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attention. He has responded with a proposal for additional constitutional safeguards to protect the income as well as the principal of the permanent fund. Hammond's original concern when he was governor, and that of others who assisted him, was directed toward setting the money aside, protecting the principal with ironclad prohibitions against spending it for any purpose, and providing for its prudent investment in order to bring about a maximum return of interest income. The achievement of this goal has far exceeded the best hopes and expectations of many of the fund's early advocates.

Sound management and regular annual increases to the permanent fund's principal have produced the result of the fund's income averaging over $500 million during the past five years. The continuation of current policies will likely, if not certainly, guarantee further increases in the future. Do we need, therefore, to concern ourselves at the present time with questions as to how the permanent fund income should be spent? The Hammond Amendment answers this question with a resounding Yes! The bonanza petroleum revenue years are over. Moderate, declining production, and new fields which might--or might not--guarantee sustained, moderate production for the decades ahead can now be anticipated. The public and its elected policy-makers should understand that adjusting state spending to this post-boom circumstance is now the issue confronting Alaskans. The bonanza years cannot be recaptured by manipulating the income account of the permanent fund. The Hammond Ammendment callspublic attention back to its original purpose.

The Hammond Amendment provides a constitutional mandate to the governor and to the state legislature to regularly use permanent fund income

for three purposes only. They must, first of all, pay annual dividends from the fund income to Alaska residents. This means all permanent state residents will continue to enjoy and to participate on an equal basis in a share of the income produced by their money. The dividend program, modest in its original conception and kept that way over the years since it was inaugurated, is not a governmental "give away" program. It represents an honest acknowledgement of the existence of the rights of the people who actually own the permanent fund. It also serves as a stern reminder of this fact and a tacit restraint upon anyone who might be tempted to contest these rights.

Second, the Hammond Amendment directs the governor and the state legislature to use fund income to safeguard the fund from the adverse effects of inflation. Always a potential danger to any invested resources, inflation can, and regularly does, affect diversified investment funds in many adverse ways. Unavoidable and unpredictable, inflationary problems present themselves on a daily basis. Managers of trust funds respond to inflationary problems by holding a portion of their undistributed income in constant reserve where it is ready to offset inflationary loses when and where they occur. This promptly restores the total of the principal each time inflation depletes it in any manner.

A third constitutional mandate in the Hammond Amendment requires the governor and the state legislature to defray all operating costs of the fund from fund income. These costs include the salaries of the permanent fund's trustees, professional staff and their employees, their rent and facilities maintenance, travel, and all professional services necessary to carry on the fund's operations. Amounting to little more than mandated bookkeeping instructions, this clause formally separates permanent fund administration

from other state administration, prevents the intermingling of fund income with other state income, and effectively requires all fund operations to be self-sup rting.

The Hammond Amendment allows the governor and the state legislature two options in the use of permanent fund income. It reserves the judgment to them as to when sufficient income surpluses have accrued to warrant transfers to the principal of the fund. With this provision surpluses can be readily transferred to principal as often as they accumulate.

A second optional spending clause in the Hammond Amendment allows the governor and the state legislature to appropriate from fund income "for any extraordinary public expenses which may from time to time arise." Such appropriations, however, "must be approved by a majority of the voters of the state in a general or special election." This clause can be invoked at any time. It imposes no cumbersome procedures on the governor and the state legislature. It acknowledges the lively possibility that permanent fund income could be needed at any time for many different purposes. But it gives the Alaska public the last word in approving any such expenditures. It ensures that the money will always be available as a genuine emergency fund or as a source of public support for any bona fide need which would actually gain the approval of the voters. It effectively prohibits erosive depletion of fund income through resorts to the whole range of subterfuges--unlimited in their number and kind--for the unaccountable spending of public money.

Informal Note, Dr. Newton/Reps. Sund and Taylor, House Judiciary, 3/11/88

1. Passing in my credentials to both of you for a review in case either of you might be interested.

2. It will be the end of next week (3/18/87) before I will have the brief completed which I would like to submit on the Hammond Amendment (HJR 48).

3. I do intend to be represented by counsel at the committee hearing, but let me assure you both that informal procedure (as Informal as you can get it) would be my preference. Thank you.

JUDICIAL SELF-RESTRAINT IN THE OPINIONS OF FELIX FRANKFURTER IN NON-CIVIL LIBERTIES CASES CONCERNING FEDERAL CONSTITUTIONAL LIMITATIONS ON STATE POWERS OF GOVERNMENT.

(Order No. 66-771)

Robert Edward Newton, Ph.D.
The Catholic University of America, 1965

Judicial self-restraint has become a term used by jurists, lawyers, legal scholars and critics of the judicial process to describe the various means by which the Supreme Court of the United States has defined and observed limitations upon its broad power of judicial review. Carried to a logical extreme, judicial review could result in judicial supremacy in American government. Because such a result would be opposed to fundamental postulates upon which all democratic societies are based, certain American jurists have attempted to avoid this logical extreme by devising means whereby the Court might limit the scope of its powers. Only by exercising judicial self-restraint, they have maintained, can the Supreme Court avoid entangling itself in political controversies not meet for judicial resolution and conserve its resources for those public questions which fall within the range of judicial competence. They have maintained, furthermore, that when the Court departs from traditional standards of reasoned objectivity, which the American public expects of all courts of law, the foundations upon which autonomous judicial power rests are also abandoned.

Associate Justice Felix Frankfurter (1882-1965), who served on the Court from 1939 to 1962, was recognized widely as the foremost exponent of judicial self-restraint during his years on the bench. This dissertation is a study of fifty-nine of his judicial opinions wherein he expressed various conceptions of the scope and limitations of judicial power in selected cases concerning federal constitutional limitations on state powers of government.

The Due Process and Equal Protection Clauses of the Fourteenth Amendment, as they had been interpreted by the Court in the late nineteenth and early twentieth centuries, had resulted in the drastic curtailment of state taxing and regulatory powers. Frankfurter ascended the bench a few years after the relaxation of judicial power in this area of federal constitutional limitations had commenced, but not too late to make significant contributions of his own. In due process cases a majority on the Court eventually accepted his view that so long as a state demonstrates a rational nexus between a given tax and governmental benefits, advantages or protection conferred by the state upon the taxed entity the tax should be regarded as free from any constitutional infirmities. In equal protection cases, Frankfurter greatly influenced the Court to yield to legislative determinations of factual differences between persons and things for the purposes of taxing and regulating.

In his Commerce Clause opinions, Frankfurter exercised a high degree of leadership on the Court as federal constitutional limitations in this area were relaxed considerably. He consistently urged that state powers to exact from interstate commerce its proportionate share of revenue to pay for the costs of state and local government must not be curtailed unduly by constitutional limitations. His conceptions of judicial self-restraint in these cases were modified and balanced by his views concerning the constitutional obligation of the Court to afford interstate commerce a measure of protection from parochial encroachments.

In no category of federal constitutional limitations on state regulatory powers was Frankfurter more austere in his conceptions of the modest role of the Court than in Supremacy Clause cases wherein state powers were challenged as conflicting with federal assertions of power. Because Congress can speak with "drastic clarity" whenever it exercises its own delegated powers to preempt state governmental power, Frankfurter consistently urged that the Court should not lightly presume that state governmental power had been superseded.

In several cases involving intergovernmental relations suits, Frankfurter urged that the Court must recognize the autonomous origin of the political powers of each state when formulating constitutional limitations to promote harmonious relations among the states themselves and between the states and the federal government.

Devoted to the Supreme Court as an institution of law and government, Frankfurter demonstrated a balanced view of the modern need for effective governmental policy limited by constitutional restraints. Through his constant advocacy of judicial self-restraint the role of the states as initiators of public policy has often been preserved when the judicial process has been invoked to contract the diffusion of governmental power which has been a traditional characteristic of American democracy.

EDWARD S. CORWIN AND AMERICAN CONSTITUTIONAL LAW

Robert E. Newton*

THE PASSING OF A FIGURE of the stature of Edward S. Corwin usually leaves the world wondering. "What manner of a man was this"? Tributes to the memory of Professor Corwin are probably just beginning to appear.[1] A prospective biographer has already commenced the task of collecting the memorabilia and data necessary for relating the story of Corwin's life.[2] In universities and colleges, and elsewhere throughout the land, his former students, representing several generations of scholars, have mourned the loss of an outstanding teacher. While they, no doubt, retain a special remembrance of him in which no one else can share, Corwin, as a scholar himself in the grand tradition, has made himself known to the world in a manner that reaches beyond personal association. In this latter respect he will probably be remembered best, and in this capacity he would probably appreciate most being the object of tributary writing, albeit writing cast more in the vein of a commentary on his works than a personal tribute.

Had he lived a century or more earlier, Corwin might have been known to the world simply as a publicist. The term is almost archaic now. There are relatively few whom the modern world recognizes as possessing the broad learning in many areas sufficient to warrant the kind of hearing once afforded the publicist. That there has been at least one such person down to the present day might be regarded as Corwin's most remarkable feat. For more than half a century he followed the traditional techniques of the publicist in subjecting contemporary constitutional and public law issues to rigorous, far-ranging, scholarly investigations that are characterized by their thoroughness, reflective insights, disciplined imagination, independence of judgment, and timely appearance.

The result of Corwin's years of toil is an extensive corpus of public law literature that includes eighteen volumes of which he is the sole author, two where he is joined by coauthors, and one in the preparation of which he served as editor. In the sixty-two articles that Corwin published in legal and professional journals some of his most profound work can be found, and in his twenty-three articles in journals of opinion and periodicals one can discern his efforts to maintain a contact with a widespread reading public.

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[1] See generally Mason, *In Memorium: Edward S. Corwin*, 57 AM. POL. SCI. REV. 789 (1963).

[2] See Garvey, *Author's Query*, N.Y. Times, Jan. 5, 1964 (Book Review), p. 32.

Neither a practicing lawyer nor the recipient of a degree in law, Corwin became, nevertheless, a legal scholar of the first rank. Among the ten legal writers cited most frequently by the Supreme Court over a period of thirty-two years, Corwin was the only nonlawyer in this group whose work was recognized as having such exceptional merit by the nation's highest court.[3] But "legal scholar," as the term is currently used, implies a degree of specialization to which Corwin did not limit himself. Political science, a new discipline in 1905, when he commenced his academic career, would seem to have captured and retained the first of Corwin's many professional loyalties.

Forty of the articles that Corwin published between 1906 and 1956 are to be found in the law reviews while only fourteen appeared in political science journals. Yet a consistent emphasis that can be discerned in his literature, regardless of the nature of the journal in which it was published, is on the political rather than the legal aspects of American constitutional law. While he was invited to address lawyers and law students frequently, Corwin was occupied principally with his teaching duties in the Politics Department at Princeton from 1905 until his retirement in 1946. He was an active member of the American Political Science Association and the Southern Political Science Association, and he served a term as president of the former group in 1931.

History also claimed a generous portion of Corwin's attention. Several of his most significant articles dealing with historical aspects of American constitutional law were published in the *American Historical Review*. For a time during his early years Corwin's attention was absorbed in the study of diplomatic history. His first book is an historical investigation of the treaty-making powers of the federal government.[4] Shortly after it appeared, he published a study that remained the most authoritative treatment of Franco-American relations at the time of the American Revolution by an American author for a number of years.[5] He maintained a membership in the American Historical Association, and one of the lectureships in the whirlwind of engagements that Corwin accepted after his formal retirement was as a visiting professor of history at Columbia.

His interest in international law and politics remained constant through World War I, the interlude between the wars, World War II, and the Cold War. Corwin was a member of the Institut International de Droit Public, and he wrote frequently on contemporary international problems. But in this respect too, as with his studies in diplomatic history, Corwin's primary concern would seem to have been with those aspects of constitutional law that deal with the respective powers of the President and

[3] Newland, *Legal Periodicals and the U. S. Supreme Court*, 3 MIDWEST J. POLITICAL SCIENCE 58 (1959).

[4] CORWIN, NATIONAL SUPREMACY: TREATY POWER V. STATE POWER (1913).

[5] CORWIN, FRENCH POLICY AND THE AMERICAN ALLIANCE OF 1778 (1916).

Congress in matters of diplomacy and war, and the constitutional implications of United States participation in international organizations.

Among the honors that Corwin received over the years he cherished particularly the Phillips Prize, awarded to him in 1942 by the American Philosophical Society. A member of the society himself, Corwin never published a distinctly philosophical work apart from his articles on various historical aspects of legal philosophy. His interest in philosophy, which dates from sometime early in his career, would seem to have grown over the years. A significant comparison can be made between his first and second published articles when Corwin, because of philosophical considerations, subsequently modified his views on the origin of the doctrine of judicial review after having initially dismissed the doctrine as a modern innovation on relevant but sparse and inadequate historical grounds.[6]

Like other political reformers of his generation, Corwin was gravely concerned when he observed the inclination of the courts to nullify federal and state legislation that represented some of the most significant achievements of the Progressive movement. But he was equally concerned that the urgency of the moment should not divert his efforts away from the path of scholarly integrity. When Charles A. Beard's *An Economic Interpretation of the Constitution* appeared in 1913, Corwin wrote a critical review of Beard's thesis in which he objected principally to Beard's subordination of the demands of historical research to didactic purposes.[7]

Down to 1937, when the Supreme Court commenced a withdrawal from its role as arbiter of issues of social policy, Corwin was as steadfast in his protests against judicial supremacy as any Court critic. The strident and iconoclastic idiom of the reformist-bent, Progressive Era writer remained a permanent characteristic of his style. Yet behind the vivid hyperbole, which can be understood as an indication of the intensity of his involvement in the public issues of his day, one also can discern Corwin's efforts to examine the problems of American constitutional law from the furthest vantage points of historical, philosophical, and legal research he could reach.

