want of an answer.~~

(b) The defendant may appeal a judgment of conviction given in the

district court in a criminal action to the court of appeals [SUPERIOR COURT]. When the judgment is given on a plea of guilty, no appeal may be taken by the defendant except on the ground that a sentence of imprisonment of 45 [180] days or more was excessive; however, the supreme court by rule may further provide for review of a judgment given on a plea of guilty. The state has no right of appeal in criminal actions for which judgment is given in the district courts, except to test the sufficiency of the information.

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

~~(d) The supreme court shall prescribe further rules for the procedure for appeals from district courts.~~

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

Sec. 22.20.010. JUDICIAL OFFICER DEFINED. The term "judicial officer" means a supreme court justice, including the chief justice, a judge of the court of appeals, a judge of the superior court, a district judge and a magistrate.

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

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

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

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

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

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

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

(2) "judicial officer" means a supreme court justice, including the chief justice, a judge of the court of appeals, a judge of the superior court, a district court judge, or a magistrate;

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

(10) A separate nonpartisan judicial ballot shall be designated for each judicial district in which a justice or judge is seeking to succeed himself. The ballot shall be divided into four parts and each part shall bear a heading indicating the court to which the candidate is seeking approval. Within each part the question of whether the justice or judge shall be approved or rejected shall be set out in substantially the following manner: (A) "Shall . . . . . be retained as justice of the supreme court for 10 years?"; (B) "Shall . . . . . be retained as judge of the court of appeals for eight years?"; (C) "Shall . . . . . be retained as judge of the superior court for six years?"; or (D) "Shall . . . . . be retained as judge of the district court for four years?" Provision shall be made for marking each question "Yes" or "No".

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

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

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

Sec. 15 35.160. REQUIREMENT OF FILING FEE FOR COURT OF APPEALS. At the time the declaration is filed, each candidate shall pay a filing fee to the lieutenant governor. The filing fee for a candidate for the court of appeals is $100.

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

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

Sec. 15.57.025. INFORMATION AND RECOMMENDATIONS ON JUDICIAL OFFICERS. No later than 60 days before the applicable state election, the judicial council shall file with the lieutenant governor a statement including information about each supreme court justice, <u>court of appeals judge,</u> superior court judge, and district court judge who will be subject to a retention election, following the evaluation of each such justice or judge conducted by the judicial council according to law. Each such statement may not exceed 300 words.

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

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

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

(2) "agency" includes a department, office, institution, corporation, authority, organization, commission, committee, council or board of a municipality or in the executive, legislative or judicial branches of the state government, and a department, office, institution, corporation, authority, organization, commission, committee, council or board of a municipality or of the state government independent of the executive, legislative and judicial branches; it also includes an officer, employee or member of an "agency" acting or purporting to act in the exercise of his official duties, but does not include the governor, lieutenant governor, a member of the legislature, justice of the supreme court, judge of the court of appeals, a superior court judge, [OR] district court judge, magistrate, member of a city council or borough assembly, elected city or borough mayor, or a member of an elected school board;

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

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

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

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

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

(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 45 days or more [EXCEEDING ONE YEAR] 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.

* Sec. 26. 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 39.23 for judges of the court of appeals.

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

* Sec. 28. The superior court has concurrent appellate jurisdiction with the court of appeals in actions and proceedings commenced in the district court and filed in the superior court before the date on which operations of the court of appeals commence. The supreme court may transfer to the court of appeals an appellate matter involving an action or proceeding commenced in the district court which is pending in the superior court on the date on which operations of the court of appeals commence, including a matter filed before the effective date of this Act. An appellate matter not so transferred shall be decided by the superior court. Before commencement of operations in the court of appeals, a decision of the superior court under this section may be appealed to the supreme court and thereafter to the court of appeals. This section applies only to ~~trade~~ actions and proceedings commenced in the district court within the appellate jurisdiction of the court of appeals.

