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SB

104

(FILE NO. 4)

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

#### THE ROLE OF AN INTERMEDIATE APPELLATE COURT

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

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

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

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

APPENDIX V

Nevada Legislation Creating an Intermediate Appellate Court

NEVADA

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

FILE NUMBER-----

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

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

1. The court of appeals consist of three judges  
or such greater number as the legislature may  
provide by law. If the number of judges is  
so enlarged, the supreme court shall provide  
by rule for the assignment of each appeal to  
a panel of three judges for decision.
2. Except as otherwise provided in this subsection,  
the judges of the court of appeals shall be  
elected by the qualified electors of the state,  
at the general election, for terms of 6 years  
beginning on the 1st Monday of January next  
after the election. The terms of the first  
three judges elected are 2 years, 4 years and  
6 years respectively, which shall be separately  
specified for their election, and in any increase  
or reduction of the number of judges, the  
legislature shall provide initial terms of 6 or  
fewer years such that one-third of the total  
number of judges, as nearly as may be, is elected  
every 2 years.
3. The judges of the court of appeals shall elect  
a chief judge from among their number. The term  
of office of the chief judge is 2 years, beginning  
on the 1st Monday of January of each odd-numbered  
year. A chief judge may succeed himself.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The commission is composed of:

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

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

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

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

5. The supreme court shall make appropriate rules for:

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

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

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

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

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

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

9. The commission may:

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

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

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

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

and be it further:

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

members files  
SR 10/4 am

KENAI PENINSULA BAR ASSOCIATION

P. O. BOX 4210  
KENAI, ALA A 99611  
TELEPHONE . 33-7167

April 17, 1979

Representative Terry Gardner  
Speaker of the House of Representatives

Representative Charles Parr  
Chairman - House Judiciary Committee

Representative Hugh Malone

Representative Patrick McConnell

Senator Clem Tillion  
President - State Senate  
Pouch B  
Juneau, Alaska

Dear Mr. Parr:

Enclosed please find a copy of a resolution which was passed by the Kenai Peninsula Bar Association at its April 13, 1979 meeting, supporting the creation of an intermediate criminal appellate court. We felt that it was important for the legislature to be aware that this bar association is very much in favor of the creation of an intermediate court of criminal appeals, in light of the strong opposition to such a court voiced by the Tanana Bar Association.

Very truly yours,



KENNETH J. CUSACK  
President  
Kenai Peninsula Bar Association

KJC/aj

Encl.

KENAI PENINSULA BAR ASSOCIATION

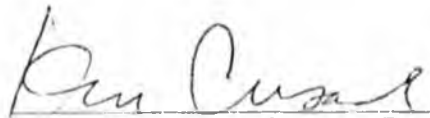
P. O. BOX 397  
KENAI, ALASKA 99611  
TELEPHONE 283-7534

RESOLUTION

Upon motion duly made, seconded, and passed by the  
Kenai Peninsula Bar Association, it was resolved:

The Kenai Peninsula Bar Association supports the  
establishment of an Alaska Intermediate Court of Appeals for  
criminal cases, provided that review from said appellate  
court to the Alaska Supreme Court shall be by writ of certiorari  
and not by automatic right of appeal.

RESOLVED this 13th day of April, 1979.

  
\_\_\_\_\_  
KENNETH J. CUSACK, President  
Kenai Peninsula Bar Association

STATE  
of ALASKA

## MEMORANDUM

*members files  
SB 104*TO: 

DATE: April 20, 1979

Representative Charles H. Parr, Chairman  
House Judiciary Committee

FILE NO:

TELEPHONE NO:

FROM:

Stuart C. Hall, Commissioner *SH*  
Alaska Public Utilities CommissionSUBJECT: Senate Bill 104 am (Establishing  
Court of Appeals)Cheri C. Jacobus, Chairman *9*  
Alaska Pipeline Commission

Pursuant to your conversation with Commissioner Hall on Friday, April 6, in Juneau, we submit our comments on SB 104. This is not a position paper of the Department of Commerce and Economic Development nor of the agencies on which we serve; it represents the individual and collective concerns of the writers.

SB 104, establishing an intermediate appellate court, represents one of the options that the Judicial Council has had under consideration for some time to alleviate the workload of the Supreme Court, particularly in the area of the criminal appeals. The other options were: expansion of the membership of the Supreme Court to seven justices and creation of an appellate division of the Superior Court (as in New York State). Instead, the Judicial Council and the state court system opted for the intermediate appellate court. A significant number of other states provide for such a court. We have no position as to whether such a new court is wise or unwise.

Proponents of the legislation refer to this proposed new court as a "Court of Criminal Appeals" and indicate that this court was intended to provide appellate relief in the criminal law area only. The drafters of the legislation, however, have included in the new court's jurisdiction "appeals to the superior court from a decision of an administrative agency".

This concerns us because it creates a third level of appellate review of decisions of the regulatory commissions. We believe this is entirely unnecessary. If a third level of appellate review is needed, we believe the APUC will require a third staff attorney to juggle the various cases under review, and this will contribute to "regulatory lag". The new court's jurisdiction will similarly impact the ATC, APC and ACPEC. The Supreme Court is not presently burdened by appeals from the APUC's decisions or those of any of the other principal regulatory agencies (ATC, APC, etc.). We believe only two levels of appellate review are required to ensure compliance with applicable statutes, constitutionally prescribed due process, etc. At the federal level, appeals from the decisions of the FCC, FTC, ICC, FERC and like agencies are taken directly to the Circuit Courts of Appeal. They do not start in the trial court of general jurisdiction, the federal district court. As the Jager case makes clear, to this point in time in Alaska, the Superior Court has acted as the intermediate appellate court. Jager v. State, 537 P.2d 1100, 1106 (Alaska, 1975). If an intermediate court of appeal is created, there is no need for the superior court to perform that function. Consequently, we believe the Superior Court should be bypassed in favor of review by the new Court of Appeals. Ideally, SB 104 am should be further amended to so provide, as should the Administrative Procedure Act (APA). We attach proposed amendments to SB 104 am accomplishing that purpose.

Representative Charles H. Parr

April 20, 1979

Page 2 of 2

The Judiciary Committee should consider that different types of administrative appeals are heard by the courts under the APA, such as:

- (1) appeals from the regulatory commissions;
- (2) appeals from denials of various benefits, e.g., unemployment insurance, workmen's compensation, or those administered by the Department of Health & Social Services;
- (3) appeals from adoption of regulations, or declaratory judgments concerning the regulations of the various administrative bodies, including the APUC, Department of Fish & Game, Environmental Conservation, etc.

Further SB 104 does not define "administrative agency".

We are advised that the drafters of this legislation did not intend that appeals from our decisions would have three appellate reviews. The effect of this bill, however, would be three appellate reviews. Another provision in the bill does allow the Supreme Court, by rule, to bypass the Court of Appeals for appeals from administrative agencies' decisions and further provides that those decisions would be heard by the Supreme Court after a Superior Court review. We do not regard this as the "clean" approach. We believe SB 104 should be amended to provide for direct appeals from the regulatory commissions' decisions to the Court of Appeals. The drafters concede that the approach in the bill as drafted is not a good one.

cc: Charles Webber, Commissioner  
Dept. of Commerce & Economic Development

Keith Specking  
Legislative Assistant to the Governor

1 Proposed amendments to SB 104am (Per Cheri C. Jacobus and Stuart  
2 C. Hall)

3

4 On page 1, line 25, after "agency", insert:

5 " , other than those agencies set out in (e) of this  
6 subsection"

7 On page 2, between lines 7 and 8, insert:

8 (e) The court of appeals has appellate jurisdiction  
9 in all actions and proceedings commenced before, and all final  
10 administrative orders or decisions of, the Alaska Public Utilities  
11 Commission, the Alaska Transportation Commission, the Alaska  
12 Pipeline Commission and the Alaska Commercial Fisheries  
13 Entry Commission. However, the court may, in its discretion,  
14 remand a commission matter to the superior court for a trial  
15 de note in whole or in part.