Corwin did not strike what some might consider the ideal balance between the amount of time he devoted to teaching, research, and writing in the academic world, and to active participation in the world of politics and public affairs. Through the Progressive Era and World War I he remained at Princeton while Woodrow Wilson, his mentor and predecessor as McCormick Professor of Jurisprudence at the University, occupied the White House. Corwin's first significant public service did not come until 1935, when he was called to Washington to act as an advisor on constitutional questions in the Public Works Administration. The following year he stepped closer to the inner circles of the New Deal as a Special Assistant Attorney General. In 1937, the year of President Roosevelt's court-packing plan and the Supreme Court's dramatic reversal of its approach to New Deal legislation, Corwin moved into the eye of the hurricane as an advisor on constitutional questions in the Justice Department. While his exact role during the constitutional crisis has never been publicly disclosed in full it is certain that he supported and assisted in formulating the court-packing plan.

[6] Corwin, *The Supreme Court and Unconstitutional Acts of Congress*, 4 MICH. L. REV. 616 (1906); Corwin, *The Supreme Court and the Fourteenth Amendment*, 7 MICH. L. REV. 643 (1909).

[7] History Teachers Magazine, Feb., 1914, 65-66.

When the crisis was resolved, Corwin ended his public service. He had long advocated the withdrawal of the Court from the expansive policy-making role it had played between 1887 and 1937. He thought the reoriented position of the Court regarding the scope of its power of judicial review signified nothing less than a constitutional revolution. In a few years his dissatisfaction with the results of the revolution began to appear. But when he turned his attention toward resolving what he considered to be fundamental defects in the structure of American constitutional law that had resulted from it, he saw little to be gained by the Court resuming a more active role.

Before the constitutional revolution Corwin shared the view of many Court critics who had objected to the manner in which the old Court had employed the due process clauses of the 5th and 14th amendments as a means for intruding speculative economic views into policy issues, when the intrinsic meaning of the terminology employed and the ascertainable intention of those who framed these clauses indicate their purpose was to provide constitutional guarantees for a multitude of civil liberties.[8] After the revolution Corwin thought that the Court, "released from the suspicion of partisan entanglements," would be "free as it had not been in many years to support the humane values of free thought, free utterance and fair play."[9]

While there can be no precise delineation of how extensive a role Corwin would have had the reoriented Court assume with regard to the protection of civil liberties, it would seem to have been a modest one. At a much earlier date he had specifically objected to the dichotomous approach to constitutional interpretation that rigidly separates property rights from other human rights and limits judges to a narrow role when reviewing legislation affecting the former while allowing a wider range to judicial discretion when testing legislation affecting the latter.[10]

When the old Court had initiated the expansion of judicial protection

[8] Corwin, *The Supreme Court and the Fourteenth Amendment*, *supra* note 6, at 644.

[9] Corwin, *Statesmanship on the Supreme Court*, 9 AMERICAN SCHOLAR 159, 163 (1940).

[10] Corwin, *Freedom of Speech and Press Under the First Amendment, a Resume*, 30 YALE L. J. 48, 55 (1920).

of civil liberties with the clear and present danger doctrine in *Schenck v. United States*[11] in 1919, Corwin expressed doubts that the Court was embarking upon a sound venture. In his opinion "the cause of freedom of speech and press is largely in the custody of legislative majorities and . . . parties . . ."[12] Corwin did not depart from this view after the constitutional revolution. He thought there was some room for judicial intervention in the event of "hasty" or "prejudiced" legislation, but he continued to insist that the freedoms of speech and of the press "must generally depend for their most complete and beneficial realization upon the ordinary law as it comes from the legislature fully as much as upon the extraordinary interventions of the Court."[13]

When the Supreme Court commenced its expansive interpretation of the establishment of religion clause of the first amendment in *McCollum v. Board of Educ.*[14] in 1948, Corwin responded with an article that was as pungent in its expletives as any of his Progressive Era tracts.[15] He did not think it was in keeping with the traditions of democracy that locally devised plans for religious education in public schools, carefully drawn to protect the rights of all children involved in contingent situations, should be annulled by the Court through the loose construction of the establishment clause.[16]

Corwin's formal writing is, for the most part, devoid of any religious content. Secular in tone, it is typical of the literature that came from the pens of those Progressive Era writers whose principal concern was for political reform. Yet with the *McCollum* decision he insisted that "anybody who knows the historical record" could not deny that American democracy is primarily a system of ethical values grounded in religion.[17] As an astute observer of modern society, he recognized that the traditional agencies for transmitting democratic values—the family, the neighborhood, and the church—had yielded many of their functions to the public school. Corwin thought it relevant to ask if the schools could "do the job" without the assistance of religious instruction.[18]

Corwin's views with regard to the limited possibility, and to a great extent the limited desirability, of the judiciary assuming a significantly larger role in the protection of civil liberties after the constitutional revolution were not episodic reactions to particular problems. They stem from his conception of certain structural changes that the revolution had brought about in American constitutional law. No longer concerned

[11] 249 U.S. 47 (1919).
[12] Corwin, *supra* note 10, at 55.
[13] Corwin, Constitutional Revolution, Ltd. 115 (1941).
[14] 333 U.S. 203 (1947).
[15] Corwin, *The Supreme Court as National School Board*, 14 Law & Contemp. Probs. 3 (1949).
[16] *Id.* at 20.
[17] *Id.* at 21.
[18] *Id.* at 21.

primarily with problems regarding the effective exercise of governmental powers, Corwin thought the chief problem for the future would consist in searching out the means for establishing effective constitutional limitations on a new basis. In the altered structure of American constitutional law he did not think that courts were adequate to perform this task.

Having abandoned what he called the doctrine of dual federalism, the Supreme Court, in Corwin's opinion, could not easily interpret the 10th amendment again as a limitation on the powers of the federal government. The Court's departure from a narrow interpretation of the separation of powers doctrine with regard to the constitutionality of Congress delegating its powers to the President and other executive agencies had, in Corwin's view, compounded the problem of constitutional limitations. The demise of these two doctrines, it seemed to Corwin, had resulted in the drastic curtailment of judicial review itself as a limitation on governmental power.[19]

The implications of the constitutional revolution disturbed Corwin very deeply. The Constitution and its surrounding corpus of doctrine and theory had served traditionally as a limitation on the powers of government in his view. What Corwin maintained had emerged from the constitutional revolution is a "Constitution of powers" the chief characteristic of which is an "aggrandized" presidency.[20] Eschewing legal for political limitations on the power of the presidency, Corwin looked to Congress and its power over the purse for effective constitutional limitations under the new dispensation.[21]

The constitutional revolution posed certain demands to Corwin's intellectual integrity when the moment arrived when he thought he must speak out as a critic of its results. In the thirty years preceding the revolution he had arisen to prominence while advocating most of the measures that had brought it about. Dual federalism, a term of opprobrium which he had coined himself to describe the states' rights view of the Constitution, at one time had seemed to him to be the principal structural defect of American constitutional law. The consistency between his views on dual federalism and other constitutional issues before the revolution and those he expressed afterward provide a good index to the integrity of his thought over the years.

Corwin had never taken issue with the text of the 10th amendment itself, nor with its essential meaning. What he had objected to was the manner in which the old Court had interpreted it as, what he called, an "independent" limitation on the powers of the federal government. This

[19] Corwin, *The Dissolving Structure of Our Constitutional Law*, 20 Wash. L. Rev. 185, 188-90 (1945).
[20] Corwin, *Our Constitutional Revolution and How to Round it Out*, 19 Pa. B. A. Q. 261-62, 277 (1948).
[21] *Ibid.*

Corwin had consistently expressed the hope that the Supreme Court would return to the views of Marshall and thereby avoid a constitutional crisis. "Granting judges due wisdom," he had said in 1914, "there is today no good reason why the aegis of the constitution may not be thrown about almost any sensible measure of social reform, to give it legal stability."[35] He reiterated this view in his presidential address before the American Political Science Association in 1931, when he expressed the hope that the national social planning which he considered necessary to effect a recovery from the depression, would not meet with obstructive judicial resistance.[36]

Corwin welcomed the legislation of the New Deal as a program of social planning that embraced his views. He was already aware of the revolutionary implications that such policies as the National Industrial Recovery Act[37] signaled for American constitutional law, if the Act were to be upheld by the Supreme Court. But he thought that American society had already become nationalized as a result of economic developments, and that national policies were long overdue in responding to these changes. "Cooperative federalism" in which the federal government and the states would function as complementary parts of a single governmental system is the term he coined to describe and support the New Deal industrial policy. "I think the Constitution of the United States can accommodate itself to the revolution which Nira [sic.] undoubtedly does spell," he said:

> I think further that this means a change in the character of the Constitution itself. The Constitution will accommodate itself to the revolution, will be absorbed into it more or less, and our attitude toward it will consequently become less legalistic and more political. We shall value it for the aid it lends to considered social purpose, not as a lawyer's document.[38]

When the Supreme Court found the National Industrial Recovery Act[39] to be unconstitutional,[40] both on the grounds of dual federalism and the separation of powers doctrine, Corwin responded with a vitriolic protest in which he codified his earlier research and writing on dual federalism.[41] Before the New Deal was popularly vindicated at the polls in 1936, Corwin proposed what for him was a radical alteration of the doctrine of judicial review. "[T]he Court," he said, "can and must decide *cases*

[35] Corwin, *Marbury v. Madison and the Doctrine of Judicial Review*, 12 MICH. L. REV. 538, 572 (1914).
[36] Corwin, *Social Planning Under the Constitution*, 26 AM. POL. SCI. REV. 1, 26-27 (1932).
[37] National Industrial Recovery Act, Ch. 90, 48 Stat. 196 (1933), as amended by Act June 14, 1935, Ch. 246, 49 Stat. 375 (1935).
[38] Corwin, *Some Probable Repercussions of 'Nira' on Our Constitutional System*, 172 ANNALS 139, 144 (1934).
[39] See statutes cited note 37 *supra*.
[40] See Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935).
[41] Corwin, *The Schechter Case—Landmark or What*, 13 N.Y. L. Q. REV. 151 (1936).

according to its own independent view of the Constitution." But, he continued, "in so doing it does not decide *questions*."[42] The Court, in his opinion, was exercising an intolerable supervisory role over the powers of the federal government that had exceeded what he called "stable limits." He thought that the conflict in constitutional interpretation between Court and Congress could only be resolved with finality by the American people at the ballot box.[43]

Corwin had never before so directly challenged the doctrine of judicial review. In 1914, after having investigated its historical, philosophical and legal foundations, he had specifically affirmed the necessity for the finality of the Court's determination of questions—not merely cases—if judicial review were to be exercised in accordance with the intentions of the framers of the Constitution.[44] During the twenties he had reaffirmed this view, and he had stated flatly that judicial review had become "so established a part of our constitutional machinery that to do away with it without giving attention to other features of the system might lead to results not to be calculated."[45]

The constitutional revolution followed closely upon the elections of 1936. Congress, exercising the commerce power and the taxing and spending power, had already enacted legislation of a nature previously found to be unconstitutional by the Supreme Court. The National Labor Relations Act [46] and the Social Security Act[47] were then in the process of litigation, having survived constitutional challenges in lower federal courts. These cases were awaiting review by the Supreme Court as the new Congress assembled and President Roosevelt took the oath of office for a second term in January 1937. The court-packing plan was submitted to Congress in February, and in April the Court, with the Justices dividing five to four, commenced to uphold the challenged legislation, and in the process of doing so abandoned dual federalism.[48]

The constitutional revolution would probably be most aptly viewed as the mid-point in Corwin's career. For the next twenty years, although he was then almost sixty, Corwin was to lead a very active life until advanced age and illnesses brought him to an enforced retirement. Commencing in 1940, he assumed a new role as America's leading whig. He publicly opposed the third term, and when presidential incumbency was limited to two terms by constitutional amendment, he voiced regrets that it had not been limited to one.[49]

[42] Corwin, *Curbing the Court*, 185 ANNALS 45, 53 (1936).
[43] *Id.* at 55.
[44] Corwin, *supra* note 35, at 550.
[45] Corwin, *The Power of the Supreme Court Over Legislation*, 57 CHICAGO LEGAL NEWS 228, 231 (1925).
[46] 49 Stat. 449 (1935), 29 U.S.C. § 151 (1947).
[47] 49 Stat. 620 (1935), 42 U.S.C. § 301 (1956), § 302 (1958).
[48] See NLRB v. Jones and Laughlin Steel Corp., 301 U.S. 1 (1937); and Steward Machine Co. v. Davis, 301 U.S. 548 (1937).
[49] Corwin, *supra* note 20, at 281.

Rather than a sharp turnabout from his earlier views, Corwin regarded his concern over the expanding powers of the federal government and the presidency as a development or rounding out of those views. Co-operative federalism had resulted, he thought, in the "aggrandizement" of federal power to the extent that we are now faced with the question "whether the constituent states of the System [sic.] can be saved for any useful purpose, and thereby saved as the vital cells that they have been heretofore of democratic sentiment, impulse, and action?"[30]

Corwin accepted the constitutional revolution, however, and he never ceased to advocate what has come to be known as the positive state. He had defended the New Deal as an assertion of "legislative authority as the supreme authority of government," rather than judicial authority.[31] While he thought the expanded powers of the presidency posed the most serious challenge to limited government, he always considered the Court's previous narrow interpretation of the separation of powers doctrine a logical absurdity insofar as it purported to establish a categorical distinction between legislative and executive power.[32] Least of all did he ever advocate a return to dual federalism.