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

* Sec. 30. It is the intent of the legislature that the court of appeals commence operations as soon as possible after the effective date of this Act. The administrative director of courts shall immediately take necessary actior to provide suitable facilities for the court of appeals. When advised by the supreme court, the judicial council shall meet and submit nominations to the governor for all initial vacancies for judge of the court of appeals.

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

January 30, 1979

M E M O R A N D U M

TO: Ms. Susan Burke
Deputy Administrative Director

INFO: Mr. Mel Martin
Technical Operations

FROM: Robert D. Bacon
Clerk, Supreme Court

SUBJECT: Caseload of New Intermediate Appellate Court

As you requested, I have brought down to the end of 1978 the statistics which I sent you on December 1, 1978.

	Pending 12/31/78		Filed 1978	
CIVIL		297		256
Extradition	3		8	
Habeas other than extradition	2		2	
Criminal Rule 35	3		3	
Civil forfeiture of property used to commit crime	3		3	
Civil suit re conditions in prison	1		0	
Review proceeding re criminal contempt of District Court	1		1	
Other civil	284		239	
CRIMINAL		209		135
SENTENCE		51		56
PETITION FOR REVIEW		61		156
Civil	34		104	
Criminal	27		52	
ORIGINAL		6		27
Civil	4		17	
Criminal	2		10	
TOTAL		624		630
Within jurisdiction of Court of Appeals*		302		270
Within new jurisdiction of Supreme Court*	322		360	

* We do not at the present time have an accurate count of matters pending in the Supreme Court which originated in the District Court. Furthermore, this would not be the statistic required for these purposes, since it includes only District Court cases which are appealed a second time from the Superior Court to the Supreme Court. The number of "other civil" cases in this

table, all of which are included in the last item on the table as within the new jurisdiction of the Supreme Court, includes a small number of cases which originated in the District Court and would not in fact be within the new jurisdiction of the Supreme Court. If you or Mel is able to get from the Superior Court the number of appeals filed with them, it would be a more useful statistic than any that this office might be able to provide on District Court cases.

RDB RDB

M E M O R A N D U M

February 5, 1979

TO: Chief Justice Rabinowitz
Justice Connor
Justice Boochever
Justice Burke
Justice Matthews
Justice Dimond
Arthur H. Snowden, II
Susan Burke
Jim Babb
Merle Martin
Connie Staska
Caroline Hudnall

FROM: Robert D. Bacon

SUBJECT: January 1979 Statistics

Attached are the regular monthly statistical tables concerning the Supreme Court's docket as of January 31, 1979.

The most significant figure may be the 152 cases which are pending with the assigned justice for preparation of a draft opinion. This is an increase from 129 one month ago, and 114 two months ago. The figure of 129 on December 31 was the highest in the court's history to that time.

During January, 51 cases were filed, and 49 were closed, 19 on the merits and 30 otherwise. The number of pending cases increased during January from 624 to 626; the number of appeals increased from 557 to 561.

The court took action on 18 petitions for review during January. Ten were denied, five were granted and summarily disposed of, two were taken for further briefing and full consideration on the merits, and one was dismissed as moot without the necessity of court action.

None of the large number of opinions prepared for publication following the January conference resulted in a case closing in January, but I expect a large number to do so in February.

RDB RDB

TABLE I

ALASKA SUPREME COURT

1979 STATISTICAL SUMMARY THROUGH JANUARY 31, 1979

Total Cases Pending: December 31, 1978	624
Cases Filed or Reinstated, 1979 to date	51
Dispositions on Merits to Jan. 31, 1979	
By Opinion and Mandate	12[a]
By Memorandum Opinion & Judgment	1
By Summary Order	6
Total Dispositions on Merits	19
Other Dispositions to Jan. 31, 1979	
Dismissals	17
Petition or Application Denied	13
Total Other Dispositions	30
Cases Pending Jan. 31, 1979	626
Reasons for Cases Pending	
Awaiting Record	120
Awaiting Briefs	169
Awaiting Hearing or Submission	57[b]
Submitted/Awaiting Draft Opinion	152
Submitted/Draft Opinion Circulating	84
Awaiting Decision on Granting Petition for Review	12
Awaiting Mandate or Decision on Rehearing	13
Stayed or Remanded	19
Total Pending Jan. 31, 1979	626

a 10 opinions have been published to date. The numbers differ because in consolidated cases and cross-appeals, more than one case is often disposed of in a single opinion. Moreover, opinions published late in December of one year do not produce case dispositions until the mandate is issued in the following year.

b Of these cases, 19 were pending with the Central Staff.