16 On page 2, line 8, delete "(c)" and insert "(f)"

17 On page 13, between lines 23 and 24, insert:

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

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

ALASKA PUBLIC UTILITIES COMMISSION  
1100 MACKAY BUILDING  
338 DENALI STREET  
ANCHORAGE, ALASKA 99501  
PHONE 276-0122

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1 (b) The complete record of the proceedings, or  
2 parts of it which the appellant designates, shall be prepared  
3 by the agency. A copy shall be delivered to all parties  
4 participating in the appeal. The original shall be filed in  
5 superior court, or the court of appeals, within 30 days after  
6 the appellant pays the estimated cost of preparing the complete  
7 or designated record or files a corporate bond equal to the  
8 estimated cost.

9 (c) The complete record includes (1) the pleadings,  
10 (2) all notices and orders issued by the agency, (3) the  
11 proposed decision by a hearing officer, (4) the final decision,  
12 (5) a transcript of all testimony and proceedings, (6) the  
13 exhibits admitted or rejected, (7) the written evidence,  
14 and (8) all other documents in the case.

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

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

27 \*Sec. 27. AS 44.62.570(a) is amended to read:

28 (a) An appeal shall be heard by the superior  
29 court, or the court of appeals, sitting without a jury.  
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\*Sec. 28. AS 44.62.570(h) is amended to read:

(h) If further appeal is taken, the supreme court may, in its discretion, stay the superior court or court of appeals judgment or agency order.

Renumber remaining bill sections accordingly

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1015 West 7th Avenue, Anchorage, Alaska 99501  
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April 4, 1979

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Treasurer  
WILLIAM M. ERWIN

Representative Fred E. Brown  
Chairman, House Commerce Committee  
Pouch V  
Juneau, Alaska 99811

Re: SB 104 am.

Dear Representative Brown:

It has come to our attention that you are interested in the views of the Alaska Academy on the proposed legislation creating an intermediate court of appeals.

I have reviewed, with great interest the text of SB 104 am. and offer the following comments:

- 1) The case load currently placed upon the Supreme Court is far in excess of the capabilities of any five men, regardless of how hard they work at their task.
- 2) Increasing the number of Supreme Court Justices would, in our opinion, create more rather than less delay in the appeal system. It has been our experience that a smaller committee can reach agreement with far less time expenditure than a larger one. The idea of panels of Justices, all from one court, has the added inherent problem of conflicting rulings.
- 3) The proposed jurisdiction of the "appellate" court would take many of the more time consuming tasks currently performed by the Supreme Court, i.e., sentence review, appeal from administrative agencies.
- 4) The discretionary power of the Supreme Court to grant a further review under Sec. 22.07.030 is a method that has been followed by nearly all states with intermediate courts of appeal, and has allowed the Supreme Court to concentrate on more serious legal issues. We believe it should be made part of any bill.

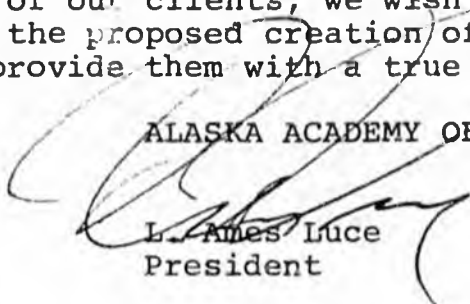
- 5) We have some problems with Sec. 22.05.015: While it is obvious that there will be cases that obviously are going to proceed to the Supreme Court, for example the recently contested primary election, we believe the better procedure would be for the new "appellate" court to certify such cases up to the Supreme Court for decision. This would be in line with the standard chain of appeal and further, would be more efficient in the use of the Court's time. If a case is permitted to go to the Supreme Court for a hearing as to whether the appeal should skip the "appellate" court -- that hearing, the briefs, the arguments and the Supreme Court's deliberations would take almost as much time as an appeal.
- 6) Other than the criticism of the Transfer of Appellate Case section of SB 104 am., we believe the bill would greatly benefit the citizens of Alaska.

While endorsing the creation of an intermediate court of appeals, we do not view such a court as a cure for all of the ills of the delay in the courts which results in great injustice to our citizens. There is a great need for both a more efficient use of the time of trial court judges and for additional judges- It currently requires nearly two years to bring a civil case to trial under the most ideal circumstances. Then the appeal process requires another two years or more. This bill would greatly reduce the appeal time and you are to be applauded for your efforts in that regard. The two plus year delay in the trial courts would, however, still be with us.

In the near future the delay at the trial court level must be reduced. We believe that such steps as a specific designation of a certain number of Superior Court Judges as civil and a certain number as criminal would be one step which should be considered. Funding of new judgeships, we believe, should at least weigh this as an alternative.

On behalf of all of our clients, we wish to thank you for your efforts, through the proposed creation of an intermediate court of appeals, to provide them with a true access to the courts.

ALASKA ACADEMY OF TRIAL LAWYERS



L. Ames Luce  
President

SB 104 master file only

RALPH M. HOLMAN  
ASSOCIATE JUSTICE

STATE OF OREGON  
SUPREME COURT  
SALEM 97310

January 25, 1979

Mr. Arthur H. Snowden, II  
Administrative Director  
Alaska Court System  
303 K Street  
Anchorage, Alaska 99501

Attention: Ms. Susan Burke

Dear Mr. Snowden:

Judge Hicks, our Court Administrator, has referred to me your inquiry concerning the approach taken to secure legislative approval of an intermediate appellate court. The proposal for such a court was made to our legislature in 1969 and resulted in the establishment of such a court in the fall of that year. At that time I was a member of both the Supreme Court of Oregon and the Judicial Administration Committee of the Oregon State Bar and was designated by the Supreme Court to draw up a plan for such a court upon which plan the individual members of the Supreme Court could agree. It was thereafter my duty, after the court had reached a consensus, to sell the plan to the Judicial Administration Committee of the Oregon State Bar and to secure approval at the annual Bar meeting of its members as well as to present the matter to the legislature. For these reasons Judge Hicks decided that I might be the logical person to respond to your inquiry.

Probably the best method of imparting information to another state concerning methods of convincing the legislature that an intermediate appellate court is necessary is to recount the Oregon experience. It might also be wise for Alaska, if it has not done so already, to contact the authorities in Colorado which have also recently gone through the same experience. At the time Colorado established its intermediate appellate court, I went to Colorado and met with the committee that had the matter under consideration and told them of our experience and problems. Colorado and Oregon had similar difficulties in that a large percentage of the population of the state was concentrated in a relatively small area, leaving a broad expanse with a comparatively small population. I would anticipate that Alaska also has a similar problem.

To begin with, the decision must be made whether the pressure of the appellate load is sufficiently large to justify at once a full-fledged intermediate appellate court. In Oregon it was decided that such a full-fledged court could not be justified upon our

original application. At that time a plan was presented to the legislature for an intermediate court of five judges which would have original appellate jurisdiction in limited classifications of cases. The five judges were to sit in two panels of three each with the Chief Judge sitting in both panels. These classifications were generally (1) criminal, (2) domestic relations, juvenile matters and adoptions, (3) probate, and (4) those in which state boards and bodies are involved which encompass such things as administrative law. The balance of the appellate litigation continued to come directly to the Supreme Court.

A statistical study was made for the past seven years in an effort to identify the percentage of total appellate litigation which arose from various classifications of cases so that the appellate load could be equitably distributed between the two courts. A dissatisfied litigant could, of course, ask that the Supreme Court review the decision of the intermediate court, and this additional duty for the Supreme Court had to be taken into consideration in making the allotment of the workload between the two courts. It was explained to the legislature that as the workload increased, the legislature would be requested to transfer original jurisdiction to the intermediate appellate court in other classifications until all original jurisdiction in appellate matters was vested in that court except for certain enumerated situations in which original appellate jurisdiction was frozen into the Supreme Court by the peculiarities of the Oregon Constitution.