To the constitutional problems of the new dispensation Corwin adopted the same scholarly attitude and methods that had characterized his earlier work. His study on the constitutional and historical development of the presidential office, the first edition of which was published in 1940, is recognized as the most thorough and authoritative treatment of the subject that is available.[33] His interest in the presidency and his earliest research and writing in this area had commenced before World War I when he published a short volume on the diplomatic powers of the President.[34] A few years later, while he advocated United States participation in the League of Nations, Corwin objected publicly to what he considered President Wilson's failure to consult adequately with the Senate on the issue.[35]

Later in the twenties when the Supreme Court adopted a latitudinarian view of the President's removal power in *Myers v. United States*,[36] Corwin published a study on the removal power demonstrating the imbalance in the Court's view of the respective powers of President and Congress.[37] When the Myers decision was modified in *Humphrey v. United States*,[38] it is significant to note, the Court redressed the imbalance in accordance with the views Corwin had expressed. These early works

[30] Corwin, *The Passing of Dual Federalism*, 36 Va. L. Rev. 1, 23 (1950).
[31] Corwin, The Twilight of the Supreme Court 148 (1934).
[32] Corwin, *op. cit. supra* note 31, at 148.
[33] Corwin, *op. cit. supra* note 31.
[34] Corwin, The President's Control Over Foreign Relations (1917).
[35] Corwin, *Wilson and the Senate*, 1 Weekly Rev. 223 (1919).
[36] 272 U.S. 52 (1926).
[37] Corwin, The President's Removal Power (1927).
[38] 295 U.S. 602 (1935).

provided the foundation for much of the first edition of *The President, Office and Powers*.[39] They demonstrate that Corwin had always been the same moderate whig in his attitude toward presidential power as he continued to be after the constitutional revolution.

It must be acknowledged that the reforms Corwin suggested to round out the constitutional revolution have not enjoyed the reception that his advocacy of the revolution itself received. The one-term presidency has proved to be a particularly uncongenial proposal to the minds of most observers and critics on this issue. The various plans he suggested to bring about an "improved relationship between President and Congress" that would establish an "institutional control" over the President and mitigate what he called "the excessive dependence on the accident of personality" in the presidential office, would also seem to have had little influence.[40]

While Corwin's ideas on how to round out the constitutional revolution were, for the most part, rejected, he grew in public esteem over the years. Besides the study on the presidency, Corwin continued to publish other works at a prolific rate. His popular volume, *The Constitution and What it Means Today*,[41] a textual outline of the development of the Constitution that was first published in 1921, eventually ran to a twelfth edition in 1958, and it has posthumously appeared in paperback. This concise study has served as a reliable reference work for several thousand scholars, lawyers, and laymen for two generations. Translated into several foreign languages it has provided a working knowledge of the U.S. Constitution to people in many walks of life in other countries. Corwin was invited to serve as the editor when Congress authorized a revised annotation of the Constitution in 1947. Five years later *The Constitution of the United States: Analysis and Interpretation*,[42] a ponderous public document of more than a thousand pages was published, reflecting unmistakably the hallmark of thoroughness of its venerable editor. When dual federalism threatened a resurgence in the form of the Bricker Amendment in 1954, Corwin served as the national chairman of the committee of judges, statesmen, lawyers, and scholars who successfully opposed this proposal to curtail the treaty-making power.

While the notes of dissatisfaction with the Constitution of powers and all that it implied are heavy and sad in many of the works Corwin published after the constitutional revolution, there are few signs of

[39] Corwin, *op. cit. supra* note 31.
[40] Corwin, *op. cit. supra* note 31, at 294-99. See also Corwin, *Wanted: A New Type Cabinet*, N.Y. Times, Oct. 10, 1948 (Magazine), p. 14.
[41] Corwin, The Constitution and What it Means Today (1921).
[42] Corwin, The Constitution of the United States: Analysis and Interpretation (1955).

nostalgia or regret.[63] Before the constitutional revolution he had thought the modern dilemma of maintaining effective but limited government had too often been resolved in favor of the latter in the balance of constitutional theory and practice. After the revolution he seemed to think the need for emphasizing constitutional limitations was greater. But Corwin's sincere regard for limited government did not commence with the constitutional revolution. It is demonstrated in some of his most profound works that span the entire length of his career.

In his early rebellion against the views of Judge Cooley, who had emphasized exclusively the significance of judicial limitations on political power, Corwin might have been inclined to regard judicially enforceable constitutional limitations as anachronistic. At one time he was unconvinced by the available evidence that he had examined that the framers of the Constitution had intended to establish judicial review. Nor did he think it could be inferred logically from the text of the Constitution. Judicial review, Corwin acknowledged on this occasion, could claim something toward a valid foundation in the political philosophy of Locke, and the latter was supplemented unquestionably, he thought, by Montesquieu's separation of powers theory. But he concluded that the origin of judicial review could be attributed primarily to an "insignificant" commonwealth court decision, and that it was "inevitable" that "aggressive popular statesmen" would not "give over to juristic hands the entire keeping of the keys of constitutional truth."[64]

Corwin did not long adhere to his early view of the origin of judicial review. The relationship between judicial review and constitutional limitations, and the significance of constitutional limitations in a system of law and government are problems to which he continued to devote his attention, and in a few years he had overcome his original doubts. While he was disconcerted when he discovered how the concomitant development of due process and the legal doctrine of vested rights had impressed American constitutional law into the service of *laissez faire* economics, he also discovered that due process as a limitation on legislative power had roots in American jurisprudence that antedated the 14th amendment and economic liberalism.[65]

Turning again to the origin of judicial review, Corwin was led to the conclusion by "all the literary evidence" that in the traditional Anglo-American view legislative power has been regarded as limited rather

[63] See CORWIN, TOTAL WAR AND THE CONSTITUTION (1947); CORWIN, LIBERTY AGAINST GOVERNMENT (1948); CORWIN, A CONSTITUTION OF POWERS IN A SECULAR STATE (1951); and CORWIN, OUR EXPENDABLE CONSTITUTION (1955).

[64] Corwin, *The Supreme Court and Unconstitutional Acts of Congress*, 4 MICH. L. REV. 616, 630 (1906).

[65] Corwin, *The Supreme Court and the Fourteenth Amendment*, 7 MICH. L. REV. 643, 672 (1909). See also Corwin, *The Doctrine of Due Process Before the Civil War*, 24 HARV. L. REV. 366, 460 (1911); Corwin, *The Dred Scott Decision in the Light of Contemporary Legal Doctrine*, 17 AM. HIST. REV. 52 (1911).

than unlimited. Judicial review, he was now satisfied, had been no accident of history, but rather a unique American adaptation of "fundamental" law.[66] The success of judicial review in the United States, Corwin thought, could be attributed to the fact that it has a philosophical and historical foundation in fundamental law. Its adoption, he concluded, signified that American constitutional law "has for its primary purpose not the convenience of the state but the preservation of individual rights."[67] Investigating further, Corwin was eventually satisfied that it could not be "reasonably doubted" that the framers of the Constitution intended to provide for judicial review.[68]

While he believed that judicially enforceable constitutional limitations had become a "national superstition,"[69] and that the enlargement of the scope of judicial review by due process had led the courts to assume an improper role in policy making, Corwin thought the values that judicial review embodied were too precious to risk its abandonment.[70] For this reason, it would seem, he consistently expressed the hope that courts would find a way to reconcile the needs for effective policy with constitutional limitations.

In the late twenties Corwin published his most extensive exploration into the foundations of American constitutional law in the natural law tradition.[71] In this study the value he assigned to the traditional view that the exercise of human authority must always be subordinated to objective, rational principles is clearly evident. Not the least significance should be attributed to his conclusion that in American constitutional law, fundamental law has been adapted in a viable institutional form primarily through the doctrine of judicial review.[72]

When, a few years later and under the pressure of circumstances, Corwin advocated the drastic curtailment of the power of the Supreme Court, it would seem to be a fair assumption that he was aware of the extent to which limited government would be jeopardized. This might explain Corwin's apparent reaction to the constitutional revolution and his early efforts to seek a new means through which effective constitutional limitations might be reestablished.

The persistence of Corwin's disenchantment with judicially enforceable constitutional limitations is the most perplexing aspect of his thought after the constitutional revolution. He was not dogmatic in his attitude toward

[66] Corwin, *The Establishment of Judicial Review* (pts. 1-2), 9 MICH. L. REV. 102, 104, 282 (1910-1911).

[67] *Id.* at 316.

[68] Corwin, *supra* note 35, at 543.

[69] CORWIN, NATIONAL SUPREMACY: TREATY POWER V. STATE POWER 5 (1913).

[70] Corwin, *supra* note 45, at 231.

[71] Corwin, *The "Higher Law" Background of American Constitutional Law* (pts. 1-2), 42 HARV. L. REV. 149, 365 (1928-1929).

[72] *Id.* at 408-09.

judicial review. He thought it would continue to have an important purpose in rationalizing, clarifying and authenticating policy in terms of broad principle.[73] Occasionally he would comment on the performance of the modern Court, but seldom were his observations on the various renewed efforts of the Justices to apply judicial limitations on the exercise of governmental power flattering.[74] He continued to hope that due process, after having been liberated from *laissez faire* economic conceptions, could be revitalized as a protection for civil liberties,[75] but the "patent formula" or "device" that the modern Court is prone to employ in due process adjudications seemed to Corwin to be a continuation of the old Court's inclination to relieve itself of the obligation of "adjusting the universal and eternal to the local and contingent."[76]

Corwin's realistic appraisal of the power of the presidency and the relative impotence of courts to offer guarantees against the abuse of executive power in all its reaches explains, to a certain extent, why he considered judicial limitations inadequate after the constitutional revolution. His unwillingness to sacrifice the demands of effective policy for constitutional limitations further explains his aversion to judicial limitations. But, to a great extent, there still would seem to be room to ask why he eschewed the means that he once demonstrated were so vital for maintaining limited government?

Events since the Supreme Court's dramatic "switch in time that saved nine"[77] have demonstrated that it did not represent quite the clear-cut structural change in American constitutional law that Corwin conceived of and described as a constitutional revolution. The judgment of time would seem to be that the endemic dilemma of American constitutional law was only partially resolved in the late thirties. While policy issues are no longer encumbered by the facile legalisms that confused and paralyzed previous generations, fundamental questions regarding the relationship between law and policy in American constitutional law have remained unanswered. The extent to which law can legitimately serve as a limitation on the abuse of power without imposing itself as a barrier to its proper exercise has not yet been precisely delineated in either theory or practice.

[73] CORWIN, CONSTITUTIONAL REVOLUTION, LTD. 115 (1941).

[74] See Corwin, *Bowing Out "Clear and Present Danger,"* 27 NOTRE DAME LAW. 325 (1952); Corwin, *The Steel Seizure Case: A Judicial Brick Without Straw*, 53 COLUM. L. REV. 53 (1953).

[75] CORWIN, LIBERTY AGAINST GOVERNMENT 167-68 (1948).

[76] Corwin, *The Debt of American Constitutional Law to Natural Law Concepts*, 25 NOTRE DAME LAW. 258, 281-82 (1950).

[77] See generally West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937); NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937); Steward Machine Co. v. Davis, 301 U.S. 548 (1937); Helvering v. Davis, 301 U.S. 619 (1937).

BOOK REVIEW

INTERNATIONAL LAW, TRADE AND FINANCE, REALITIES AND PROSPECTS. By Stanley D. Metzger. New York; Oceana Publications, Inc., 1962. Pp. 184. $6.00. INTERNATIONAL CLAIMS: THEIR ADJUDICATION BY NATIONAL COMMISSIONS. By Richard B. Lillich. Syracuse: Syracuse University Press. 1962. Pp. 140. $5.00. INTERNATIONAL CLAIMS: THEIR PREPARATION AND PRESENTATION. By Richard B. Lillich and Gordon A. Christenson. Syracuse: Syracuse University Press. 1962. Pp. 173. $7.50.

By

GERALD L. KOCK*

THE THREE BOOKS to be examined here have been on the market for several years, but further consideration of them may be warranted as a result of the Supreme Court's recent decision in the *Sabbatino* case.[1] It can be said at the outset that Professor Metzger's statement of the act of state doctrine and the Bernstein exception have prevailed.[2] That rule, that our courts will not examine into the validity of appropriations of American owned properties by recognized foreign governments in the absence of an expression from the executive branch that such judicial restraint is not appropriate in a given case,[3] serves to channel claims for relief into the international sphere, within the scope of these three books, instead of leaving them to the sporadic accidents of personal property litigation.[4]

Professor Metzger's book is not really a survey of realities and prospects in international law, or trade and finance, but it does range broadly over those areas. The title indicates that the book is a collection of papers published earlier in various periodicals, divided into the three parts. Even

* Associate Professor of Law, Emory University School of Law; author, GEORGIA COMMERCIAL PRACTICE (1964), OHIO COMMERCIAL PRACTICE (1965), and translator, THE FRENCH CODE OF CRIMINAL PROCEDURE (1964).

[1] Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964).

[2] METZGER, INTERNATIONAL LAW, TRADE AND FINANCE, REALITIES AND PROSPECTS 66-67 (1962).

[3] A rule of judicial self restraint, the doctrine is one of domestic, not international law. Whether international law may ever require recognition of acts of foreign states, in the cases that are significant in terms of private litigation, those involving expropriation of foreign owned private property, it is generally accepted not to be required. 1 OPPENHEIM, INTERNATIONAL LAW 267-70 (8th ed. 1955). At least for current practice, note must be taken of the amendment to the Foreign Assistance Act of 1961, which turns the usual rule upside down by denying acts of state effect unless the executive speaks. Foreign Assistance Act of 1964, 78 Stat. 1009, 22 U.S.C.A. §2370(e) (1964).

[4] Lillich & Christenson indicate that Cuban claims have already been accumulating at the Department of State. See LILLICH & CHRISTENSON, INTERNATIONAL CLAIMS: THEIR PREPARATION AND PRESENTATION 2 (1962). S. Rep. No. 1535, 87th Cong., 2d Sess., 93-95 (1962), contains a list of appropriations which is a good example of claims. See also the discussion in the statement of the executive branch opposing the change in the *Sabbatino* rule reprinted in 3 INT'L LEGAL MATERIALS 1077-88 (1964).