TABLE II

ALASKA SUPREME COURT

January 31, 1979

	Civil Appeals	Criminal Appeals	Sentence Appeals	TOTAL APPEALS	Petitions for Review	Originals	TOTAL ALL CASES
PENDING DECEMBER 31, 1978	297	209	51	557	61	6	624
FILED OR REINSTATED THRU [illegible], 1979							
FILED OR REINSTATED THIS MONTH	18	12	2	32	14	5	51
TOTAL FILED YEAR-TO-DATE							
Adjustments							
DISPOSITIONS							
A. By Opinion and Mandate/Published							
Affirmed	4		2	6	1		7
Affirmed in Part/Reversed or Remanded in Part	1			1			1
Reversed					1		1
Reversed and Remanded	3			3			3
Remanded Only							
Sentence Too Lenient							
Bar Disciplinary Action							
B. By Memorandum Opinion & Judgment							
Affirmed		1		1			1
Reversed							
C. By Summary Order							
Affirmed		1		1	3		4
Reversed or Reversed & Remanded					2		2
Other							
TOTAL DISPOSITIONS ON MERITS	8	2	2	12	7	0	19
D. Petitions for Review/Originals Denied					10	3	13
E. Dismissals							
By Agreement or by Appellant	8	3		11			11
By Court	5			5	1		6
On Motion							
TAL DENIALS AND DISMISSALS	13	3		16	11	3	30
TOTAL CASE DISPOSITION	21	5	2	28	18	3	49
Reasons for Cases Pending January 31, 1979							
Awaiting Record	62	53	4	119		1	120
Awaiting Briefs	67	70	13	150	13	6	169
With Central Staff	10	3	2	15	4		19
Awaiting Hearing/Submission	27	10		37	1		38
Awaiting Draft Opinion	70	48	17	135	16	1	152
Draft Opinion Circulating	39	24	13	76	8		84
Awaiting Decision on Granting P/R or Orig.					12		12
Awaiting Mandate or Decision on Rehearing	6	5	1	12	1		13
Stayed or Remanded	13	3	1	17	2		19
TOTAL CASES PENDING January 31, 1979	294	216	51	561	57	8	626

M E M O R A N D U M

February 13, 1979

TO: Chief Justice Rabinowitz
Arthur H. Snowden, II
Susan Burke, in Anchorage and Juneau

INFO: Justice Connor
Justice Boochever
Justice Burke
Justice Matthews
Jim Babb
Caroline Hudnall

FROM: Robert D. Bacon

SUBJECT: Reversal Rate: Cases Reversed Only in Part

Attached is a summary of Mr. Gaguine's survey of most of the cases included in the 1978 statistics as "affirmed in part and reversed or remanded in part," "remanded only," "reversed," and "reversed and remanded."

You will note that it significantly reduces our raw reversal rate.

RDB

M E M O R A N D U M February 13, 1979

TO: Robert D. Bacon

FROM: John B. Gaguine

SUBJECT: A Brief Analysis of Cases Reversed in Whole or in Part in 1978

I have made a cursory examination of most of the cases that the court reversed in whole or in part in 1978, and have concluded that the raw reversal rate of 40-50% does not truly reflect the way things are; i.e., the percentage of cases in which the superior court was reversed in toto is considerably less.