The 1977 Legislative Assembly finally concluded the transition and, as of January 1, 1978, all original appellate jurisdiction (except for the constitutional exceptions) was vested in the intermediate appellate court, which now has ten judges and which presently needs at least two more. The legislature was told in advance that when the workload justified a full intermediate appellate court it was contemplated that there would be twelve intermediate appellate judges sitting in panels of three each, thus effectively making four intermediate appellate courts of three judges each. Presently, the intermediate court is sitting in panels of four with nine members being divided into panels of three and with the Chief Judge, sitting with each panel, making the fourth judge.

A word of caution is in order concerning the division of original appellate jurisdiction. In surveying what had occurred in other states, we observed that original appellate jurisdiction lines tend to become blurred. As an illustration: a constituent of Senator Jones from the cow country part of the state wants quick litigation results in cattle rustling cases. As a result, Senator Jones dumps a bill into the legislature that says appeals in all such cases will bypass the intermediate appellate court and go directly to the Supreme Court. As soon as it is generally understood that this can be done, all hell breaks loose and pretty soon a well-devised appellate plan becomes a complete mess, with special interest groups forcing through bills which require bypassing the intermediate appellate court in their particular field of interest. Therefore, it is important at the outset not to make any exceptions, be it first-degree murder or whatever. Such exceptions breed others. We have been relatively successful in Oregon in avoiding this pitfall which is exhibited in almost every other state in which different layers of appellate courts exist.

Another pitfall in this regard is the practical political aspects of getting something approved by the Bar and the legislature. If a full-scale intermediate appellate court is deemed not to be immediately feasible, as it was deemed not to be in Oregon, extreme care should be taken in deciding what kinds of litigation are going to be subject to the possibility of two appeals and what kinds of litigation are not. The tendency of the members of the Bar is to resist the possibility of having two appeals in the kinds of litigation out of which they make their real money. Therefore, it was deemed wise in Oregon, as a political ploy only, in an effort to get the camel's nose into the tent, to dump into the intermediate appellate court's jurisdiction as many classes of litigation as possible in which the cost of litigation on either one or both sides is borne by the public coffers. Lawyers seldom object to an increase in litigation for which they are being paid out of the public pocket when it is a kind of litigation in which their private clients can ill afford to pay. This does not necessarily tend to put into the intermediate appellate court's original jurisdiction those classes of litigation which should actually be there, but it is something to which resort may be had in a situation in which extreme difficulty is contemplated in getting the Bar's approval. Without the Bar's approval you will

probably not get far. We did it in Oregon in order to get our toe in the door, and we were successful. I am, of course, unable to make any such political judgment as to what the wise course may be in Alaska, or whether it is even necessary to do it by small bits over a period of ten years, as was necessary in Oregon.

Another decision which has to be made is whether the separate panels of the intermediate appellate court sit in one location or whether the various panels are distributed around the state. In Oregon it was decided that all members of the court should sit in the state capital, as does the Supreme Court. The reason was entirely one of finances. One of the most expensive parts of an appellate court is a law library. With all of the appellate judicial manpower located in one place (Supreme Court and all sections of the intermediate appellate court), one law library suffices. For any section of an appellate court that is located elsewhere, the law library must be duplicated. This involves a tremendous, monumental expense.

Our experience has shown that there are other benefits, and also detriments, from having the intermediate appellate court concentrated in one location. Having the various panels all in one place tends to minimize disparate decisions by separate panels. They talk to each other and go over each other's opinions. It also centralizes administration and minimizes the cost of furnishing space and equipment. Now that we have gone to computers for the printing and storing of opinions, I suspect that the savings are material. However, if every panel of the intermediate appellate court monitors what comes out of other panels, production tends to slow down as everyone is looking over everyone else's shoulders.

In addition to the problem of where the judges should sit is the problem of whether they should be selected from the state at large or from districts. In Oregon the judges are elected from the state at large. This tends to elect persons from the most heavily populated part of the state who have name familiarity there. Regardless of where the members of the court sit, our experience has indicated that there may be some justification for having members of the court elected from various part of the state, if it is felt that there is any value in a judicial representation from various areas.

The fact that the entire court may be centrally located in one area does not prevent its panels from actually sitting in various parts of the state to hear arguments. It is a means of showing the flag and servicing people locally with the judicial system, while still permitting the court to be centrally located with the attendant benefits that may come therefrom. In most sections of the state there are physical facilities for local trial courts and these, as a rule, can be easily used by a three-man judicial panel for the purpose of hearing cases which have arisen from a particular section of the state. In Oregon, upon occasion, even the Supreme Court travels about to hear cases--not usually--but sometimes.

It should also be remembered that it is valuable to have interchangeable appellate manpower. The Supreme Court should have the authority to assign its members to the intermediate appellate court, and members of that court should be assignable to the Supreme Court. As an illustration, last month I sat with a panel of the intermediate court that was shorthanded. I am, of course, disqualified to sit on those cases should they come to the Supreme Court. The system has worked well and makes the most of the available manpower.

If it is determined that a full intermediate court is not politically or financially feasible in Alaska at this time, as it was not at the beginning in Oregon, great care should be taken in defining the classification of the kinds of cases when making a division of original appellate jurisdiction. Time spent in writing opinions concerning which court has original appellate jurisdiction is wasted completely. Oregon law has a provision that if anyone contends an appeal has been filed in the wrong court, the Supreme Court shall decide it summarily without argument or briefing. We have never written one opinion on the subject and do not intend to. We have had trouble with consistency in how to devise certain informal internal rules for this purpose. The principal difficulty is with the administrative and governmental law classifications. I will not take your time to detail our experience further except to say that it is available, if desired.

Statistical studies are available in convincing a legislature that the establishment of the intermediate appellate court is necessary and desirable. In Oregon we made studies which showed

the increase in the number of appeals filed over a period of years and the percentage of appeals which came from each classification of litigation and the number of written opinions which resulted. We used statistics from other states showing the average number of opinions written by the members of the supreme courts of those states and compared them with the average number that must be written in Oregon to keep current in the absence of an intermediate appellate court. We made projections of the number of future appeals that could be anticipated, using as a basis therefor our past history of increases. These projections can be related to population, trial court litigation, and other relevant data. The statistics should be kept as simple and uncomplicated as possible; if they are too complex, the members of the legislature often get lost in the maze. If you have a genuine case, it can easily be demonstrated. Our investigation indicates that a supreme court judge should not be expected to write more than an average of 30 opinions a year of the detailed kind which is to be expected from such a court.

Since the establishment of the intermediate court in Oregon, the appellate system has been modified considerably. Originally, appeals from administrative decisions went to the top trial court where either a further hearing was had or a hearing was had on the record made before the state board or body. This has all been changed. Such appeals now go straight from the hearing agency of the state board or body to the Court of Appeals. We have a two-level trial court: district courts, which are of a limited and lesser jurisdiction, and circuit courts, which are of an unlimited jurisdiction. It used to be that losing litigants in the district court could get a new trial by appealing to the higher trial court. Recording devices have now been put into the lower trial courts and the tapes come directly to the Court of Appeals for review. I have no idea whether any of this is helpful to Alaska since I am unfamiliar with its administrative hearing and trial court procedure and composition.

Oregon still has an appellate litigation crisis. Since the 1967 statistics, which were the most recent ones available at the time of the formation of the Court of Appeals, the appellate load has increased more than five-fold. There are presently being filed more than 3,000 appeals each year. While many are dismissed before decision, the Court of Appeals, of necessity, decides many cases

Mr. Arthur H. Snowden, II

7

January 25, 1979

without written opinion. In fact, many appeals do not merit a written opinion and the members of the profession seem to have accepted this state of affairs.