WHO'S WHO IN AMERICAN POLITICS

SECOND EDITION 1969-1970

A Biographical Directory of United States Political Leaders

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Phi Beta Kappa, 1956; Magna Cum Laude, 1956; Distinguished Military Graduate, 1956; National Newman Honor Society, 1956; Knights of Columbus Fellow, 1957-58-59-61-62; Who's Who in American Politics, 1969, 1971; Outstanding Educators of America, 1972; Gerald Loeb Journalism Award nominee, 1975; Talent Scholarship, University of Alaska, Juneau, 1982; Citation Resolution of Appreciation, City and Borough of Juneau, Alaska, 1984.

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Public law; public administration; political theory; public policy; U.S. national, state and local political institutions.

PROFESSIONAL APPOINTMENTS

Instructor in history and political science, summer sessions, The Catholic University of America, 1960-61-62

Instructor in social sciences, Norwich University, 1962-65

Lecturer in political science, The Catholic University of America, 1965-66

Assistant Professor of political science, Virginia Polytechnic Institute, 1966-67

Associate Professor of political science, St. Ambrose College, 1967-70

Associate Professor of political science and program coordinator, graduate extension program in public administration, University of Alaska, Juneau, 1970-75

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Legislative Consultant

BACKGROUND OF PUBLIC EXPERIENCE

Consultant, Alaska State Legislature, Capital Site Planning Legislation, 1977; legislative representative, American Society for Public Administration, 1975; State Representative, Iowa State Legislature, 1969-70; Montgomery County (Virginia) planning workshop, 1966-67; Northfield (Vermont) Democratic Town Committee, 1963-65; civilian staff, U.S. Army, Chief of Transportation, 1959; civilian staff, U.S. Comptroller of the Army, 1958; Administrative Assistant, Governor of Iowa, 1957.

PROFESSIONAL ASSOCIATIONS

American Political Science Association (1957)
American Jucicature Society (1960)
American Association of University Professors (1963)
American Society for Legal and Political Philosophy (1967)
American Society for Public Administration (1970)

PUBLICATIONS

A Short Bibliography of Books in Public Administration. Juneau: Southeast Alaska Chapter, American Society for Public Administration, 1971.

The Office of Ombudsman: Questions and Answers with Hawaii Ombudsman Herman Doi. ed. Juneau: Southeast Alaska Chapter, American Society for Public Administration, 1975.

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Making Juneau a More Efficient State Capital: An Examination of the Functions of a State Governmental Center in the Decade of the Eighties. Juneau: University of Alaska, Juneau, 1984.

"Edward S. Corwin and American Constitutional Law," Journal of Public Law, Winter, 1965.

"Locating Alaska's New Capital City: Accessibility is the Key Word," Alaska Construction and Oil, August, 1975.

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"Interfacing the Capital Move Issue with Alaska's Development Cities Act of 1972," Alaska Construction and Oil, October, 1975.

"Siting Alaska's New Capital City on a Developmental Base: Exploring some of the Prospects and Problems," Alaska Construction and Oil, December, 1975.

(NOTE: The above four-part Development City series was republished in the Anchorage Daily News in December, 1975.)

"State Capital Relocation Decision Nearing," Alaska Construction and Oil, August, 1976.

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"Relocating Alaska's State Capital," State Government: The Journal of State Affairs, The Council of State Governments, Summer, 1977.

"Alaska Historically Divided on Whether to Change Sites: Capital Move Issue Dates Back to the 1920's," Anchorage Daily News, July, 1980.

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"Capital Relocation: An Unfinished Story," Anchorage Daily News, July, 1980.

"The Alaska Capital Relocation: An Issue for a Bygone Era," Alaska Construction and Oil, April, 1983.

Book reviews.

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Member of the Associated Press

THE DAILY SENTINEL

Wednesday, February 24, 1988 Vol. 50, No. 38

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RCR
3/10/88

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JUNEAU EMPIRE

THE ALASKA DAILY EMPIRE · THE DAILY ALASKA EMPIRE · ALASKA EMPIRE · ALASKA EMPIRE · JUNEAU EMPIRE 75 YEARS

State in the black for first time since 1981

By SUE CROSS
THE ASSOCIATED PRESS

Alaska ended a year in the black for the first time since 1981, carrying a balance of $19.7 million from fiscal 1987 into the current year, according to a report released Friday.

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CORRECTION

THIS DOCUMENT
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TO ASSURE LEGIBILITY

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RCA
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Poll: More Alaskans eye permanent fund for aid

By SUE CROSS
THE ASSOCIATED PRESS

Alaskans appear more willing than ever before to spend the Alaska Permanent Fund, probably because so many of them are in financial trouble, says Anchorage pollster David Dittman.

In a $20,000 survey of Railbelt area residents, paid for by the Alaska Senate, Dittman found almost two-thirds of the respondents support spending the excess earnings of the permanent fund.

And if the economy declines further, 43 percent said, it would be OK to spend the principal of the $9 billion oil-money savings account.

"This is the first time in anything we've done that people were willing to use it," Dittman said.

"For a long time, if you said permanent fund, it didn't matter if you said 'earnings' or 'principal,' it was followed by 'No,'" he said.

Dittman presented his findings Friday to the Senate Finance Committee.

Committee Co-chairman Rick Halford, R-Chugiak, said he was surprised by the change in attitude toward the permanent fund, but believes the responses might have differed if the question was expanded.

The poll-takers asked people if the earnings left over after permanent fund dividends and inflation proofing are paid should be used to "help pay for programs to help the economy." Sixty-four percent said "yes;" 32 percent said "no."

The excess earnings reserve held $566 million as of Dec. 31.

Halford, a vocal opponent of any plan to tap the Permanent Fund, said more people would have disapproved of the idea had they been told use of the excess earnings could eventually slow the growth of the fund and decrease the size of their dividends.

Dittman said he did not believe the answers would have changed.

The telephone survey was answered by 1,002 people in 27 Railbelt communities, from Valdez and Cordova in the south to Fairbanks and its surrounding communities on the north end. The margin of error for the poll was estimated at 1 percent to 3 percent.

Senate President Jan Faiks, R-Anchorage, said she commissioned the poll because she wanted a data base for use in judging economic development proposals.

She did not request a statewide survey, she said, because at the time she did not realize the seriousness of economic problems in other parts of Alaska. If legislators outside the Railbelt want their areas polled, the questions could be included in later statewide surveys by Dittman, she said.

Faiks said the biggest surprise in the poll was Alaskans' assessment of the economy.

Almost one in four Railbelt residents said they are seriously considering leaving Alaska because of economic problems, and 39 percent said they are "very likely" or "quite likely" to leave the state within the next two years.

More than half the people polled said their families had suffered wage cuts, reduced work hours or job losses in the past two years.

"The situation is worse than I thought it is," Faiks said.

Who do Alaskans blame? A third of the respondents say government or some part of it: the Legislature, politicians in general, federal officials, local officials, former Gov. Bill Sheffield and Gov. Steve Cowper.

Oil companies and oil-producing countries were next on the list.

When asked how they goofed, Alaskans said government spent too much money and on the wrong things. The second most popular response was that those who were to blame had "let oil prices go down."

At the same time, many respondents said government should help improve the economy by spending more money on various programs.

Among their top suggestions for legislative action were passing the strongest possible law to enforce local hire and lowering home mortgage rates.

Respondents also generally liked Cowper's proposals for an education endowment and a science foundation, though they were not asked how the state should find money to establish those or other programs included in the questions.

Faiks said senators will consider the poll results when deciding what type of economic aid programs to fund.

House Speaker Ben Grussendorf, D-Sitka, said representatives also will study the poll and are especially interested in questions regarding the permanent fund.

But Grussendorf said he will withhold judgment on the specifics of the survey until he can read it in more detail and determine whether the answers were influenced by how the questions were asked.

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Anchorage Daily News

Winner, 1976 Pulitzer Prize Gold Medal for Public Service

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Howard Weaver, Managing Editor
Michael Carey, Editorial Page Editor

Katherine Fanning, Editor and Publisher 1971 to 1983
Lawrence Fanning, Editor and Publisher 1967 to 1971

Founded in 1946 by Norman C. Brown

In the black at last

For the first time since 1981, Alaska ended the fiscal year in the black. Despite fears that the state was heading for a deficit, the treasury had a surplus of $19.7 million when Department of Administration officials finished balancing the fiscal 1987 books.

But the appearance of black ink on the balance sheet shouldn't be cause for self-congratulation. The state avoided red ink only because the governor and legislature made significant reductions in state spending.

It seems logical that state officials should have been able to balance budgets when times were good. But that wasn't the case.

The big spenders of the first half of the 80's never had enough dollars to square their accounts even when they were rolling in oil money. They routinely ran up hundreds of millions in deficits and then paid them off after the end of the fiscal year. It took bad news — and the threat of worse — to put Alaska's budget in the black.

letters from the people

The Daily News welcomes letters on issues of public interest. To accommodate as many writers as possible, letters should be limited to 250 words and accompanied by a daytime telephone number for verification. (Telephone numbers will not be printed.) Unsigned letters will not be published; the News reserves the right to edit letters for clarity, length, taste and libel. Address letters to "Letters from the People," Anchorage Daily News, P.O. Box 14-9001, Anchorage, AK 99514-9001.

Budget news encouraging

Sue Cross's recent Associated Press article on Gov. Steve Cowper's budgetary achievement for FY 1987 is about the best Alaska news I have read in recent months. No Alaska governor since Bill Egan, to my knowledge, has ever achieved so much through teamwork and sustained effort on an urgent state problem. Cowper's effective management and execution of his first budget — turning the inherited $875 million deficit into a $19.7 million surplus — represents a solid beginning that can but produce lasting results.

We were at least four years overdue in Alaska in adjusting state spending to our declining petroleum revenues. We are now safely over the initial, painful hump.

One of the critical ingredients in the governor's budgetary achievement in his first year in office really stands out in Sue Cross' story. Steve Cowper has refused to tolerate three different state accounting systems, which have in the past produced different, incompatible and contradictory results. During the opulent years these conflicting systems certainly resulted in wholesale waste and unnecessary controversy over money matters.

When the abundance dried up last December, only the firm hand of the state governor kept us out of public bankruptcy. But the bills we owed were paid out the resources available. The story is as simple as that.

A vote of thanks is certainly due to Steve Cowper now and to the unsung heros who worked with him. I am also happy that the AP dispatch went to every news outlet in Alaska.

— *Robert E. Newton*
Juneau

Anchorage Daily News

Winner, 1976 Pulitzer Prize Gold Medal for Public Service

Gerald E. Grilly, Publisher
Howard Weaver, Managing Editor
Michael Carey, Editorial Page Editor

Katherine Fanning, Editor and Publisher 1971 to 1983
Lawrence Fanning, Editor and Publisher 1967 to 1971

Founded in 1946 by Norman C. Brown

Experience shows leave fund alone

Alaska's economy is in bad shape now, but think how much worse it would be if the state had "brought the permanent fund home to Alaska."

Economist Thomas Stauffer, in Alaska last month to meet with the permanent fund board, paints a grim picture of oil-rich states that followed such a course with their oil savings accounts.

Venezuela originally planned to set aside 13 percent of its oil income. But the nation has stopped saving money and is now $30 billion in debt. Most of the savings were spent on national development projects, most of which still require state subsidies.

Iran planned early on to put 70 percent of its oil money into an account to fund development projects. By the time the shah was overthrown in 1979, Dr. Stauffer found the money had been spent, with very little to show for it. The account had basically been used as an alternative to the government's capital budget.

Even closer to home, the results aren't much better. In Alberta, Canada, the main idea behind the province's heritage fund has been economic development, not generating income. When the oil business slumps, earnings from these local investments slump, too. Because almost all the money is invested locally, Alberta's fund doesn't do much to help the province weather rough economic times.

All three cases had one thing in common. The oil savings accounts were treated as economic development funds, not as trusts to earn money in the future. Indeed, the country with the greatest success most closely followed Alaska's policy. Kuwait's income from savings now exceeds its earnings from oil. The country still takes in plenty of oil money and reinvests the income from savings.

Alaska's recession has spurred calls to take another look at the permanent fund. Some would like Alaska to spend more of the fund's income. Others would like to invest more of the fund in state.

Experience from these other countries should give Alaskans plenty of reason to stick with the present course. The boost to the economy might be nice while it lasts, but the extra spending only postpones the day of economic reckoning.

(7)

HOUSE COMMITTEE REPORT

Date referred: 1/22/88

FURTHER REFERRALS: Judiciary
Finance

DATE: 2-17-88

The State Affairs Committee has considered HJR 48

Proposing an amendment to the Constitution of the State of Alaska relating to income from the permanent fund.

RECOMMENDS:

[ ] replace with _____ [ ] the same title

[ ] attached amendment(s) [ ] a new title

- [ ] do pass
- [ ] do not pass
- [X] no recommendation
- [ ] individual recommendations
- [ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[X] fiscal impact

[ ] zero fiscal note

[ ] zero with analysis

[ ] same as previous fiscal note published _____

[ ] same as previous zero fiscal note published _____

SIGNING DO PASS:

Jan Ulmer

SIGNING OTHER RECOMMENDATIONS:

Lyn Hoffman pass

Debra Kelly, NO REC -

Terry Martin - No meaningful work was done on bill

Cliff Davidson (no rec.)

Jan Ulmer
Chairman's signature

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HJR 48
PUBLISH DATE: HJR 48

FISCAL NOTE

REQUEST:

Revision Date: 1/29/88
Title: Constitutional amendment relating to income from the permanent fund.
Sponsor: ULMER
Requestor: House State Affairs

Agency Affected: Office of the Governor
BRU: Division of Elections

Components: II - Primary & General Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	0	2.2*	0	0	0	0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	2.2*	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	2.2*	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

* Costs included cover 2 to 3 additional pages in each Official Election Pamphlet, for printing and typesetting, and costs estimated to cover computer programming requirements for vote

(cont.)