Under the category of cases labeled "Affirmed in part, reversed in part," I looked at all the 1978 opinions, 24 of them. I found only two where the decision was essentially reversed: Alsop v. State, 586 P.2d 1236 (eminent domain), and North Slope Borough v. Sohio, 585 P.2d 534 (local taxation). On a few more the portions reversed were as important as the portions affirmed. Teamsters v. King, 572 P.2d 1163 (permissible damages); State v. Tanana Valley Sportsmen, 583 P.2d 854 (validity of emergency game regulations); Vetter v. Wagner, 576 P.2d 979 (workers' compensation award; Board had essentially ignored prior Supreme Court ruling in case). In numerous cases in this category, both civil and criminal, the reversal and remand were only to correct minor errors. Criminal: J.H.B., Jr., v. State, 578 P.2d 146 (affirms on four issues, remands for hearing on whether juvenile jurisdiction would have been waived absent hearsay evidence); Mohn v. State, 584 P.2d 40 (conviction affirmed, remanded for resentencing, because of

trial court's failure to allow defendant to speak before sentencing); Cochran v. State, 586 P.2d 175 (conviction affirmed, remanded to correct sentence suspended one year more than statutorily permitted). In two other cases the trial court was mostly affirmed, but still new trials were required: Stevens v. State, 582 P.2d 621 (violation of criminal discovery rules held harmless as to one rape conviction, but not second); Johnson v. State, 579 P.2d 20 (hearsay admissible, but not to prove defendant's identity). Sentencing cases: Rust v. State, 582 P.2d 134 (remanded for trial court to explore issue of treatment in prison of Rust's dyslexia); Gonzales v. State, 582 P.2d 630 (affirms on constitutional issues, remanded for resentencing because Gonzales was sentenced as second offender when other conviction occurred after drug sale here); Shagloak v. State, 582 P.2d 1034 (long sentence affirmed, remanded because judge incorrectly altered sentence after pronouncing it); Kodiak v. Jackson, 584 P.2d 1130 (remand because minimum sentence in municipal code violates state law); State v. Tucker, 581 P.2d 223 (affirms sentence, remands to vacate instructions on parole, as judge has no parole authority over sentences of less than a year).

Three of the civil cases were reversed only on the issue of attorney's fees: Curran v. Hastreiter, 579 P.2d 524 (remand for fact finding on fees question); Frantz v. First National Bank of Anchorage, 584 P.2d 1125 (remanded for court to spell out reasons for fees decision); Anderson v. State, 584 P.2d 537 (same). Others were only on minor points of damage computation; Curt's Trucking v. Anchorage, 578 P.2d 975; ASHA v. Riley Pleas, Inc., 586 P.2d 1244

(wrong rate of interest applied by trial court); Alaska Airlines v. Sweat, 584 P.2d 544 (complex case on damages affirmed, except on one minor point). Other cases reversed for minor correction: APUC v. Anchorage, 579 P.2d 1071 (interim rate increase to be placed in escrow); Faro v. Faro, 579 P.2d 1377 (custody case; trial court affirmed, except that portion of order requiring unemployed non-custodial mother to pay support).

Under the cases labeled "Remanded Only," 16 in 1978, about half are essentially reversals of the trial court, one in a criminal case, Robinson v. State, 578 P.2d 141 (search and seizure); one in a sentence appeal, Abraham v. State, 585 P.2d 526 (Supreme Court exercised discretion to hear issue trial court had refused to hear as untimely); the rest in civil appeals. Three cases were remanded for resentencing; in two resentencing was ordered (in one, Deal v. State, Opin. No. 1769, Dec. 15, 1978, the state confessed error), and in the third the Supreme Court itself ordered the sentence reduced. The remaining cases were primarily affirmances, with correctional remands, such as technical corrections in the sentence or statement of reasons for an alimony award.

There were few opinions simply labeled "Reversed" without more; five through 583 P.2d. All were total reversals of the trial court. Note here, however, that at least two were petitions for review; if the Supreme Court had agreed with the trial court's ruling, it probably would have refused review altogether.