A detailed recapitulation of the procedure on petition to the Supreme Court from the Court of Appeals can be furnished, if desired. The Oregon law requires that three of our seven Supreme Court members must vote to allow review of an opinion of the intermediate appellate court. A number of statistical documents used in Oregon in our application before the legislature in 1967 are enclosed, as examples only, but I am sure much better ones could be evolved. One of the enclosures is a statistical study made in the state of Colorado. We made a similar one but I do not find it in my file. It is extremely difficult to anticipate in advance all relevant inquiries which might be of interest.

I am sure that you should contact Chief Judge Herbert M. Schwab of the Oregon Court of Appeals. While he did not participate in the planning and passage of the act which established the court, he has acted as Chief Judge since its formation and probably knows the pitfalls in the administration of such a court better than anyone in existence. The two of us have been the ones from Oregon who have traveled to other states that are planning the establishment of such a court.

Sincerely,

*Ralph M. Holman*  
Ralph M. Holman

mta

3 of 5 here sounds good  
+ it would be nice if that  
vote was required to be a  
part of the record

*JH*

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 30, 1979

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

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

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

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

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

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

Therefore no constitutional amendment is necessary to establish the court.

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

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

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

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

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

Representative Charles H. Parr  
Page 3  
March 30, 1979

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

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

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

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

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

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

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

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

Representative Charles H. Parr  
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March 30, 1979

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

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

BGB:jd



Alaska Court System

State of Alaska

SUSAN BURKE  
Staff Counsel

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K STREET  
ANCHORAGE, ALASKA 99501

April 2, 1979

Honorable Charles Parr  
Chairman, House Judiciary Committee  
Pouch V  
Juneau, Alaska 99811

Re: SB 104am -- An Act Establishing the Court of Appeals.

Dear Representative Parr:

I understand from Mr. Snowden that the Judiciary Committee had some technical questions regarding Senate Bill 104. I will attempt to provide a brief explanation of those portions of the bill that the Committee inquired about.

1. Jurisdiction over Administrative Agency Appeals.

Proposed Section 22.07.020(a)(8) [page 1, line 24] grants jurisdiction to the court of appeals to review a superior court decision in an appeal from an administrative agency. These appeals currently go from the superior court to the supreme court. When the supreme court first considered the question of court of appeals jurisdiction, it believed the best combination of cases would be criminal cases and the administrative agency appeals. However, because it was difficult to know with absolute certainty how many criminal cases the new court could properly handle, the supreme court wished to provide some flexibility in the bill. It is contemplated that the supreme court would in the first instance provide for direct review to the supreme court for these kinds of cases and that they would be transferred to the court of appeals only if it appeared that that court was able to handle them.

A number of sections in the bill were included solely for the purpose of implementing this proposed transferability of administrative agency appeals. If the Committee determines

Honorable Charles Parr  
April 2, 1979  
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that this transferability should not be included in the bill, the following sections should be deleted from the bill:

- (a) At page 1, delete lines 24 and 25;
- (b) At page 2, delete lines 10 through 12;
- (c) At page 5, delete lines 28 and 29;
- (d) At page 6, delete line 1.

2. Jurisdiction over District Court Appeals.

Under current law, the superior court initially hears appeals from the district court, both civil and criminal, and there is a right of appeal by either party to the supreme court from the superior court's decision. Two purposes were intended to be achieved by transferring jurisdiction from the superior court to the court of appeals over civil appeals as well as criminal. First, there are more criminal district court appeals than civil. As long as the criminal appeals were going to be heard by the court of appeals, it was thought that there were too few civil appeals to warrant the maintenance of an appellate process in the superior court for these cases. Second, it provides a means to eliminate the current right to two appeals from a district court case while at the same time assuring that a district court appeal was decided by more than one person.

3. Transfer of Appellate Cases.

Section 3 of the bill at page 5 (AS 22.05.015) provides the mechanism for transferring appropriate cases from the court of appeals to the supreme court if it appears that the supreme court would be taking review in any event. This type of provision is a fairly standard one in court of appeals legislation from other states, and is generally intended to avoid requiring parties to take a case through both courts when the case was of sufficient importance that the supreme court would certainly take review. This section would also permit the supreme court to accept cases pending in the court of appeals in order to take care of temporary workload imbalances between the two courts.

4. Discretionary Review on the Supreme Court's Own Motion.

I have not had an opportunity to do extensive research on the question of whether the United States Supreme Court has the

Honorable Charles Parr  
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authority to take review on its own motion of cases decided by the federal Circuit Courts. It is my understanding, however, that as a practical matter the U.S. Supreme Court does not do this, but may, in very extraordinary cases "invite" parties to apply for review. The inclusion of the authority by the supreme court to invoke its discretionary review "on its own motion" was not something that was considered to be terribly important one way or the other, and its deletion would have no effect on the efficient operations of the court of appeals and the supreme court.

5. Sentence Appeal Jurisdiction.

At page 9, line 4 and page 13, line 10, the bill proposes to change the limitation on sentence appeals from 180 days to 45 days. In 1976, the Supreme Court promulgated amendments to District Court Criminal Rule 7 and Appellate Rule 21 permitting appeals from sentences of 45 days or more. The Supreme Court was then of the view that this change was within its rule making authority. This view has been expressed again in a recent case, Wharton v. State, Opin. No. 1797 (February 16, 1979). The rationale behind the rule change was that 45 days is a significant period of incarceration and that the supreme court should review sentences in these cases. The amendments in the bill were included merely to conform the statute to the rule.

With respect to all of the matters that are raised in this letter, we would of course prefer that the provisions of the bill remain in the same form as passed by the Senate. However, it appears that none of the changes that the Committee is contemplating would be fatal to the operation of the court of appeals as envisioned by the Court System.

As a final matter, the Committee had requested that I furnish some additional information concerning the reversal rate of the Alaska Supreme Court as compared with reversal rates in other jurisdictions. Several years back we did prepare a very short comparative analysis for Senator John Rader. Because so few supreme courts regularly keep such figures, there were only a few other states included in that comparison and thus it did not provide a particularly accurate picture. Unfortunately, those of us who were likely to have kept a copy of that report have searched our files and cannot locate it. I have, however, enclosed a portion of the final report prepared by a committee from Idaho that examined recently the workload problems of the Idaho Supreme Court. This report does contain some information along these lines.

Honorable Charles Parr  
April 2, 1979  
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The Committee also requested the number of public defender appeals in relation to the total criminal appeals. This information requires the Supreme Court Clerk's Office to review the status cards of each case manually and it should be available to the Committee very shortly.

I am sorry that I was not able to appear personally before the Committee today, as some of these questions could perhaps have been answered at the hearing. If the Committee has additional questions, please let me know.

Sincerely,



Susan Burke  
Deputy Administrative Director

SB:ps  
Encl.

Bacon

AN INVESTIGATION INTO THE PROBLEMS  
CREATED BY THE GROWING APPELLATE  
CASELOAD IN IDAHO

REPORT OF THE SUPREME COURT  
APPELLATE COURT COMMITTEE

September 16, 1977

## THE APPELLATE COURT COMMITTEE

Justice Charles R. Donaldson	Co-Chairman
Justice Allan G. Shepard	Co-Chairman
J. Charles Blanton	Attorney
Paul S. Boyd	Attorney
Peter J. Boyd	Attorney
Robert E. Brown	Attorney
Albert Carlsen	Business
Louis H. Cosho	Attorney
Fred J. Hahn	Attorney
Bill Hall	Editor
John Hepworth	Attorney
Howard Humphrey	Attorney
Gary J. Ingram	Representative
Richard B. Kading	Attorney
Samuel Kaufman	Attorney
Edith Miller Klein	Senator
Robert W. Macfarlane	Labor
Ellison M. Matthews	Attorney
Patricia McDermott	Representative
Wesley F. Merrill	Attorney
Z. Reed Millar	Attorney
Dean E. Miller	Attorney
Thomas A. Miller	Attorney
William Murphy	Lt. Governor
Thomas G. Nelson	Attorney
W. W. Nixon	Attorney
William A. Parsons	Attorney
Ray W. Rigby	Attorney
James E. Risch	Senator
T. W. Stivers	Representative
Jay L. Webb	Attorney
Dennis E. Wheeler	Attorney
Paul W. Worthen	Representative

## FOREWORD

The court modernization effort of the late 1960's gave Idaho one of the most admired court structures in the nation, and that structure basically has remained unchanged and has well served the state. But events have occurred which could not be foreseen in the late 1960's: rapid state population growth, increasing numbers of attorneys admitted to practice, a litigious public attitude, new due process guarantees for criminal defendants, and a legislation explosion. The cumulative effect of these occurrences is causing a serious strain on one part of the court system structure--the Supreme Court's appellate capabilities.