Prepared by: Linda Edgeworth
Phone: 465-4611
Division: Elections
Date: 1/22/88

Approved by Commissioner:
Date: 2-1-88
Agency: Office of the Governor, Division of Elections

Distribution (by preparer): 2/1/88
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

counting purposes. However, these costs are based on the assumption that all candidates and issues will fit on three ballot cards, which is the norm. It should be noted, however that should the inclusion of this issue require a 4th ballot to be printed, the cost increase would have to be calculated at 16 cents per ballot x approximately 320,000 voters. The total cost of printing the additional ballot card would be $51.2.

Under these circumstances the fiscal note would be:

53.4

Rep John Sund

520 Third St.
Juneau, Alaska 99801
January 25, 1988

Mr. Warren W. Endicott
Executive Director
Legislative Affairs Agency
Alaska State Legislature
Juneau, Alaska 99811

RE: HJR 48
by request by Ulmer and Hudson
1/22/88

Dear Mr. Endicott:

Last Friday, January 22, 1988 HJR 48 was introduced in the House of Representatives. This constituent courtesy introduction was made by request of Dr. George W. Rogers with Juneau Representatives Fran Ulmer and Bill Hudson acting as co-sponsors. This resolution embodies the authentic text of the Hammond Amendment. This proposal relating to constitutional protection of the earnings of the Alaska Permanent Fund was prepared during the months of July and August 1987 by a local Juneau drafting team. This informal group worked under the monitorship of Dr. Rogers. We were in continuous contact with Governor Jay Hammond (ret.) through the six week period which elapsed before the final draft of the text was submitted to Hammond on August 27, 1987.

Although this group worked informally, some effort was made to preserve a written record of its proceedings. As a result there does exist a Hammond Amendment drafting file which was assembled and indexed some weeks after Dr. Rogers submitted the final draft to Hammond.

Dr. Rogers retired the master copy of this file on November 11, 1987 to the Alaska State Historical Library, forwarded a copy via certified mail to Jay Hammond, and retained a copy in his own possession. Copies were also provided to the Legislative Affairs Library, the House Speaker, the Senate President, the Governor's Office, and to the Associated Press. There were a few other recipients, but postage and reproduction costs prohibited any widespread dissemination of the file.

House Speaker Ben Grussendorf ha referred the Hammond Amendment Resolution (HJR 48) to that chamber's State Affairs, Judiciary and Finance Committees. Could your agency provide the chairmen of each of these committees with copies of the drafting file at your early convenience? This will enable them to background themselves on the myriad of details that were weighed and considered during the drafting process. Direct service from your agency might be very beneficial to ensure the committee chairmen of the bona fide authenticity of the documentation being provided. Your own agency librarian can readily contact the State Historical Library in the unlikely event that any questions

should arise relative to the genuiness of the materials being provided. The state historical librarian and her staff are available to assure anyone that the master copy of the file is the property of the State of Alaska and has been in the state's possession since mid-November of last year. Thank you for your courtesy.

Sincerely,

Robert E. Newton
(907) 586-1792

cc: Hon. Speaker
Ch'm., State Aff.
Jud., Fin.

POSITION PAPER

HB 48

When a defendant is charged with multiple criminal incidents, the trial judge currently has the discretion to decide whether sentences for those offenses should run concurrent or consecutively. Although presumptive sentencing mandates that the presumptive jail term be applied, the trial court can decide whether societal interests indicate a need for multiple presumptive sentences to run end to end. This bill would take away that discretion from the trial judge and require the judge to give consecutive sentences regardless of the facts and circumstances of the case.

The major danger of this bill is that it shifts discretion from the trial court to the prosecutor. Often in an offense which involves a continuing course of conduct, the prosecutor is the one who decides how many counts with which to charge the defendant. If consecutive sentences statutorily are mandated, it is the prosecutor who decides what sentence the defendant will receive, since by charging three counts he can require a judge to give three consecutive sentences.

The current sentenci[illegible] law, which gives the trial court the power to give consecutive sentences when a defendant is dangerous and needs to be isolated from the community adequately protects society's interests, since a defendant's prior record and bad acts are always able to be presented by the prosecutor to the judge. Often judges do give consecutive sentences. However, where a defendant appears to be particularly amenable to rehabilitation, the judge may decide that the presumptive jail term for one count will be adequate to rehabilitate the defendant and to protect society.

Although this bill will not affect the caseload or workload of the Public Defender Agency, it will certainly impact the correctional system in a significant manner.

For the above reasons, the Alaska Public Defender Agency and the Office of Public Advocacy oppose the above legislation.

Dana Fabe AFF
Dana Fabe, Public Defender — Date 2/20/87

Garrey Peska
Commissioner Garrey Peska
Department of Administration — Date 2/27/87

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:

Bill Version : HB 48
Publish Date : 01/19/87

Revision Date:

Agency Affected : Administration

Title : "An Act relating to criminal sentencing..."

BRU : Office of Public Advocacy

Sponsor : Zawacki

Requestor : House Judiciary

Components :

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS:

FULL-TIME		0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by : Brant McGee, Public Advocate
Division : Office of Public Advocacy
Phone : 274-1684
Date : 2/22/87

Approved by Commissioner : Garrey Peska
Agency : Department of Administration
Date : 2/27/87

Distribution (by preparer) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : HB48
Publish Date :

REQUEST:

Revision Date:
Title : "An Act relating to criminal sentencing procedures."
Sponsor : Zawacki
Requestor : House Judiciary/Finance

Agency Affected : Department of Administratic
BRU : Public Defender Agency

Components :

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		-0-				
FEDERAL FUNDS						
OTHER						
TOTAL		-0-				

POSITIONS:

FULL-TIME		-0-				
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Zero fiscal impact.

Prepared by : Dana Fabe, Public Defender
Phone : 279-7541
Division : Public Defender Agency
Date : February 20, 1987

Approved by Commissioner : Dana Fabe
Date : 2/27/87
Agency : Dept. of Administration

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:

Bill Version : House Bill 48
Publish Date :

Revision Date:
Title : "An Act relating to criminal sentencing procedures"
Sponsor : Representative Zawacki
Requestor : House Judiciary

Agency Affected : Dept. of Corrections
BRU :
Components :

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES				20,089.2	42,187.4	55,371.0
TRAVEL				73.6	154.6	202.9
CONTRACTUAL				1,575.0	3,307.6	4,341.3
SUPPLIES				2,100.0	4,410.0	5,788.1
EQUIPMENT				105.0	220.6	289.5
LAND & STRUCTURES						
GRANTS, CLAIMS				252.0	529.2	694.6
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	24,194.8	50,809.4	66,687.4
CAPITAL	-0-	217,500.0	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	217,500.0	-0-	24,194.8	50,809.4	66,687.4
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	217,500.0	-0-	24,194.8	50,809.4	66,687.4

POSITIONS:

FULL-TIME	-0-	-0-	-0-	438	876	1,095
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See Attached

Prepared by : Susie Riley, Program Budget Analyst
Phone : 465-3376
Division : Administrative Services
Date : Feb. 6, 1987

Approved by Commissioner : Acting William W Lockwood
Date : 4/6/87
Agency : Department of Corrections

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 48

ANALYSIS

House Bill No. 48 would have a substantial impact on the length of jail time to be served by inmates incarcerated for violations of AS 11.41.100 - 11.41.470 or AS 11.41.500 - 11.41.530. Currently the State's Court of Appeals has ruled that multiple sentences being served by these offenders may be served concurrently. This legislation would cause the terms to be served consecutively.

In order to determine the fiscal impact of this legislation, five scenarios were created based on the profile of sentenced offenders currently being placed in the custody of the Department for violations of these statuates and the length of sentences being served. The scenerios present the effects if 1% of these offenders were to serve their sentences consecutively, 5%, 10%, 25% and 50%.

Number to Serve	1%	5%	10%	25%	50%
Additional Man Years to be Served	29	145	290	724	1448
Additional Operating Costs (FY90)	$1,333.7	$6,668.7	$13,337.5	$33,343.7	$66,687.4

Experience has shown that a large proportion of prosecutions are for repeated offenses the sentences for which now run concurrently; thus the worst case scenario is the most likely.

The impact of HB 48 will cause the State's inmate population to quickly escalate requiring the equivalent of 5 more Spring Creek facilities; two needed by FY90, two more in operation by FY91 and a fifth by FY92 with comparable costs and personnel.

Costs for capital construction and operations are based on the original estimated cost of construction of Spring Creek Correctional Center and the estimated full year cost of operation of that facility inflated by 5% per year.

To: House Judiciary Committee

Original letter
Action copy

520 Third St.
Juneau, Alaska 99801
January 25, 1988

Mr. Warren W. Endicott
Executive Director
Legislative Affairs Agency
Alaska State Legislature
Juneau, Alaska 99811

RE: HJR 48
by request by Ulmer and Hudson
1/22/88

Dear Mr. Endicott:

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Sincerely,

Robert E. Newton
(907) 586-1792

cc: Hon. Speaker
Ch'm., State Aff.
Jud., Fin.

Legislative Affairs Library

1790 Evergreen Ave.
Juneau, Alaska 99801
November 11, 1987

Governor Jay Hammond (ret.)
Lake Clarke
Port Alsworth, Alaska 99656

Dear Mr. Hammond: JRH

This date I am retiring our communications and drafts on the proposed Hammond Amendment to the Alaska State Constitution protecting the income of the permanent fund to the Alaska State Historical Library. A complete file is also enclosed with this letter for your records. Since there is a written record of this work, I have decided to make it available for contemporary public examination as well as for the historical record.

I am also providing complete files to Mr. Fred Eastaugh of the Juneau law firm Robertson, Monagle and Eastaugh, and to Mr. Carl Sampson, the Managing Editor of the Juneau Empire. Mr.'s Eastaugh and Sampson held the final draft of the proposal for ten days (August 17 through August 27, 1987) while the call was out in this community for final suggestions and revisions. Receiving none, I initialled the draft on the latter date and sent it to you via certified mail.

My request is pending with local university authorities with regard to the Juneau workshop which I proposed to you in mid-July to facilitate public discussion of Alaska Permanent Fund issues. According to your wishes we should be able to schedule such a meeting with two to three weeks notice. Be sure of my sustained interest in assisting you in any manner to bring about the needed constitutional protection for the permanent fund at an early date. I am most hopeful that our response to your June 29, 1987 communication to the Juneau Empire will be received favorably by the voting public in all regions of the state.

Sincerely,

George W. Rogers

cc: State Historical Library
Mr. Eastaugh
Mr. Sampson

Index, Hammond Amendment Drafting File. (Records retired to the Alaska State Historical Library by Dr. George W. Rogers, November 11, 1987)

A. Communications

1. Letter, Governor Jay S. Hammond (ret.), published by the Juneau Empire, June 29, 1987.

2. Telegram, Dr. George W. Rogers to Governor Hammond, July 9, 1987.

3. Telegram, Dr. Rogers to Governor Hammond, August 6, 1987.

4. Letter, Governor Hammond to Dr. Rogers, August 23, 1987.

5. Telegram, Dr. Rogers to Governor Hammond, August 27, 1987.

B. Hammond Amendment Drafts

1. First Draft, undated.

2. Second Draft, July 24, 1987.

3. Third Draft, July 27, 1987.

4. Fourth Draft, July 28, 1987.

5. Fifth Draft, July 29, 1987.

6. Final (sic.) Draft, July 29, 1987.

7. Sixth Draft, July 30, 1987.

8. Seventh Draft, August 1, 1987.

9. Eighth Draft, August 4, 1987.

10. Ninth Draft, August 5, 1987.

11. Tentative Final Draft. August 6, 1987.

12. Semi-Final Draft, August 17, 1987.

13. Final Draft, August 27, 1987.

C. Hammond Amendment Exegesis

1. Typescript copy, The Hammond Amendment, Dr. Robert E. Newton, published by the Juneau Empire, September 29, 1987.

LETTERS

Juneau Empire, 6/29/87, p. 4

Governor, legislators dealing public bad hand

Dear Editor:

As the gaming tables in Juneau re-open July 1, for the special session crap shoot, the public should be clearly aware of the stakes and key players.

The stakes, of course, are the earnings of your permanent fund. The governor wants to "cover his bets" by being allowed to draw on those earnings. The Senate believes this unnecessary; they would gamble that oil income will be sufficient to cover the budget. No need for new taxes or "raiding" the permanent fund.

Some of course, bristle at the word "raid." They'll try to lull you into complacency. "We wouldn't dream of touching the fund itself nor your dividends," they'll pronounce in pious indignation. "We just want to 'drain off' a bit of the surplus." Well don't you believe it!

Both the fund and prospective dividends will be made more anemic through such a bleeding. Those who'd have you think otherwise are like surgical quacks who try to convince you that a diet which carves 5 pounds off your carcass by trimming it from the heart muscle could well prove terminal, but the same poundage could be extracted in pints of blood, without any damage.

Since at stake are monies which by law can now be only used for dividends or inflation-proofing your permanent fund, by rights those who would gamble them on something quite different, should first be required to seek your approval before placing their bets. I can, however, appreciate why, in this instance, time might not permit this. Where there are dramatic reductions in oil revenues it might be necessary to use those earnings before the public could grant approval. Regardless, if both the governor and the legislature wish to gamble, both should be required to put their mouths where your money is.

For example, if the Senate really believes oil revenues will be sufficient, they should "loan" permanent fund earnings to the governor. But only on the condition that he be permitted to spend them and the loan "forgiven," should there be the revenue shortfall the Senate believes highly unlikely. On the other hand, should oil revenues prove sufficient, as the Senate is betting, the governor should be willing to re-pay the loan and deposit the money into the permanent fund where it belongs.