The largest group of overturned cases was the one labeled "Reversed and Remanded." Through 579 P.2d (about half a year), there were twenty-six. A large number of these

represented partial affirmances. This category also includes seven criminal convictions reversed, and remanded for new trials, because of procedural errors resulting in violations of the defendant's rights but not directly indicative of innocence: Green v. State, 579 P.2d 14 (use of recorded testimony without showing of witness' unavailability; trial court affirmed on three other issues); Johnson v. State, 577 P.2d 1063 (improper use of sealed verdict over defendant's objection); Rivett v. State, 573 P.2d 946 (failure to instruct on lesser included offense; other assignments of error overruled); Kimoktcak v. State, 578 P.2d 594 (defendant's right to jury sequestration denied); Richardson v. State, 579 P.2d 1372 (error to play back testimony to jury in defendant's absence; trial court affirmed on two other issues); Walker v. State, 578 P.2d 1388 (failure of defendant to personally waive right to 12-person jury); O'Dell v. Anchorage, 576 P.2d 104 (record does not reflect knowing waiver of right to counsel). Many of the civil reversals were on narrow issues: two on improper grants of summary judgment because material issues of fact existed; two on attorney's fees; one on attorney disqualification; one contempt for untimely filing of a brief one on dismissal for nonprosecution of action; one on a narrow question of interpretation of the Workmen's Compensation Act. Among the reversals here was State v. Erickson, 574 P.2d 1, upholding the validity of the cocaine laws.

I hope that this short discussion might prove useful. If you wish me to expand upon it, I will willingly do so. The accuracy here is not 100% guaranteed -- I looked at a lot of cases rather quickly.

JBG

M E M O R A N D U M April 4, 1979

TO: Chief Justice Rabinowitz
Justice Connor
Justice Boochever
Justice Burke
Justice Matthews
Justice Dimond
Arthur H. Snowden, II
Susan Burke
Jim Babb
Merle Martin
Dick Emerman
Connie Staska
Carolyn Hudnall

FROM: Robert D. Bacon

SUBJECT: March 1979 Statistics

Attached are Supreme Court statistical tables as of March 31, 1979.

The most significant statistic for March does not appear on the attached tables. The court issued 11 memorandum opinion and judgments in March. By comparison, in the 14-month period since instituting the MO&J form, the court had issued only 17.

Several of those MO&Js, and most of the large number of opinions cleared for publication by the March 8 law conference in Juneau, do not appear as March case dispositions since on March 31 the 10-day waiting period for a petition for rehearing was still running. As a result, only 45 cases were finally closed in March (only 20 on the merits). The 56 filings and 1 reinstatement (Yale v. Flint, No. 4157) caused the total number of pending cases to increase from 628 to 640. Of those 640, 154 were awaiting preparation of a draft by the assigned justice.

The court denied eight petitions for review in March, granted and summarily disposed of two, and kept four for plenary consideration on the merits, a denial rate of 57% and a summary disposition rate of 71%.

Case No. 4529, Snyder v. State, docketed previously as a sentence appeal, was converted in March to a regular criminal appeal on receipt of papers indicating that the excessiveness of the sentence was not the sole issue to be presented in this court.

RDB RDB

TABLE I

ALASKA SUPREME COURT

1979 STATISTICAL SUMMARY THROUGH MARCH 31, 1979

Total Cases Pending: December 31, 1978	624
Cases Filed or Reinstated, 1979 to date	155
Dispositions on Merits to Mar. 31, 1979	
By Opinion and Mandate	43[a]
By Memorandum Opinion & Judgment	11
By Summary Order	11
Total Dispositions on Merits	65
Other Dispositions to Mar. 31, 1979	
Dismissals	39
Petition or Application Denied	35
Total Other Dispositions	74
Cases Pending Mar. 31, 1979	640
Reasons for Cases Pending	
Awaiting Record	140
Awaiting Briefs	156
Awaiting Hearing or Submission	46[b]
Submitted/Awaiting Draft Opinion	154
Submitted/Draft Opinion Circulating	84
Awaiting Decision on Granting Petition for Review	11
Awaiting Mandate or Decision on Rehearing	33
Stayed or Remanded	16
Total Pending Mar. 31, 1979	640

a 50 opinions have been published to date. The numbers differ because in consolidated cases and cross-appeals, more than one case is often disposed of in a single opinion. Moreover, opinions published late in December of one year do not produce case dispositions until the mandate is issued in the following year.

b Of these cases, 10 were pending with the central staff.