Any proposal for change in the basic structure of the state's court system is bound to be greeted with controversy, particularly within the legal community. The Supreme Court Appellate Court Committee recognizes that no matter what may be suggested, its recommendations could not please the legal community in its entirety. This report is submitted, however, in the hopes that it will be read and digested, discussed and debated, before a final judgment is made.

September 16, 1977

Carl F. Bianchi  
Reporter for the Committee

of the Supreme Court or within the present structure, is not desirable.<sup>12</sup>

Some discussion was held on whether a form of panelization--splitting civil and criminal jurisdiction between either two Supreme Courts or two units of the same Supreme Court--would be helpful. It was pointed out that this is the system used in Texas, which state has criminal and civil courts of appeal, and that this solution had led to jurisdictional disputes and opposition from district attorneys in Texas. As a result of the Texas experience, other states had rejected this approach.

#### Reversal Rates

The Appellate Court Committee spent considerable time examining how the Supreme Court dealt with appeals from the district court. At the May 9th committee meeting, some committee members inquired whether the Supreme Court's percentage of reversal itself was leading to an increase in the number of appeals. Between the two meetings, the Administrative Office of the Courts was requested to seek information from other states to verify whether the Idaho Supreme Court's activities on appeal were out of line with other state courts of last resort.

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<sup>12</sup> The American Bar Association Standards Relating to Appellate Courts say that a Supreme Court "should not sit in panels or divisions, whether fixed or rotating, or delegate its deliberative and decisional functions to officers such as commissioners." Standard 3.01, at 7. Panels are said to dilute the function of developing the law and to lead to inconsistency of decisions.

Concerning only appeals from judgments in the district court, of a total of 5,144 final district court judgments in 1976, there were 196 appeals filed with the Idaho Supreme Court during that calendar year. Trial court decisions stood in 66 per cent of those appeals, were modified in 29 per cent of the appeals, and were directly reversed in 5 per cent of the cases. If the decisions ordering the district court judgment modified are lumped together with reversals, it could be said that the Supreme Court has a 34 per cent reversal rate. If only those appeals where the Supreme Court issued a final opinion are considered, (excluding dismissals prior to trial and settlements), the percentage is even higher. But whether the reversal rate is too high or too low is a subjective opinion without a frame of reference.

According to statistics obtained from other states and from the National Center for State Courts' National Courts Statistics Project, Wisconsin had a reversal rate in 1974 of approximately 30 per cent of its Supreme Court opinions, while Hawaii had a 39 per cent reversal rate in 1974. (The Hawaii reversal rate is actually even higher, since Hawaii classifies opinions where the trial court decision is ordered modified as affirmances.) The Alaska Supreme Court has reversed the lower courts in 51.5 per cent of the written opinions during 1976. The New Mexico Supreme Court, which has an intermediate appellate court, reversed 49 per cent of

its appeals. North Dakota, which does not have an intermediate appellate court, reversed 42 per cent of its appeals. In a comparison of twelve other states,<sup>13</sup> reversal rates (when modifications are included), ranged from a low of 15 per cent to a high of 54 per cent, with most in a range of 27 to 32 per cent.

The committee concluded that it was difficult to compare statistics between states due to differences in procedures and technology. However, the reversal rates obtained from other states led committee members to believe that the Idaho Supreme Court reversal rate is not much higher than other states and that the reversal rate in itself could not be identified definitively as a causal factor in the increasing rate of appeals. As pointed out by the vice-chairman of the Idaho Judicial Council, there are multiple factors affecting reversal rates of district judge opinions, including: the need for law clerks by judges in high-volume areas; complexity of cases handled; volume of cases handled; and change in status of the law between the time of trial and the time of consideration of the appeal. In light of the many factors involved in reversals, and the difficulty in identifying causal connections, the Appellate Court Committee abandoned this area of inquiry as a source of relief to the appellate caseload problem.

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<sup>13</sup> Only states without intermediate appellate courts were selected for comparison purposes.



## Alaska Court System

State of Alaska

303 "K" STREET  
ANCHORAGE, ALASKA  
99501

ARTHUR H. SNOWDEN II  
ADMINISTRATIVE DIRECTOR

(907) 274-8611

February 2, 1979

Honorable Robert H. Ziegler, Sr.  
Chairman, Senate Judiciary Committee  
Pouch V  
Juneau, Alaska 99811

Re: The Court of Appeals

Dear Senator Ziegler:

This is in response to your request for background information concerning the proposed intermediate appellate court.

In 1977 the supreme court became increasingly aware that the appellate workload was growing beyond the court's ability to handle it effectively and efficiently. Since 1970, following the increase in the supreme court's membership from three to five justices, the court's case filings have risen from 217 to 630, an increase of 300%. Though there have been slight increases in clerical staff, and two central legal staff assistants added, the supreme court is operating with essentially the same personnel it had in 1972 when the case filings were only 249.

During recent years the court has instituted a number of improvements designed to speed up the appellate process and to allow the court to handle better the increasing caseload.<sup>1</sup> Yet even with these improvements, the backlog of cases awaiting decision by the court continues to rise. In 1977 the chief justice requested the administrative office to explore additional solutions to the workload problems. A copy of the report prepared by this office is enclosed, but the report may be briefly summarized here.

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1. These improvements include delegating routine motions to the Clerk of the Court for decision, establishing a strict policy concerning extensions of time for filing briefs, providing a mechanism for parties to agree to a summary decision of their appeals, establishing a screening function for identifying cases that are amenable to summary decision, improving the case status monitoring capabilities, and increased use of per curiam and memorandum decisions.

February 2, 1979

Among the possible solutions identified in the report were to (1) increase the membership of the supreme court to seven; (2) limit the right of appeal; (3) have the supreme court hear cases in panels of three, with assistance from superior court judges; (4) increase the law clerk staff; and (5) establish an intermediate court of appeals. After reviewing the report, the supreme court determined that increasing the size of the court would not add significantly to its ability to decide more cases. The increased time required to achieve consensus of among more justices and the time required to review more draft opinions would nearly offset the advantage to be gained by having two more justices writing opinions. Limiting the right of appeal was rejected because it was believed that fairness requires that a party be entitled to one appeal. The court also agreed that the use of panels would not provide a significant workload savings and that such savings as would be achieved would only offer a temporary respite. Additionally, the use of panels, particularly if superior court judges were used on the panels, would unduly dilute the supreme court's law-making function. The court decided that an augmented central legal staff could provide some assistance,<sup>2</sup> but it also recognized that placing too much reliance on legal assistants is not desirable and runs the risk of having appeals decided essentially by law clerks and not by the court.

At the time the supreme court reviewed the report in September of 1977 it agreed that an intermediate appellate court was the one solution that offered the best hope of relieving the court's workload while maintaining the supreme court's essential law making function. The court, however, decided to wait one more year before making a final decision whether to seek the establishment of an intermediate appellate court. In the fall of 1978, it was clear that the workload situation on the court had not altered significantly, even though the appellate filings for 1978 increased only slightly over 1977. The court was deciding more cases than in 1977, writing more opinions, and generally working at a killing pace. Yet the backlog was still rising and at the end of 1978 the court had more cases under advisement and awaiting decision than ever before. The inevitable conclusion to be drawn from this is that even at the current rate of appellate filings, the court cannot keep pace. The backlog of cases awaiting

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<sup>2</sup> The court now has two central staff attorneys working under the direction of the Clerk of the Supreme Court.