However, the governor has drawn up the "house rules" for the special session, and they smack entirely too much of "Heads I win. Tails you lose." Under his proposal, even if it is not necessary to use fund earnings to balance the budget, (as seems increasingly likely from current oil pricing), once those earnings are withdrawn from the fund's reserve account, they'll be lost to the fund forever!

It is upon that point that I take violent issue with the governor's proposition.

Certainly he should be granted a "safety net" in the event of another free fall in oil prices. However, should prices hold, he should not be allowed to use that net as a "snare" to snatch monies away from the permanent fund and into the general fund, where they will certainly be spent for other than what is now required by law.

At the very least, before legislators "count their chips and throw in their hands," they should demand that, in return for allowing the governor to draw down on permanent fund earnings now, he first agree that in the future he'll not try to do so before gaining permission by a majority vote of the fund's "stockholders," namely you.

I'm increasingly convinced that only by structuring such an obligation into our Constitution can the dividend program, or the fund itself long survive.

Now, I know the governor to be an honorable man. Accordingly, I'm dismayed by those who assert that his proposals are designed to seduce the Senate into an action which would breach what, to date, has been the virginal sanctity of the permanent fund. So far, neither the governor nor the legislature have found a way to unlock the statutory chastity belt so wisely fashioned by the fund's founders to ward off the rapacious. Similarly, it's hard to believe that for a few paltry items in the capital budget there are legislators who would be willing to throw the governor the skeleton key. But then again I'm not sure I'd bet on that ... and neither should you.

Sincerely,
Jay S. Hammond
Naknek, Alaska

NIGHT LETTER - GEORGE W. ROGERS, 7/9/87

GOV. JAY HAMMOND
LAKE CLARKE
PORT ALSWORTH, ALASKA 99653

LOCAL JUNEAU MEDIA GAVE YOUR PERMANENT FUND LETTER TO ALASKA PUBLIC EXCELLENT COVERAGE. SINCERELY HOPE THAT STATEWIDE MEDIA DID AS WELL. FULLY SUPPORTIVE OF YOUR POSITION ON CONSTITUTIONAL PROTECTION FOR FUND EARNINGS. SUGGESTING UNIVERSITY WORKSHOP IN JUNEAU AS A PRACTICAL VEHICLE TO PREPARE FOR FURTHER PRESENTATION OF ISSUE. ACADEMIC FREEDOM WOULD PRIVILEGE AT LEAST ONE DELIBERATIVE SESSION WITHOUT COMPROMISING STATE LAW ON OPEN MEETINGS. FEES FOR ADMISSION AND PARTICIPATION COULD BE NOMINAL. UNIVERSITY REGULATIONS FOR NONCREDIT WORKSHOPS ALLOW FOR COMPLETE FEE WAIVER WITHOUT EMBARRASMENT FOR THE IMPECUNIOUS, ENABLING FULL, OPEN PARTICIPATION. SUCH A FORUM WOULD ATTRACT BROADLY BASED PARTICIPATION AND ASSURE THAT NO SINGLE INTEREST OF LOCALITY WOULD DOMINATE PROCEEDINGS. VOLUNTEERS AVAILABLE IN JUNEAU IN SUFFICIENT NUMBER TO PROVIDE ALL NECESSARY EXPERTISE AND LEGWORK WITHOUT RUNNING UP PROHIBITIVE COSTS. SUGGESTING LATE JULY OR EARLY AUGUST FOR TIMING. CONSIDERING A DAY OR TWO AT THE MOST SHORT CONFERENCE. IF YOU CONCURR WILL MAKE PROPOSAL TO LOCAL UNIVERSITY OFFICIALS.

DR. GEORGE W. ROGERS
1790 EVERGREEN AVE.
JUNEAU, ALASKA 99801
586-1202

NIGHT LETTER - DR GEORGE W. ROGERS, 8/6/87

GOV. JAY HAMMOND
LAKE CLARKE
PORT ALSWORTH, ALASKA 99653

DRAFT OF MODEL PERMANENT FUND CONSTITUTIONAL AMENDMENT TO SAFEGUARD PERMANENT FUND INCOME COMPLETED. CLOSE TO A MONTH INVESTED IN THIS EFFORT. NOT A PRODUCT OF ONE LAWYER, BANKER, ACCOUNTANT, BUREAUCRAT, ETC. NO HASTE EITHER. PROCESS OF THOROUGH, OPEN CONSULTATION HAS BEEN FOLLOWED. ENTIRELY PLEASED AND SATISFIED WITH RESULT. FURTHER TECHNICAL MODIFICATIONS IN WORDING POSSIBLY NEEDED. WISH TO SHARE TEXT WITH YOU IMMEDIATELY. DISPATCHING IT BY PRIORITY MAIL FOR YOUR REVIEW.

URGING YOU TO LEND YOUR NAME TO THIS TEXT TO ENABLE PROMOTION AS THE HAMMOND AMENDMENT. ALASKA PUBLIC TRUSTS YOU IN THIS MATTER AS THEY DO NO OTHER PUBLIC FIGURE. EVERY GOOD REASON FOR THIS. PROSPECTS EXCELLENT FOR A CLEAN, AFFIRMATIVE ADOPTION CAMPAIGN WHICH MAY WELL PROVE TO BE EDUCATIONAL AND INFORMATIVE TO PUBLIC AND YOUNGER GENERATION OF OFFICE HOLDERS. AWAITING YOUR REPLY.

DR. GEORGE W. ROGERS
1790 EVERGREEN AVE.
JUNEAU, ALASKA 99801
586-1202

Port Alsworth, Alaska 99653
August 23, 1987

Dr. George Rogers
Juneau, Alaska

Dear George:

I hope you received my phone message regarding your communications relat to a Constitutional amendment on the Permanent Fund. I have been absent from Lake Clark for varous prolonged periods of late. moreover, my phone recorder has been acting up..

At any rate, I am delighted that you have taken it upon yourself to atte protect the Permanent Fund earnings.

I had proposed an amendment last year which was designed to do the same However, it got nowhere. It read in essence: Earnings of the P.F. may be only for inflation proofing, the payment of dividends, reiinvestment in Fund, or as other wise provided by law ratified by a 2/3 vote of the pe

At any rate, I would be most happy to lend my name to your efforts.

Sincerely,

Jay Hammond

NIGHT LETTER - George W. Rogers, 8/27/87

GOV. JAY HAMMOND
LAKE CLARKE
PORT ALSWORTH, ALASKA 99653

FINAL DRAFT ON PROPOSAL FOR CONSTITUIONAL SAFEGUARDS ON PERMANENT FUND INCOME COMPLETED. TEXT HAS BEEN CAREFULLY REVIEWED HERE IN JUNEAU OVER THE PAST THREE WEEKS. RECOMMENDING IT TO YOU AND ASKING YOU TO ALLOW THE USE OF YOUR NAME TO ENABLE YOUR FRIENDS AND ASSOCIATES TO CALL IT THE HAMMOND AMENDMENT. FORWARDING TEXT VIA PRIORITY MAIL AND ASKING YOU TO CONFIRM RECEIPT.

ALSO REQUESTING YOU TO CONSIDER MY PROPOSAL TO ATTEND WORKSHOP HERE IN JUNEAU TO FACILITATE PUBLIC DISCUSSION OF PROPOSAL. AUTHORIZATION IS PENDING FOR TENDERING YOU FULL PAYMENT ON ALL YOUR EXPENSES IN THE EVENT THAT YOU COULD ACCEPT. AS AN ALTERNATIVE WOULD YOU CONSIDER THE PREPARATION OF AN ENDORSEMENT MESSAGE IF TRIP TO JUNEAU WOULD NOT BE CONVENIENT BEFORE LATE SEPTEMBER. AWAITING YOUR REPLY.

GEORGE W. ROGERS
1790 EVERGREEN AVE.
JUNEAU, ALASKA 99801
586-1202

ARTICLE IX, SECTION 15
ALASKA PERMANENT PUBLIC TRUST FUND

At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue sharing payments and bonuses received by the State shall be placed in the Alaska Permanent Public Trust Fund. The principal of this fund shall be used only for those income-producing investments specifically designated by law as eligible for Alaska Permanent Public Trust Fund investments. All income from the Alaska Permanent Public Trust Fund shall be deposited in that same fund. The legislature may appropriate monies from these deposits to provide for an annual dividend payment to Alaska residents, to provide for the management and oversight of the fund itself, and to defray other extraordinary public expenses that may from time to time arise. Except for annual dividend and fund management and oversight appropriations, all other appropriations from the income of the Alaska Permanent Public Trust Fund must be approved by a referendum vote of the Alaska public taken in a general election or in a special election provided for by law.

ARTICLE IX, SECTION 15
ALASKA PERMANENT PUBLIC TRUST FUND

At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue sharing payments and bonuses received by the State shall be placed in the Alaska Permanent Public Trust Fund. The principal of this fund shall be used only for those income-producing investments specifically designated by law as eligible for fund investments. All income from the fund shall be deposited in the fund. Upon deposit the legislature may appropriate from this income to provide for an annual dividend payment to Alaska residents, to offset the effects of inflation on the principal of the fund, to defray all costs related to fund management and oversight, and for any extraordinary public expenses which may arise from time to time. Except for appropriations to pay dividends, to safeguard the principal of the fund from the effects of inflation, and to provide for fund management and oversight expenses, all other appropriations from the income of the fund must be approved by a vote of the public taken in a general election or a special election provided for by law.

THIRD DRAFT

DR. NEWTON
7/27/87

ARTICLE IX, SECTION 15
ALASKA PERMANENT PUBLIC TRUST FUND

At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue sharing payments and bonuses received by the State shall be placed in the Alaska Permanent Public Trust Fund. The principal of this fund shall be used only for those income-producing investments specifically designated by law as eligible for fund investments. All income from the fund shall be deposited in the fund in a manner provided for by law. The legislature may appropriate from this income to provide for an annual dividend payment to Alaska residents, to offset the effects of inflation on the principal of the fund, to transfer surplus income to the principal of the fund, to defray all costs related to fund management and oversight, and for any other extraordinary public expenses which may arise from time to time. Except for appropriations to pay dividends, to safeguard the fund from the effects of inflation, to transfer surplus income to the principal of the fund, and to provide for fund management and oversight expenses, all other appropriations from the income of the fund must be approved by a vote of the public taken in a general election or in a special election provided for by law.

FOURTH DRAFT

Dr. Newton
7/28/87

ARTICLE IX, SECTION 15
ALASKA PERMANENT PUBLIC TRUST FUND

At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue sharing payments and bonuses received by the State shall be placed in the Alaska Permanent Public Trust Fund. The principal of this fund shall be used only for those income-producing investments specifically designated by law as eligible for fund investments and it shall remain dedicated to this sole purpose. All income from the fund shall be deposited in a separate income account in the fund in a manner provided for by law. The legislature may appropriate from this income account to provide for an annual dividend payment to Alaska residents, to offset the effects of inflation on the principal of the fund, to transfer surplus income to the principal of the fund, to defray all costs related to fund management and administration, and to provide for any extraordinary public expenses which may from time to time arise. Except for appropriations to pay dividends, to safeguard the principal of the fund from the effects of inflation, to transfer surplus income to the principal of the fund, and to provide for fund management and administration expenses, all other appropriations from the income account of the fund must be approved by the qualified voters of the State in a subsequent general election or in a special election provided for by law.

29 July 97 (Draft Five)

ARTICLE IX, SECTION 15

ALASKA PERMANENT PUBLIC TRUST FUND

At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue sharing payments and bonuses received by the State shall be placed in the permanent public trust fund [permanent trust fund], the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent public trust fund [permanent trust fund] investments. All income from the fund shall be deposited in a separate account in the fund. The legislature may appropriate from this income [Income shall be appropriated] to provide for the payment of annual dividends to Alaska residents [to residents of the state], to offset the effects of inflation on principal, to provide the operating costs of the fund, to transfer income to the principal of the fund [and income may be appropriated to principal] and to provide for extraordinary expense which may from time to time arise. Except for appropriations to pay dividends, safeguard the principal from inflation, provide for the operating costs of the fund, and transfer income to principal, appropriations must be approved by a majority of the registered voters of the state in a general or special election. [Appropriations for extraordinary expense must be approved by a majority of the registered voters of the state in a general or special election.]

FINAL DRAFT

Dr. Newton
7/29/87

ARTICLE IX, SECTION 15
ALASKA PERMANENT PUBLIC TRUST FUND

At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue sharing payments and bonuses received by the State shall be placed in the Alaska Permanent Public Trust Fund. The principal of this fund shall be used only for those income-producing investments specifically designated by law as eligible for fund investments, and it shall remain dedicated to this sole purpose. All income from the fund shall be deposited in a separate income account in the fund in a manner provided for by law. The legislature may appropriate from this income account to provide for an annual dividend payment to Alaska residents, to offset the effects of inflation on the principal of the fund, to transfer surplus income to the principal of the fund, to defray all costs related to fund management and administration, and to provide for any extraordinary public expenses which may from time to time arise. Except for appropriations to pay dividends, to safeguard the principal of the fund from the effects of inflation, to transfer surplus income to the principal of the fund, and to provide for fund management and administration expenses, all other appropriations from the income account of the fund must be approved by the qualified voters of the State in a subsequent general election or in a special election provided for by law.

EXPLANATION

The above text is proposed to replace the current provisions in the Alaska State Constitution on the Alaska Permanent Fund. It renames the fund to more fully correspond with what the fund has come to mean to the Alaska public. It provides for the deposit of fund earnings back into the fund rather than into the state's General Fund. It clearly defines the powers of the legislature over the income as well as the principal of the fund. (All underlined portions of the above text represent proposed new terminoloy. Portions not underlined represent the terminology which the Alaska Consitution now contains.)