TABLE II
ALASKA SUPREME COURT
March 31, 1979

	Civil Appeals	Criminal Appeals	Sentence Appeals	TOTAL APPEALS	Petitions for Review	Originals	TOTAL ALL CASES
PENDING DECEMBER 31, 1978	297	209	51	557	61	6	624
FILED OR REINSTATED THRU February 28, 1979	35	21	5	61	27	10	98
FILED OR REINSTATED THIS MONTH	29	13	4	46	11	0	57
TOTAL FILED YEAR-TO-DATE	64	34	9	107	38	10	155
Adjustments		+ 1	- 1	0			0
DISPOSITIONS							
A. By Opinion and Mandate/Published							
Affirmed	8	7	7	22	1		23
Affirmed in Part/Reversed or Remanded in Part	1	5	1	7	1		8
Reversed	1	1		2	2		4
Reversed and Remanded	5	2		7			7
Remanded Only			1	1			1
Sentence Too Lenient							
Bar Disciplinary Action							
B. By Memorandum Opinion & Judgment							
Affirmed	7	3		10			10
Reversed	1			1			1
C. By Summary Order							
Affirmed		1		1	3		4
Reversed or Reversed & Remanded					2	1	3
Other					4		4
TOTAL DISPOSITIONS ON MERITS	23	19	9	51	13	1	65
D. Petitions for Review/Originals Denied					29	6	35
E. Dismissals							
By Agreement or by Appellant	16	8		24	3		27
By Court	6	3		9	2		11
On Motion	1			1			1
TOTAL DENIALS AND DISMISSALS	23	11	0	34	34	6	74
TOTAL CASE DISPOSITION	46	30	9	85	47	7	139
Reasons for Cases Pending March 31, 1979							
Awaiting Record	79	54	7	140	0	0	140
Awaiting Briefs	76	59	8	143	10	3	156
With Central Staff	3	2	3	8	2	0	10
Awaiting Hearing/Submission	18	12	2	32	4	0	36
Awaiting Draft Opinion	79	44	15	138	12	4	154
Draft Opinion Circulating	38	26	10	74	10	0	84
Awaiting Decision on Granting P/R or Orig					9	2	11
Awaiting Mandate or Decision on Rehearing	18	9	2	29	4	0	33
Stayed or Remanded	4	8	3	15	1	0	16
TOTAL CASES PENDING March 31, 1979	315	214	50	579	52	9	640

M E M O R A N D U M

March 2, 1979

TO: Chief Justice Rabinowitz
Justice Connor
Justice Boochever
Justice Burke
Justice Matthews
Justice Dimond
Arthur H. Snowden
Susan Burke
Jim Babb
Merle Martin
Dick Emerman
Connie Staska
Caroline Hudnall

FROM: Robert D. Bacon

SUBJECT: February 1979 Statistics

Attached is Supreme Court statistical information as of February 28, 1979.

For all its efforts in February, the court merely stayed in the same place. The number of matters pending on the docket increased by two, from 626 to 628. A total of 46 cases was filed, plus one reinstatement (Hintz v. State, No. 3541). The court closed 45 cases, 26 on the merits and 19 otherwise.

The number of cases pending with a justice for preparation of a draft opinion remained at 152. The number which were the subject of circulating draft opinions grew from 84 to 90. Both of these numbers are somewhat exaggerated; when cross-appeals are pending, they are counted as two cases in these statistics but can be disposed of with a single draft.