February 2, 1979

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

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

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

Clearly the supreme court cannot handle these anticipated future increases.

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

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

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

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

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

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

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

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

Sincerely,

Arthur H. Snowden, II

AS/pmr

SB 104 file

# Alaska State Legislature

HOME ADDRESS  
P.O. BOX 65  
GALENA, ALASKA 99741

WHILE IN JUNEAU  
POUCH V  
JUNEAU, ALASKA 99811  
TELEPHONE 465-3753



Senate

SENATOR  
**John C. Sackett**  
CHAIRMAN  
SENATE FINANCE COMMITTEE  
MEMBER  
LABOR & MANAGEMENT COMMITTEE

April 24, 1979

Honorable Charlie Parr, Chairman  
Judiciary Committee  
Alaska State House of Representatives  
State Capitol  
Juneau, Alaska 99811

Dear Charlie,

I would appreciate your consideration in scheduling Senate Bill 104, (Establishing the Court of Appeals), for hearing in your committee within the very near future.

This legislation is of priority interest to me, and your assistance would be most helpful. If you should have question regarding the bill, please contact me. Please notify my office if a hearing can be scheduled within the immediate future. Again, I thank you for your consideration and assistance.

Very sincerely,

A handwritten signature in cursive script that reads "John C. Sackett".

John C. Sackett

Dear John -

I didn't get your letter about SB 104 (Court of Appeals) until <sup>it</sup> returned to my office late last night.

This bill has had four hearings, for a total of about six hours. Here are some of the questions which have surfaced:

1. Is this the best solution to the Court's problems?
2. Should the Court of Appeals have civil rather than criminal jurisdiction, or both?
3. Under what circumstances, and using what mechanism, should the Supreme Court review cases which ~~had~~ have already been decided by the Court of Appeals?
4. Should appeals from district courts and administrative agencies go directly to the Court of Appeals (or to the Supreme Court or to Superior Court)?
6. Is there a need to restrict sentence appeals, in light of past Supreme Court rulings?
7. Should a judge rejected by the voters be eligible for appointment to a different court?
8. ~~What~~ Should a judge be allowed to be a delegate to a constitutional convention?
5. Should there be a limitation on cases which can be appealed?

This is the most significant change ~~proposed~~ <sup>proposed</sup> to the court system since statehood. The Legislature is constitutionally mandated to establish courts and define their jurisdiction, and should take this responsibility seriously. It does not seem to me appropriate that the court system should be ~~subjected~~ <sup>subjected</sup> to take ~~such~~ action.

I have been looking for ~~some~~ a way to set up the Court of Appeals now, without resolving all the major questions first. The idea would be to permit the Judicial Council to ~~solicit~~ solicit applications for judgeships, review and make recommendations to governor so that he could appoint, ~~there is~~ with a delayed date for the court to begin operation. This would also give time for the administrative director of the court system to arrange for ~~office~~ <sup>space</sup>, furniture, personnel, etc. Unfortunately, I have not found a satisfactory way to do this.

As you may be aware, there are still several important senate bills to go through Judiciary Committee. It is possible to schedule another hearing on SB 104, but this would interfere with action on those bills.

I would be happy to discuss this ~~would be~~ with you personally.

Sincerely,

340 Returns

LEGISLATIVE PREFERENCE POLL

Although the Board of Governors does not feel it should take an active position on substantive law issues to come before the Alaska Legislature, the Board does feel that certain pieces of pending legislature potentially would have a broad effect on the administration of justice. Therefore, the Board is asking for membership response on those issues which currently are pending before this session of the legislature.

Please indicate your response on each of the issues stated on the following survey. MAIL YOUR RESPONSE TO THE ALASKA BAR ASSOCIATION, P.O. BOX 279, ANCHORAGE, ALASKA 99510 AS SOON AS POSSIBLE.

Thank you for your co-operation.

Ronald L. Kull  
Executive Director

	<u>Support</u>	<u>Oppose</u>	<u>Take No Position</u>
Proposed Constitutional amendment requiring the election of Judges	<u>65</u>	<u>268</u>	<u>7</u>
Proposed Constitutional amendment requiring the election of the Attorney General	<u>107</u>	<u>229</u>	<u>10</u>
Proposed Intermediate Appellate Court	<u>203</u>	<u>113</u>	<u>22</u>
Court Appropriations bill, including judicial salary legislation	<u>163</u>	<u>80</u>	<u>83</u>
University of Alaska Law Program	<u>76</u>	<u>165</u>	<u>81</u>

Additional legislation which you feel should receive Association attention.

(Specify)

_____	_____	_____
_____	_____	_____
_____	_____	_____

COMMENTS:

\_\_\_\_\_  
Signature (optional)

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.

	<u>Pending</u> <u>12/31/78</u>	<u>Filed</u> <u>1978</u>
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 <sup>NOT</sup> do 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

Ms. Susan Burke  
January 30, 1979  
Page 2

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*

MEMORANDUM

January 3, 1979

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

FROM: Robert D. Bacon, Clerk

SUBJECT: December 1978 Statistics

Attached are preliminary statistical tables for the month of December, 1978.

In a few weeks, this office will issue a more detailed annual statistical report containing information for the full year 1978, including average times that various classes of cases are pending, and making comparisons to prior years.

Some preliminary information revealed by this report: during 1978, there were 630 cases filed or reinstated, up from 613 in 1977. However, the number of appeals declined from 470 to 447, the number of petitions and original applications increased from 143 to 183. During 1978, the court disposed of 560 cases, including 302 on the merits. The comparable figures for 1977 are 450 and 231. At the end of 1978 there were 624 cases pending, an all-time high, and a 12.6% increase over the 554 cases pending on the docket one year ago.

During December, only 24 cases were closed, including only 11 on the merits. These are the smallest numbers for any month in more than two years. The 129 cases under submission and awaiting a draft opinion appears to be the largest number ever.

SH for

RDB

ALASKA SUPREME COURT  
December 31, 1978

	Civil Appeals	Criminal Appeals	Sentence Appeals	TOTAL APPEALS	Petitions for Review	Originals	TOTAL ALL CASES
PENDING DECEMBER 31, 1977	265	207	36	508	41	5	554
FILED OR REINSTATED THRU November 30, 1978	230	118	55	403	141	24	568
FILED OR REINSTATED THIS MONTH	26	17	1	44	15	3	62
TOTAL FILED YEAR-TO-DATE	256	135	56	447	156	27	630
Adjustments	+ 1	- 2	+ 2	+ 1		- 1	0
<b>DISPOSITIONS</b>							
A. By Opinion and Mandate/Published							
Affirmed	42	56	23	121	8	2	131
Affirmed in Part/Reversed or Remanded in Part	24	7	2	33	1		34
Reversed	2	7		9	2	1	12
Reversed and Remanded	26	19	2	47	2		49
Remanded Only	11	5	3	19			19
Sentence Too Lenient			1	1			1
Bar Disciplinary Action						2	2
B. By Memorandum Opinion & Judgment							
Affirmed	6	5	1	12			12
Reversed	1	1		2			2
C. By Summary Order							
Affirmed	2	1		3	3		6
Reversed or Reversed & Remanded	8			8	12		20
Other	1	2		3	6	5	14
TOTAL DISPOSITIONS ON MERITS	123	103	32	258	34	10	302
D. Petitions for Review/Originals Denied					85	14	99
E. Dismissals							
By Agreement or by Appellant	69	18	8	95	4		99
By Court	27	9	3	39	12	1	52
On Motion	6	1		7	1		8
TOTAL DENIALS AND DISMISSALS	102	28	11	141	102	15	258
TOTAL CASE DISPOSITION	225	131	43	399	136	25	560
<b>Reasons for Cases Pending December 31, 1978</b>							
Awaiting Record	67	50	8	125			125
Awaiting Briefs	78	70	12	160	14	5	179
With Central Staff	5	3		8			8
Awaiting Hearing/Submission	33	10	1	44	2		46
Awaiting Draft Opinion	54	40	22	116	13		129
Draft Opinion Circulating	38	24	6	68	11		79
Awaiting Decision on Granting P/R or Orig					16	1	17
Awaiting Mandate or Decision on Rehearing	11	4	2	17	2		19
Stayed or Remanded	11	8		19	3		22
TOTAL CASES PENDING December 31, 1978	297	209	51	557	61	6	624