SIXTH DRAFT
"A"
Dr. Newton
7/30/87

ARTICLE IX, SECTION 15
ALASKA PERMANENT PUBLIC TRUST FUND

At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue sharing payments and bonuses received by the State shall be placed in the permanent public trust fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent public trust fund investments. All income from the fund shall be deposited in a separate income account in the fund. The legislature may appropriate from this income account to provide for the payment of annual dividends to residents of the state, to transfer income to the principal of the fund to offset the effects of inflation on the principal, to provide for the operating costs of the fund, to transfer surplus income to the principal of the fund, and to provide for any extraordinary public expenses which may from time to time arise. Except for appropriations to pay dividends to residents, to safeguard the principal of the fund from inflation, to provide for the operating costs of the fund, and to transfer surplus income to the principal of the fund, all other appropriations must be approved by a majority of the registered voters of the state in a general or special election.

EXPLANATION:

The above text is proposed to replace the current provision in the state constitution on the Alaska Permanent Fund. It renames the fund to more fully correspond with what the fund has come to mean to the Alaska public. It provides for the deposit of permanent fund earnings back into the fund rather than into the state general fund. It clearly defines and restricts the powers of the legislature over the income as well as the principal of the fund. (All underlined portions of the above text represent proposed new terminology. Portions not underlined represent the terminology which the Alaska Constitution now contains.)

1 August 87 (Draft Seven)

ARTICLE IX, SECTION 15

ALASKA PERMANENT TRUST FUND

At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in the permanent trust fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent trust fund investments. [ALL] Income from the permanent trust fund shall be used to provide for the payment of annual dividends to residents of the state, to offset the effects of inflation on the principal and to provide the operating costs of the fund, and income may be used to increase the principal and to provide for any extraordinary public expense which may from time to time arise. Appropriations for extraordinary public expense must be approved by a majority of the voters of the state in a general or special election. [shall be deposited in the general fund unless otherwise provided by law.]

EIGHTH DRAFT

Dr. Newton
8/4/87

ARTICLE IX, SECTION 15
ALASKA PERMANENT FUND

At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in the permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. Income from the permanent fund shall be used to provide for the payment of annual dividends to residents of the state, to offset the effects of inflation on the principal of the fund, and to provide for the operating costs of the fund. Income may be used to increase the principal of the fund at any time, and to provide for any extraordinary public expenses which may from time to time arise. Appropriations for any such expenses must be approved by a majority of the voters of the state in a general or special election.

5 August 87 (Draft Nine)

ARTICLE IX, SECTION 15

ALASKA PERMANENT TRUST FUND

At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in the permanent trust fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent trust fund investments. [ALL] Income from the permanent trust fund shall be used to provide for the payment of annual dividends to residents of the state, to offset the effects of inflation on the principal and to provide for the operating costs of the fund. Income from the permanent trust fund fund may be used to increase the principal and to appropriate for any extraordinary public expense which may from time to time arise. Appropriations for extraordinary public expense must be approved by a majority of the voters of the state in a general or special election. [shall be deposited in the general fund unless otherwise provided by law.]

TENTATIVE FINAL DRAFT

Dr. Newton
8/6/87

ARTICLE IX, SECTION 15
ALASKA PERMANENT FUND

At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in the permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. Income from the permanent fund shall be used to provide for the payment of annual dividends to residents of the State, to offset the effects of inflation on the principal and to provide for the operating costs of the fund. Income from the permanent fund may be used to increase the principal and to appropriate for any extraordinary public expenses which may from time to time arise. Appropriations for any extraordinary public expenses must be approved by a majority of the voters of the State in a general or special election.

EXPLANATION:

The above text is proposed to replace the current provisions in the state constitution on the Alaska Permanent Fund. It defines and restricts the uses of the income from the fund as well as the principal of the fund. (All underlined portions of the above text represent proposed new terminology. Portions not underlined represent the terminology which is now contained in the Alaska State Constitution.)

PROPOSED "HAMMOND AMENDMENT"

SEMI-FINAL DRAFT
Dr. Newton
8/17/87

ARTICLE IX, SECTION 15
ALASKA PERMANENT FUND

At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in the permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. Income from the permanent fund shall be used to provide for the payment of annual dividends to residents of the State, to offset the effects of inflation on the principal and to provide for the operating costs of the fund. Income from the permanent fund may be used to increase the principal and to appropriate for any extraordinary public expenses which may from time to time arise. Any appropriation for an extraordinary public expense must be approved by a majority of the voters of the State in a general or special election.

EXPLANATION:

This proposed amendment to the state constitution defines and restricts the uses which may be made of the income as well as the principal of the Alaska Permanent Fund. Underlined portions of the above text represent proposed new terminology. Those portions not underlined represent the existing text of the Alaska State Constitution.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

PROPOSED "HAMMOND AMENDMENT"

SEMI-FINAL DRAFT

Dr. Newton
8/17/87

ARTICLE IX, SECTION 15
ALASKA PERMANENT FUND

At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in the permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. Income from the permanent fund shall be used to provide for the payment of annual dividends to residents of the State, to offset the effects of inflation on the principal and to provide for the operating costs of the fund. Income from the permanent fund may be used to increase the principal and to appropriate for any extraordinary public expenses which may from time to time arise. Any appropriation for an extraordinary public expense must be approved by a majority of the voters of the State in a general or special election.

EXPLANATION:

This proposed amendment to the state constitution defines and restricts the uses which may be made of the income as well as the principal of the Alaska Permanent Fund. Underlined portions of the above text represent proposed new terminology. Those portions not underlined represent the existing text of the Alaska State Constitution.

PROPOSED "HAMMOND AMENDMENT"

FINAL DRAFT

Dr. George W. Rogers
August 27, 1987

ARTICLE IX, SECTION 15
ALASKA PERMANENT FUND

At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in the permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. Income from the permanent fund shall be used to provide for the payment of annual dividends to residents of the State, to offset the effects of inflation on the principal and to provide for the operating costs of the fund. Income from the permanent fund may be used to increase the principal and to appropriate for any extraordinary public expenses which may from time to time arise. Any appropriation for an extraordinary public expense must be approved by a majority of the voters of the State in a general or special election.

EXPLANATION:

This proposed amendment to the state constitution defines and restricts the uses which may be made of the income as well as the principal of the Alaska Permanent Fund. Underlined portions of the above text represent proposed new terminology. Those portions not underlined represent the existing text of the Alaska State Constitution.

THE HAMMOND AMENDMENT

by Robert E. Newton

November 2, 1976 marked a redletter day for the Alaska public. Authorized by a popular vote taken in a state general election, the Alaska Permanent Fund was formally chartered on that date in the state constitution. This investment fund was created to hold a minimum of twenty-five percent of the state's royalty income from the petroleum industry in a public trust for all state residents. All told this investment has included approximately ten percent of total state revenue since 1976. In addition to the constitutionally mandated contributions, extra deposits, approximately doubling the size of the fund, have been made at the option of various governors and state legislatures. The size of the fund today reflects a continuous, lively sense of responsibility on the part of elected state officials to cooperate with the spirit as well as the letter of the state constitution.

The original permanent fund amendment was designed to counter the tide of excessive state spending which had already commenced in 1969 when the state received $900 million as a result of the initial state

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Dr. Newton is a publicist on legal and state governmental issues. A Phi Beta Kappa Laureate from Iowa University (1956), he served in the legislature of that state in 1969-70. He earned a Ph.D. in political science from the Catholic University of America in 1965. He has resided in Juneau for the past seventeen years.

lease purchases by the petroleum companies before the pipeline was constructed and oil production began. A consensus gradually developed during the construction years (1969 - 1978) to the effect that abuses in state spending would unavoidably and markedly accelerate after petroleum production did begin. It was also known that over a relatively brief period (five to seven years) of bonanza-level production the volume of oil produced would commence to seriously decline. Proportionately state revenue receipts would also decline. The permanent fund was designed to provide one sure way to safely retain a portion of the short-term wealth from the years of peak production for future generations of Alaskans. Over the years since the permanent fund was chartered more than $9 billion has been deposited into its principal. At the present time it is one of the largest trust funds in the world. It is the corporate property of the people of Alaska.

Jay Hammond was Alaska's governor (1974 - 1982) when the original permanent fund amendment was framed and adopted. Safeguarding and shepherding the public's petroleum heritage represents the finest achievement of his career in Alaska public life. Not his idea alone, Hammond placed a high priority on the fund's speedy adoption in the early years of his first term. As governor he consistently supported permanent fund deposits in excess of the minimum which is mandated by the state constitution. In his retirement years since 1982, Hammond has returned frequently to the limelight in order to foster and to protect the fund, and to focus public attention on issues affecting it. Several recent proposals--all of them perfectly legal and constitutional--to divert permanent fund income toward defraying routine, recurring state governmental expenditures have not escaped Hammond's

attention. He has responded with a proposal for additional constitutional safeguards to protect the income as well as the principal of the permanent fund. Hammond's original concern when he was governor, and that of others who assisted him, was directed toward setting the money aside, protecting the principal with ironclad prohibitions against spending it for any purpose, and providing for its prudent investment in order to bring about a maximum return of interest income. The achievement of this goal has far exceeded the best hopes and expectations of many of the fund's early advocates.

Sound management and regular annual increases to the permanent fund's principal have produced the result of the fund's income averaging over $500 million during the past five years. The continuation of current policies will likely, if not certainly, guarantee further increases in the future. Do we need, therefore, to concern ourselves at the present time with questions as to how the permanent fund income should be spent? The Hammond Amendment answers this question with a resounding Yes! The bonanza petroleum revenue years are over. Moderate, declining production, and new fields which might--or might not--guarantee sustained, moderate production for the decades ahead can now be anticipated. The public and its elected policy-makers should understand that adjusting state spending to this post-boom circumstance is now the issue confronting Alaskans. The bonanza years cannot be recaptured by manipulating the income account of the permanent fund. The Hammond Ammendment callspublic attention back to its original purpose.

The Hammond Amendment provides a constitutional mandate to the governor and to the state legislature to regularly use permanent fund income

for three purposes only. They must, first of all, pay annual dividends from the fund income to Alaska residents. This means all permanent state residents will continue to enjoy and to participate on an equal basis in a share of the income produced by their money. The dividend program, modest in its original conception and kept that way over the years since it was inaugurated, is not a governmental "give away" program. It respresents an honest acknowledgement of the existence of the rights of the people who actually own the permanent fund. It also serves as a stern reminder of this fact and a tacit restraint upon anyone who might be tempted to contest these rights.

Second, the Hammond Amendment directs the governor and the state legislature to use fund income to safeguard the fund from the adverse effects of inflation. Always a potential danger to any invested resource, inflation can, and regularly does, affect diversified investment funds in many adverse ways. Unavoidable and unpredictable, inflationary problems present themselves on a daily basis. Managers of trust funds respond to inflationary problems by holding a portion of their undistributed income in constant reserve where it is ready to offset inflationary loses when and where they occur. This promptly restores the total of the principal each time inflation depletes it in any manner.

A third constitutional mandate in the Hammond Amendment requires the governor and the state legislature to defray all operating costs of the fund from fund income. These costs include the salaries of the permanent fund's trustees, professional staff and their employees, their rent and facilities maintenance, travel, and all professional services necessary to carry on the fund's operations. Amounting to little more than mandated housekeeping instructions, this clause formally separates permanent fund administration

from other state administration, prevents the intermingling of fund income with other state income, and effectively requires all fund operations to be self-supporting.

The Hammond Amendment allows the governor and the state legislature two options in the use of permanent fund income. It reserves the judgment to them as to when sufficient income surpluses have accrued to warrant transfers to the principal of the fund. With this provision surpluses can be readily transferred to principal as often as they accumulate.

A second optional spending clause in the Hammond Amendment allows the governor and the state legislature to appropriate from fund income "for any extraordinary public expenses which may from time to time arise." Such appropriations, however, "must be approved by a majority of the voters of the state in a general or special election." This clause can be invoked at any time. It imposes no cumbersome procedures on the governor and the state legislature. It acknowledges the lively possibility that permanent fund income could be needed at any time for many different purposes. But it gives the Alaska public the last word in approving any such expenditures. It ensures that the money will always be available as a genuine emergency fund or as a source of public support for any bona fide need which would actually gain the approval of the voters. It effectively prohibits erosive depletion of fund income through resorts to the whole range of subterfuges--unlimited in their number and kind--for the unaccountable spending of public money.

HJR

60

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD. 2-22-88 1:30p.m.

(7)

HOUSE COMMITTEE REPORT

Date referred: 2/15/88 FURTHER REFERRALS:

DATE: Feb 22, 1988

The Judiciary Committee has considered HJR 60

Urging expedient and positive action by the United States Congress on S. 1983, adding a second bankruptcy judgeship for Alaska.

RECOMMENDS:

[ ] replace with CS HJR 60 (JUD) [ ] the same title
[ ] attached amendment(s) [ ] a new title

[ ] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact
[ ] zero fiscal note
[ ] zero with analysis
[ ] same as previous fiscal note published _____
[ ] same as previous zero fiscal note published _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman's signature

Original sponsors: Miller, Frank
and Gruenberg

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 60 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

Urging expedient and positive action by the United States Congress on S. 1983 or other legislation adding a second bankruptcy judgeship for Alaska.