The court made decisions on 14 petitions for review in February. It denied 11 (79%), granted and summarily disposed of two (14%)(Wilson v. Mine Safety Appliances Co., No. 4259, and Ross v. Moody, No. 4419), and kept one for oral argument on the merits (Messerli v. State, No. 4326).

Nineteen opinions were published in February, the same as the average number per month during 1978.

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TABLE I

ALASKA SUPREME COURT

1979 STATISTICAL SUMMARY THROUGH FEBRUARY 28, 1979

Total Cases Pending: December 31, 1978	624
Cases Filed or Reinstated, 1979 to date	98
Dispositions on Merits to Feb. 28, 1979	
By Opinion and Mandate	34[a]
By Memorandum Opinion & Judgment	2
By Summary Order	9
Total Dispositions on Merits	45
Other Dispositions to Feb. 28, 1979	
Dismissals	23
Petition or Application Denied	26
Total Other Dispositions	49
Cases Pending Feb. 28, 1979	628
Reasons for Cases Pending	
Awaiting Record	128
Awaiting Briefs	168
Awaiting Hearing or Submission	45[b]
Submitted/Awaiting Draft Opinion	152
Submitted/Draft opinion Circulating	90
Awaiting Decision on Granting Petition for Review	15
Awaiting Mandate or Decision on Rehearing	11
Stayed or Remanded	19
Total Pending Feb. 28, 1979	628

a 29 opinions have been published to date. The numbers differ because in consolidated cases and cross-appeals, more than one case is often disposed of in a single opinion. Moreover, opinions published late in December of one year do not produce case dispositions until the mandate is issued in the following year.

b Of these cases, 17 were pending with the central staff.

TABLE II
ALASKA SUPREME COURT
February 28, 1979

	Civil Appeals	Criminal Appeals	Sentence Appeals	TOTAL APPEALS	Petitions for Review	Originals	TOTAL ALL CASES
PENDING DECEMBER 31, 1978	297	209	51	557	61	6	624
FILED OR REINSTATED THRU January 31, 1979	18	12	2	32	14	5	51
FILED OR REINSTATED THIS MONTH	17	9	3	29	13	5	47
TOTAL FILED YEAR-TO-DATE	35	21	5	61	27	10	98
Adjustments							
DISPOSITIONS							
A. By Opinion and Mandate/Published							
Affirmed	6	5	5	16	1		17
Affirmed in Part/Reversed or Remanded in Part	1	5	1	7			7
Reversed	1	1		2	2		4
Reversed and Remanded	3	2		5			5
Remanded Only			1	1			1
Sentence Too Lenient							
Bar Disciplinary Action							
B. By Memorandum Opinion & Judgment							
Affirmed		2		2			2
Reversed							
C. By Summary Order							
Affirmed		1		1	3		4
Reversed or Reversed & Remanded					2	1	3
Other					2		2
TOTAL DISPOSITIONS ON MERITS	11	16	7	34	10	1	45
D. Petitions for Review/Originals Denied					21	5	26
E. Dismissals							
By Agreement or by Appellant	11	5		16			16
By Court	6			6	1		7
On Motion							
TOTAL DENIALS AND DISMISSALS	17	5	0	22	22	5	49
TOTAL CASE DISPOSITION	28	21	7	56	32	6	94
Reasons for Cases Pending February 28, 1979							
Awaiting Record	67	55	6	128			128
Awaiting Briefs	73	70	11	154	8	6	168
With Central Staff	7	3	3	13	4		17
Awaiting Hearing/Submission	21	5	0	26	1	1	28
Awaiting Draft Opinion	67	48	17	132	17	3	152
Draft Opinion Circulating	49	23	9	81	9		90
Awaiting Decision on Granting P/R or Orig.				0	15		15
Awaiting Mandate or Decision on Rehearing	8	2	1	11			11
Stayed or Remanded	12	3	2	17	2		19
TOTAL CASES PENDING February 28, 1979	304	209	49	562	56	10	628