TABLE I  
ALASKA SUPREME COURT  
1978 STATISTICAL SUMMARY

Total Cases Pending: December 31, 1977	554
Cases Filed or Reinstated, 1978	630
 <u>Dispositions on Merits to Dec. 31, 1978</u>	
By Opinion and Mandate	248 <sup>1</sup>
By Memorandum Opinion & Judgment	14
By Summary Order	<u>40</u>
Total Dispositions on Merits	302
 <u>Other Dispositions to Dec. 31, 1978</u>	
Dismissals	159
Petition or Application Denied	<u>99</u>
Total Other Dispositions	258
Cases Pending Dec. 31, 1978	624
 <u>Reasons for Cases Pending</u>	
Awaiting Record	125
Awaiting Briefs	179
Awaiting Hearing or Submission	54 <sup>2</sup>
Submitted/Awaiting Draft Opinion	129
Submitted/Draft Opinion Circulating	79
Awaiting Decision on Granting Petition for Review	17
Awaiting Mandate or Decision on Rehearing	19
Stayed or Remanded	<u>22</u>
Total Pending Dec. 31, 1978	624

*225 + 1-1-1  
awaiting  
decision*

- 1 237 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 following year.
- 2 Of these cases, eight were pending with the Central Staff.

SUPREME COURT ACTIVITY, 1977

*1976 Filings should be 468 not 466*  
*Clark's file*

The following is the Clerk's annual report of the activity of the Alaska Supreme Court.

I. FILINGS

Total Filings. The total filings in the Alaska Supreme Court increased from 466 in 1976 to 613 in 1977, or an overall increase of 32 per cent. (See Tables I and II for further comparisons.)<sup>1</sup>

Appeal Filings. Of the 613 cases filed or reinstated in 1977, 470 were appeals. Of this number, 251 or 53 per cent were civil appeals or cross-appeals. Criminal and juvenile appeals accounted for 156 filings. There were 63 sentence appeals filed.

Petitions for Review and Originals. A total of 126 petitions for review were filed in 1977 as compared to 86 filed in 1976. There were 17 applications for original relief filed in 1977 as compared to 16 filed in 1976.

II. DISPOSITIONS

A total of 450 cases were disposed of by the Supreme Court in 1977. In 1976, 335 cases were disposed of during the year. (See Tables III and IV for details on 1977 case dispositions.)

<sup>1</sup>

The increase in filings is a continuing trend. For example, 337 cases were filed in 1975. The 1977 filings mark a 73 per cent increase over 1975.

Of the total 450 cases, 214 (or nearly 50 per cent of dispositions) were disposed of by opinion or mandate.<sup>2</sup> This figure may be compared with 148 cases disposed of by opinion and mandate in 1976. A total of 17 cases were disposed of by summary order in 1977.

Of the total dispositions in 1977, 152 were cases dismissed by the Court or by the parties. These dismissals represent about one-third of all dispositions and about one-fourth of all 1977 filings. Other dispositions include 67 (or about one-half of filings) petitions for review denied without opinion.

### III. PENDING CASELOAD

The pending caseload of the Supreme Court at the end of 1977 was 554 cases. This figure may be compared with 391 cases pending at the end of 1976 and 258 pending at the end of 1975. The pending caseload has almost doubled in two years. (See Tables IV, V, and VI for further analysis of the pending caseload.) The 1976-77 increase in pending cases is more than 40 per cent.

Of the 554 cases pending at the end of 1977, 212 or 38 per cent were awaiting decision. About 25 per cent were awaiting record and another 25 per cent were awaiting briefs. (See Table V for more detail.)

### IV. MOTIONS

Over 1,200 motions were processed by the Court in 1977. (See Table VII) Of this number, 182 were substantive motions determined by the full Court and 35 were petitions for rehearing determined by the full Court. A total of 65 stay applications were assigned to individual justices during 1977. The balance of the motions were routine motions determined by a single justice or by the Clerk under the authority of Appellate Rule 14(c).

2

The total of 214 case dispositions by opinion does not match the figure of 189 actual opinions filed in 1977. (See Clerk's report of "Opinions by Justice" dated January 17, 1978.) This is true because the 214 dispositions include a separate accounting of appeals and cross-appeals disposed of in single opinions. Also, the 214 dispositions include some opinions filed in 1976 on which mandates did not issue until 1977.

V. TIME PERIODS FOR DISPOSITION OF APPEALS

For 1977 we have attempted to analyze the time periods for bringing appeals to issue and to decision.

Civil Appeals. For 1977, 101 civil appeal opinions were analyzed. The analysis follows:

3

1. Number of Days From Notice of Appeal to Mandate

Greatest Number	1,006 days
Least Number	150 days
Average Number	485 days (or one year, 120 days)

---

3

The time periods for resolving appeals in Alaska may be compared to the standards of timely disposition proposed by the American Bar Association in its Standards Relating to Appellate Courts:

Record Preparation	30 days
Briefing	70 days
Argument	(promptly)
Decision	<u>90 days</u>
Total	190 days

The actual time periods may also be compared to the time limits set by appellate rule and by internal procedures:

Record Preparation	40 days
Briefing	80 days
Argument	30 days
Decision	<u>120 days</u>
Total	270 days

2. Number of Days From Notice of Appeal to Certification of Record (Commencement of Briefing)

Greatest Number	497 days
Least Number	1 day
Average Number	120 days
Median	103 days

3. Number of Days From Certification of Record to Completion of Briefing

Greatest Number	354 days
Least Number	5 days
Average Number	135 days

4. Number of Days From Completion of Briefing to Hearing or Submission

Greatest Number	199 days
Least Number	1 day
Average Number	70 days

5. Number of Days From Hearing or Submission to Mandate

A. Number of Days From Hearing or Submission to Circulating Draft Opinion:

Greatest Number	233 days
Least Number	0 days
Average Number	85 days

B. Number of Days From Circulating Draft Opinion to Publication Date:

Greatest Number	189 days
Least Number	6 days
Average Number	65 days

C. Number of Days From Publication Date to Mandate:

Greatest Number	173 days
Least Number	10 days
Average Number	18 days

Criminal Appeals. A less extensive analysis of 54 1977 criminal and juvenile appeals follows:

1. Total Number of Days From Notice of Appeal to Mandate:

Greatest Number	1,076 days
Least Number	294 days
Average Number (or 1 year, 288 days)	593 days
Median Number	578 days

2. Number of Days From Notice of Appeal to Certification of Record (Commencement of Briefing):

Greatest Number	411 days
Least Number	20 days
Average Number	153 days
Median Number	142 days

3. Number of Days From Certification of Record to Completion of Briefing:

Greatest Number	528 days
Least Number	22 days
Average Number	193 days
Median Number	173 days

4. Number of Days From Completion of Briefing to Hearing or Submission:

Greatest Number	220 days
Least Number	4 days
Average Number	65 days
Median Number	49 days

5. Number of Days From Hearing and Submission to Opinion Publication:

Greatest Number	334 days
Least Number	47 days
Average Number	169 days
Median Number	165 days

Sentence Appeals: A total of 21 sentence appeals were classified as follows:

Number of Days From Notice of Appeal to Opinion Publication:

Greatest Number	662 days
Least Number	130 days
Average Number	304 days
Median Number	263 days

VI. TYPE OF DISPOSITION

Civil Appeals. For 1977, 101 civil appeal opinions were classified as to type of disposition. The classification follows:

Cases Affirmed	48
Cases Affirmed in Part, Reversed in Part	18
Cases Reversed	8
Cases Reversed and Remanded	23
Cases Remanded	<u>4</u>
Total	101

Criminal Appeals. For 1977, 54 criminal and juvenile appeal opinions were classified as to type of disposition. The classification follows:

Cases Affirmed	38
Cases Reversed and Remanded	13
Cases Reversed	<u>3</u>
Total	54

Sentence Appeals: The classification of 21 sentence appeal opinions follows:

Sentences Affirmed	15
Sentences Affirmed in Part, Reversed in Part	1
Sentences Reversed and Remanded	4
Sentences Too Lenient	<u>1</u>
Total	21

TABLE I

## ALASKA SUPREME COURT CASE FILINGS 1970-1977

	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>
Regular Appeals and Sentence Appeals Filed	172	197	188	195	208	249	364	470
Petitions for Review Filed	33	12	45	49	60	81	86	126
Original Applications Filed	<u>12</u>	<u>6</u>	<u>16</u>	<u>11</u>	<u>22</u>	<u>7</u>	<u>16</u>	<u>17</u>
Total Filings	217	215	249	255	290	337	466	613

INCREASES

		<u>NUMERICAL</u>	<u>PERCENTAGE</u>
Increase	1970-71	-2	--
	1971-72	+34	16%
all	1972-73	+6	2%
	1973-74	+35	14%
Categories	1974-75	+47	16%
	1975-76	+129	38%
	1976-77	+147	32%
Increase	1973-74	+13	7%
Appeals	1974-75	+41	20%
and	1975-76	+115	46%
Sentence	1976-77	+106	29%
Appeals			

TABLE II

## ALASKA SUPREME COURT CASE FILINGS 1975-1977

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>% Increase 1975-1977</u>	<u>% Increase 1976-1977</u>
Appeals					
Civil	151	214	251		
Criminal & Juvenile	76	119	156		
Sentence	<u>22</u>	<u>31</u>	<u>63</u>		
Total Appeals	249	364	470	90%	29%
Petitions for Review	81	86	126		
Original Applications	<u>7</u>	<u>16</u>	<u>17</u>		
Total Filings	337	466	613 <sup>*</sup>	73%	32%

\*Case filings for 1977 include 22 reinstated cases.

TABLE III

## ALASKA SUPREME COURT DISPOSITION OF CASES 1977

	<u>Opinion and Mandate</u>	<u>Summary Disposition by Order</u>	<u>Dismissed by Court or Parties</u>	<u>Review Denied</u>	<u>Total</u>
Appeals					
Civil	120	5	76		201
Criminal & Juvenile	54	1	33		88
Sentence	<u>21</u>	<u>    </u>	<u>19</u>		<u>40</u>
Total Appeals	195	6	128		329
Petitions for Review	16	7	13	67	103
Original Applications	<u>3</u>	<u>4</u>	<u>11</u>	<u>    </u>	<u>18</u>
Total	214	17	152	67	450

TABLE IV

ALASKA SUPREME COURT  
 FILINGS, DISPOSITIONS AND PENDING CASELOAD 1977

<u>Civil Appeals and Cross Appeals</u>		<u>Sentence Appeals</u>	
Pending 12/31/76	218	Pending 12/31/76	16
Filed or Reinstated 1977	<u>251</u>	Filed or Reinstated 1977	<u>63</u>
Total	469	Total	79
<u>Disposition</u>		<u>Disposition</u>	
By Opinion and Mandate	120	By Opinion and Mandate	21
By Summary Order	5	Dismissed	<u>19</u>
Dismissed	<u>76</u>	Total	40
Total	201	Pending 12/31/77	39
Pending 12/31/77	268	<u>Petitions for Review</u>	
<u>Criminal and Juvenile Appeals</u>		Pending 12/31/76	20
Pending 12/31/76	132	Filed 1977	<u>126</u>
Filed or Reinstated 1977	<u>156</u>	Total	146
Total	288	<u>Disposition</u>	
<u>Disposition</u>		Opinion and Mandate	16
By Opinion and Mandate	54	By Summary Order	7
By Summary Order	1	Dismissed or Withdrawn	13
Dismissed	<u>33</u>	Review Denied	<u>67</u>
Total	88	Total	103
Pending 12/31/77	200	Pending 12/31/77	43

TABLE IV (Continued)

Original Applications

Pending 12/31/76	5
Filed or Reinstated 1977	<u>17</u>
Total	22

Disposition

Opinion and Mandate	3
By Summary Order	4
Dismissed	<u>11</u>
Total	18
Pending 12/31/77	4

Total Pending Cases December 31, 1976	391
Total Filings and Reinstatements 1977	<u>613</u>
Total	1004
Total Dispositions 1977	<u>450</u>
Total Pending December 31, 1977	554

TABLE V

ALASKA SUPREME COURT  
REASON FOR CASES PENDING DECEMBER 31, 1977

	C A S E S    A W A I T I N G					STAYED	TOTAL
	RECORDS	BRIEFS	HEARING	DECISION	MANDATE		
<u>Appeals</u>							
Civil Appeals	84	54	22	94	4	10	268
Criminal and Juvenile Appeals	47	62	14	70	1	6	200
Sentence Appeals	<u>6</u>	<u>9</u>	<u>    </u>	<u>19</u>	<u>1</u>	<u>4</u>	<u>39</u>
Total Appeals	137	125	36	183	6	20	507
<u>Petitions for Review</u>		12	1	26	2	. 2	43
<u>Original Applications</u>	<u>    </u>	<u>    </u>	<u>1</u>	<u>3</u>	<u>    </u>	<u>    </u>	<u>4</u>
TOTAL .	137	137	38	212	8	22	554
% of Total	24.6	24.6	6.9	38.3	1.6	4.0	100%

ALASKA SUPREME COURT PENDING CASELOAD 1961-1977

	Total Cases Pending at Year End	Regular and Sentence Appeals	Petitions for Review	Other	Increase or Decrease
1961	78	76	1	1	
1962	75	73	1	1	-3
1963	99	96	2	1	+24
1964	66	57	2	7	-33
1965	85	78	5	2	+19
1966	93	85	2	6	+8
1967	100	91	5	4	+7
1968	122	107	3	12	+22
1969	114	100	11	3	-8
1970	165	145	15	5	+51
1971	182	175	3	4	+17
1972	211	188	18	5	+29
1973	188	172	14	2	-23
1974	216	193	20	3	+28
1975	258	241	16	1	+42
1976	391	366	20	5	+133
1977	554	507	43	4	+163

Percent of Increase	1961-1977	600%
Percent of Increase	1968-1977	354%
Percent of Increase	1976-1977	41%

TABLE VII

ALASKA SUPREME COURT  
MOTION PRACTICE 1977

	TOTAL 1977
Stay Applications Determined by Single Justices	65
Routine Motions Determined by Single Justices	192
Routine Unopposed Motions Determined by Clerk (estimated)*	800
Substantive Motions Determined by Full Court	182
Petitions for Rehearing [Full Court]	<u>35</u>
TOTAL MOTIONS	1274

\*Almost all were unopposed motions to extend time to file briefs and other papers.

TABLE I

## 1978 RECAPITULATION

	<u>Civil Appeals</u>	<u>Criminal Appeals</u>	<u>Sentence Appeals</u>	<u>Total Appeals</u>	<u>Petitions for Review</u>	<u>Originals</u>	<u>TOTAL</u>
Pending Jan. 1, 1978	268	200	39	507	43	4	554
Filed	253	133	53	439	156	27	622
Reinstated	3	2	3	8	0	0	8
Adjustments <sup>a</sup>	-2	+5	-1	+2	-2	0	0
Closed	225	131	43	399	136	25	560
Pending Dec. 31, 1978	297	209	51	557	61	6	624

a Accounts for cases converted from one category to another during 1978, and for correction of erroneous classifications of certain cases pending January 1, 1978.