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

WHEREAS the District of Alaska currently has only one authorized bankruptcy judge, whose official duty station is Anchorage; and

WHEREAS the total number of bankruptcy cases filed in the District of Alaska has increased 332 percent between 1983 and 1987; and

WHEREAS, for the 12 - month period ending June 30, 1987, the District of Alaska recorded 204 Chapter 11 filings, placing it well above the national average of 80 filings per bankruptcy judge; and

WHEREAS the current District of Alaska bankruptcy judge handled 773 adversarial proceedings in the same 12 - month period, which is 2.5 times the circuit average of 311 proceedings per authorized judgeship; and

WHEREAS the high percentage of adversary proceedings and the high percentage of Chapter 11 filings result in a case load that requires the Alaska bankruptcy judge to expend a greater amount of time per case than a judge in a district with a more balanced case load; and

WHEREAS the Alaska District bankruptcy judge currently holds court for approximately four days a month in Fairbanks, Nome, Juneau, and Ketchikan, requiring the expenditure of more than 30 hours a month in nonproductive travel time; and

WHEREAS unpredictable flying weather in Alaska often results in additional lost time for the bankruptcy judge and staff due to flight delays or

cancellations; and

WHEREAS growing case loads in Cordova, Kodiak, Valdez, and Sitka have prompted recommendations by the Administrative Office of the United States Courts to recommend that these communities be added to the list of court sites; and

WHEREAS the current case load of the bankruptcy judge precludes addition of communities as court sites; and

WHEREAS the District of Alaska Bankruptcy Court will be moving in July 1988 to the remodeled Anchorage Federal Court Building, a building that includes facilities for a second bankruptcy judge, secretary, and law clerk, and a second courtroom; and

WHEREAS the Ninth Circuit Court of Appeals currently recognizes the excessive work load in the District of Alaska Bankruptcy Court by sending an extra judge and support staff to Alaska for approximately one week every month to help handle the conflict case load; and

WHEREAS roughly 25 percent of the cost for a second District of Alaska bankruptcy judge and support staff is currently being expended through the cost of this traveling judge and staff; and

WHEREAS Alaska's senators have introduced legislation to establish a second bankruptcy judge;

BE IT RESOLVED that the Alaska State Legislature urges the United States Congress to take expedient and positive action on S. 1983 or other legislation creating a second bankruptcy judgeship for the District of Alaska.

COPIES of this resolution shall be sent to the Honorable Howell T. Heflin, Chairman of the Subcommittee on Courts and Administrative Practices, a subcommittee of the U.S. Senate Committee on the Judiciary; the Honorable Charles E. Grassley, Ranking Minority Member of the Subcommittee on Courts and Administrative Practices, a subcommittee of the U.S. Senate

Committee on the Judiciary; the Honorable Joseph R. Biden, Jr., Chairman of the Senate Committee on the Judiciary; the Honorable Strom Thurmond, Ranking Minority Member of the Senate Committee on the Judiciary; the Honorable Robert W. Kastenmeier, Chairman of the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, a subcommittee of the U.S. House of Representatives Committee on the Judiciary; the Honorable Carlos J. Moorhead, Ranking Minority Member of the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, a subcommittee of the U.S. House of Representatives Committee on the Judiciary; the Honorable Peter W. Rodino, Jr., Chairman of the House Committee on the Judiciary; the Honorable Hamilton Fish, Jr., Ranking Minority Member of the House Committee on the Judiciary; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

5-1928A
Chenoweth
2/12/88

IN THE HOUSE BY MILLER AND FRANK

HOUSE JOINT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

Urging expedient and positive action by the United State Congress on S. 1983, adding a second bankruptcy judgeship for Alaska.

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

WHEREAS the current condition of the Alaskan economy has caused the number of bankruptcy filings, both personal and corporate, to reach critical proportions in the state; and

WHEREAS the District of Alaska currently has only one authorized bankruptcy judge, whose official duty station is Anchorage; and

WHEREAS the total number of bankruptcy cases filed in the District of Alaska has increased 332 percent between 1983 and 1987; and

WHEREAS, for the statistical year ending June 30, 1987, the District of Alaska recorded 204 Chapter 11 filings, placing it well above the national average of 80 filings per bankruptcy judge; and

WHEREAS the current District of Alaska bankruptcy judge handled 773 adversarial proceedings in statistical year 1987, which is 2.5 times the circuit average of 311 proceedings per authorized judgeship; and

WHEREAS the high percentage of adversary proceedings and the high percentage of Chapter 11 filings result in a caseload that requires the Alaska bankruptcy judge to expend a greater amount of time per case than a judge in a district with a more balanced caseload; and

WHEREAS the Alaska District bankruptcy judge currently holds court for approximately four days a month in Fairbanks, Nome, Juneau, and Ketchikan, requiring the expenditure of more than 30 hours a month in nonproductive

travel time; and

WHEREAS unpredictable flying weather in Alaska often results in additional lost time for the bankruptcy judge and staff due to flight delays or cancellations; and

WHEREAS growing case loads in Cordova, Kodiak, Valdez, and Sitka have prompted recommendations by the Administrative Office of the United States Courts to recommend that these communities be added to the list of court sites; and

WHEREAS the current caseload of the bankruptcy judge precludes addition of communities as court sites; and

WHEREAS the District of Alaska Bankruptcy Court will be moving in July 1988, to the remodeled Anchorage Federal Court Building, a building that includes facilities for a second bankruptcy judge, secretary, and law clerk, and a second courtroom; and

WHEREAS the Ninth Circuit Court of Appeals currently recognizes the excessive work load in the District of Alaska Bankruptcy Court by sending an extra judge and support staff to Alaska for approximately one week every month to help handle the conflict case load; and

WHEREAS roughly 25 percent of the cost for a second District of Alaska bankruptcy judge and support staff is currently being expended through the cost of this traveling judge and staff; and

WHEREAS Alaska's senators have introduced legislation to establish a second bankruptcy judge;

BE IT RESOLVED that the Alaska State Legislature urges the United States Congress to take expedient and positive action on S. 1983 creating a second bankruptcy judgeship for the District of Alaska.

COPIES of this resolution shall be sent to the Honorable Howell T. Heflin, Chairman of the Subcommittee on Courts and Administrative Practices, a subcommittee of the U.S. Senate Committee on the Judiciary; the

Honorable Charles E. Grassley, Ranking Member of the Subcommittee on Courts and Administrative Practices, a subcommittee of the U.S. Senate Committee on the Judiciary; the Honorable Joseph R. Biden, Jr., Chairman of the Senate Committee on the Judiciary; the Honorable Strom Thurmond, Ranking Member of the Senate Committee on the Judiciary; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M February 22, 1988

SUBJECT: CS HJR 60, relating to a second bankruptcy judge in Alaska

TO: Representative John Sund, Chairman
House Judiciary Committee
Attn: John Hartle

FROM: Jack Chenoweth
Legislative Counsel

The committee substitute requested is enclosed.

In addition to the three changes you specifically requested, I have

(1) amended the title to refer to S. 1983 "or other legislation," a change made to parallel the amendment made in the "Be It Resolved" clause;

(2) amended a reference to "statistical year" in the fourth WHEREAS clause, a change made to parallel the change made in the immediately preceding clause.

Enclosure

JBC:gc
WKG1:107

Adopted

February 22, 1988

MEMORANDUM

TO: Rep. John Sund, Chair,
House Judiciary Committee

FROM: John Hartle, PA, JH
House Judiciary Committee Staff

RE: HJR 60

I have three suggestions for amendments to HJR 60, the resolution which urges the U.S. Congress to add a second bankruptcy judgeship for Alaska.

1. Page 1, line 10-12: Drop the first 'whereas' clause.
- The second, third, and forth clauses state the rational for the request quite clearly.

2. Page 1, line 17 [STATISTICAL YEAR] <u>12-month period</u>

3. Page 2, line 25 after "S. 1983" add "or otherwise" [CREATING] <u>create</u>
- This would express support for adding a second bankruptcy judgeship without regard to the specific legislation used to authorize it.

Introduced: 2/15/88
Referred: Judiciary

5-1928A

BY MILLER, FRANK AND GRUENBERG

IN THE HOUSE

HOUSE JOINT RESOLUTION NO. 60

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

Urging expedient and positive action by the United States Congress on S. 1983, adding a second bankruptcy judgeship for Alaska.

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

WHEREAS the current condition of the Alaskan economy has caused the number of bankruptcy filings, both personal and corporate, to reach critical proportions in the state; and

WHEREAS the District of Alaska currently has only one authorized bankruptcy judge, whose official duty station is Anchorage; and

WHEREAS the total number of bankruptcy cases filed in the District of Alaska has increased 332 percent between 1983 and 1987; and

WHEREAS, for the ~~statistical year~~ 12-month period ending June 30, 1987, the District of Alaska recorded 204 Chapter 11 filings, placing it well above the national average of 80 filings per bankruptcy judge; and

WHEREAS the current District of Alaska bankruptcy judge handled 773 adversarial proceedings in statistical year 1987, which is 2.5 times the circuit average of 311 proceedings per authorized judgeship; and

WHEREAS the high percentage of adversary proceedings and the high percentage of Chapter 11 filings result in a caseload that requires the Alaska bankruptcy judge to expend a greater amount of time per case than a judge in a district with a more balanced caseload; and

WHEREAS the Alaska District bankruptcy judge currently holds court for approximately four days a month in Fairbanks, Nome, Juneau, and Ketchikan, requiring the expenditure of more than 30 hours a month in nonproductive

travel time; and

WHEREAS unpredictable flying weather in Alaska often results in additional lost time for the bankruptcy judge and staff due to flight delays or cancellations; and

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WHEREAS the current caseload of the bankruptcy judge precludes addition of communities as court sites; and

WHEREAS the District of Alaska Bankruptcy Court will be moving in July 1988, to the remodeled Anchorage Federal Court Building, a building that includes facilities for a second bankruptcy judge, secretary, and law clerk, and a second courtroom; and

WHEREAS the Ninth Circuit Court of Appeals currently recognizes the excessive work load in the District of Alaska Bankruptcy Court by sending an extra judge and support staff to Alaska for approximately one week every month to help handle the conflict case load; and

WHEREAS roughly 25 percent of the cost for a second District of Alaska bankruptcy judge and support staff is currently being expended through the cost of this traveling judge and staff; and

WHEREAS Alaska's senators have introduced legislation to establish a second bankruptcy judge;

BE IT RESOLVED that the Alaska State Legislature urges the United States Congress to take expedient and positive action on S. 1983 creating a second bankruptcy judgeship for the District of Alaska.

COPIES of this resolution shall be sent to the Honorable Howell T. Heflin, Chairman of the Subcommittee on Courts and Administrative Practices, a subcommittee of the U.S. Senate Committee on the Judiciary; the

Honorable Charles E. Grassley, Ranking Member of the Subcommittee on Courts and Administrative Practices, a subcommittee of the U.S. Senate Committee on the Judiciary; the Honorable Joseph R. Biden, Jr., Chairman of the Senate Committee on the Judiciary; the Honorable Strom Thurmond, Ranking Member of the Senate Committee on the Judiciary; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

Alaska State Legislature

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(907) 465-4976

House of Representatives

MEMORANDUM

TO: Representative Mike Navarre
Chairman, House Rules Committee

FROM: Representative Mike Miller

RE: Scheduling of CS HJR 60 (Judiciary)

DATE: 2/22/88

The House Judiciary Committee heard testimony on House Joint Resolution 60 and passed a committee substitute on to the Rules Committee. This resolution urges the U.S. Congress to consider Senate Bill 1983 which would create a second bankruptcy judgeship for the District of Alaska. A copy of the U.S. Senate Bill is attached for your review.

As you are aware, the Alaskan economy is going through a very rough period of time. With the current economic downturn, the number of bankruptcy filings in Alaska have soared yet the entire state is still served by a single Bankruptcy Judge stationed in Anchorage.

The Scheduling and passage of S. 1983, by Congress, will accelerate the decision process for obtaining a second bankruptcy judgeship for Alaska. Although steps have been taken to ensure favorable consideration of this legislation, the bill needs to be scheduled for a hearing before the U.S. Senate Committee on the Judiciary. The chairman of this committee has expressed an interest in the bill; however, the recent requirement of time to confirm a new U.S. Supreme Court Judge has caused a backlog in the committee schedule. I believe it would be beneficial to express our collective state support for S. 1983 before the schedule for the Senate Committee on the Judiciary is filled with other matters.

With the congressional time constraint in mind, I respectfully request that CS HJR 60 (Judiciary) be scheduled before the full House of Representatives at the earliest possible date.

Alaska State Legislature

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House of Representatives

MEMORANDUM

TO: Representative John Sund, Chairman
House Judiciary Committee

FROM: Representative Mike Miller M.W. Miller

RE: HJR 60, Urging expedient and positive action by the U.S. Congress on S. 1983, adding a second bankruptcy judgeship for Alaska

DATE: 2/15/88

House Joint Resolution 60 was introduced today, under my sponsorship, and referred to the House Judiciary Committee. A copy of the resolution is attached for your review.

This resolution urges the the U.S. Congress to consider Senate Bill 1983 which would create a second bankruptcy judgeship for the District of Alaska. A copy of the U.S. Senate Bill is also attached for your review.

As a attorney, you are probably aware of Alaska's current Bankruptcy Court situation. With the current economic downturn, the number of bankruptcy filings in Alaska have soared yet the entire state is still served by a single Bankruptcy Judge stationed in Anchorage.

Federal legislation has been introduced, in the form of S. 1983, which would accelerate the decision process for obtaining a second bankruptcy judgeship for Alaska. Although steps have been taken to ensure favorable consideration of this legislation, the bill needs to be scheduled for a hearing by the U.S. Senate Committee on the Judiciary. The chairman of this committee has expressed an interest in the bill, however; the recent requirement of time to confirm a new U.S. Supreme Court Judge has caused a backlog in the committee schedule. I believe it would be beneficial to express our collective state support for S. 1983 before the schedule for the Senate Committee on the Judiciary is filled with other matters.

I respectfully request that you consider scheduling HJR 60 before the House Judiciary Committee sometime during the week of February 22-26. I anticipate discussion on the resolution will consume very little of the Committee's time.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

Alaska State Legislature

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With the congressional time constraint in mind, I respectfully request that CS HJR 60 (Judiciary) be scheduled before the full House of Representatives at the earliest possible date.