



Alaska Judicial Council

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EIGHTH REPORT TO SUPREME COURT AND LEGISLATURE 1973 - 1975

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INTRODUCTION

The Alaska Judicial Council is created by Article IV, §9 of the Alaska Constitution. The Council consists of the Chief Justice of the Alaska Supreme Court, who serves as Ex Officio Chairman, three lay members appointed by the Governor of Alaska, and three attorney members appointed by the Board of Governors of the Alaska Bar Association following a Bar election. The Council has two constitutionally mandated functions: (1) Nominating qualified candidates for judicial office; and (2) conducting studies and reporting to the Supreme Court and the Legislature concerning the administration of justice in Alaska. As a result of legislative action in 1975, the Judicial Council is now additionally encharged with the duty to conduct an evaluation of each District and Superior Court judge, and of each Supreme Court justice, prior to his or her retention election, and to make the result of such evaluation public knowledge. The Council may also offer a recommendation as to whether or not a judge or justice should be retained or rejected.

Prior to FY'74 the Judicial Council had no permanent full-time office or staff. Its research and reporting responsibilities were wholly dependent on the Office of the Administrative Director of the Alaska Court System. The bi-annual report was virtually the only printed and disseminated statement of the Council, and it reflected primarily the internal work product and recommendations of the

Alaska Court System. Follow-up efforts with other justice agencies or the Legislature were accomplished on a "time available" basis by Court System staff, or pursuant to the part-time contract services of an attorney hired as executive secretary. Judicial Council meetings were scheduled at erratic intervals, and there was little continuity between meetings. Only in very recent years has this state of affairs been substantially altered. In the words of (then) Chief Justice Jay A. Rabinowitz, in his State of the Judiciary Message, April 15, 1975:

"The present fiscal year [FY'76] is only the second year that the Judicial Council has received from the Legislature a modest budget for hiring a staff, and yet it is already apparent that the relatively small investment has produced, . . . valuable information about the justice process and some immediate improvements in the justice system. The Judicial Council has truly begun to fulfill its constitutional mandate which in part requires it to make studies and recommendations to the Legislature and the Supreme Court of Alaska for improvements in the administration of justice."

To conclude this introductory section, mention should be made of the personnel changes which have occurred within the Judicial Council in 1974-76. Eugene Wiles, an attorney member from Anchorage, resigned from the Council and the Board of Governors of the Alaska Bar Association selected Joseph L. Young as his successor. Thomas Miklautsch, a non-attorney member from Fairbanks, also resigned from the Council and Robert Moss, Sr., a commercial fisherman from Homer, was appointed by Governor Hammond to fill his seat.

R. Eldridge Hicks, the Council's first Director, resigned in July 1975, and the position of Executive Director is now held by Michael L. Rubinstein.

JUDICIAL VACANCIES FILLED

In 1973 Peter J. Kalamarides and Seaborn Buckalew, Jr. were nominated by the Council and appointed by the Governor to the Superior Court bench in Anchorage. In the same year Ethan Windahl was nominated by the Council and appointed by the Governor to the District Court bench in Nome. In 1974 Thomas E. Schulz was nominated by the Council and appointed by the Governor to the Superior Court bench in Ketchikan. In 1975, pursuant to Judicial Council nominations, the following persons were appointed: Edmond W. Burke to the Supreme Court bench, J. Justin Ripley and Victor D. Carlson to the Superior Court bench in Anchorage, Alexander O. Bryner and Laurel Peterson to the District Court bench in Anchorage, Gerald O. Williams to the District Court bench in Juneau, Duane Craske to the District Court bench in Wrangell-Petersburg, Roy H. Madsen to the Superior Court bench in Kodiak, Monroe N. Clayton to the District Court bench in Fairbanks, and James R. Blair to the Superior Court bench in Fairbanks.

In 1974 The Council also nominated applicants for the position of Public Defender, which vacancy was filled by the Governor's appointment of Brian Shortell.

On January 8, 1976 the Council nominated Joseph D. Balfe, Allen T. Compton and Roger W. DuBrock as qualified candidates to fill the vacancy on the Superior Court bench in Juneau created by Judge Victor D. Carlson's appointment to the Anchorage Superior Court. Following a public hearing on January 9, 1976 at Sitka, the Council unanimously voted to seek legislative authorization for the creation of an additional Superior Court position for the First Judicial District in place of the present District Court position at Sitka. As of this writing legislative and gubernatorial action is still pending on both of the above matters.

JUDICIAL RETENTION ELECTIONS

In August of 1974 the Judicial Council concluded that the retention election process for judges was not functioning as it was intended, mainly because the voters of the State were largely uninformed as to the qualifications and performances of the judges whose names appeared on the ballot. The Council developed a program for evaluating the nineteen judges subject to retention election in that year. Its program included the review of vacation, sick leave and continuing education records, and the taking of a poll of attorneys, agency personnel, and members of the public who knew the judges. Also included in the evaluation process were personal interviews with some of the judges themselves.

In November 1974, pursuant to the foregoing evaluation, the Judicial Council recommended the retention of seventeen judges and the rejection of two. However, because the general constitutional mandate of the Council to "conduct studies for improvement of the administration of justice" left unclear the extent to which the Council was empowered to conduct an evaluation of judges, or to publicize the results of such a process, the published conclusions were limited to a bare statement of endorsement or opposition. There was no attempt at discussion or explanation of the positive or negative qualities of the individual judges, nor was any explanation provided for the reasons two judges were recommended for rejection. Owing to these obvious weaknesses, the Council's 1974 efforts were less than wholly effective.

In January of 1975 the Judicial Council drafted proposed legislation specifically designed to empower it to conduct and disseminate a meaningful judicial evaluation. The result was that in the last session of the Legislature portions of Titles 15 and 22 of the Alaska Statutes were significantly amended, and the Council now has clear authority to carry out a thorough and, hopefully, effective program of judicial evaluation, and to disseminate to the public the conclusions of the evaluation process as well as the reasons in support of its recommendations.

At the present time the office of the Executive Director is engaged in designing an expanded judicial evaluation questionnaire to be distributed among jurors and other laymen who have had contact with the court system, as well

as to members of the Bar, and possibly police. Preliminary contacts have been made with the Board of Governors of the Alaska Bar Association, and it seems likely that the Bar will cooperate with the Judicial Council in the evaluation enterprise. A final evaluation of all judicial candidates subject to retention or rejection in 1976 will be prepared by the Council for distribution prior to the November general elections.

IMPROVEMENTS IN JUDICIAL SELECTION PROCESS

The Alaska Judicial Council is fully aware that the quality of justice in the State of Alaska can be little better than the quality of the men who comprise the judiciary itself. For this reason the Council has embarked upon an extensive effort further to revise and improve its procedures with a view toward the nomination of only the best qualified candidates. One means of striving for this ideal has been to require all prospective applicants to submit samples of their legal research and writing. These samples are then scrutinized and evaluated by the Council to assess the professional legal skills of the candidate, his capacity for abstract thought, and his ability to communicate in writing. Each candidate is also required to submit a partial list of court cases in which he has participated in the capacity of advocate. These case files are reviewed and, in appropriate instances, contact is initiated with the judge or opposing

counsel for a confidential assessment of the competence, honesty and integrity of the judicial applicant. The Judicial Council is also in the process of developing a comprehensive application form. This form will be designed to elicit certain background information which, while germane to the qualifications of a judicial candidate, might otherwise be overlooked at the personal interview.

The personal interview process has been substantially updated and formalized since 1973.

The Judicial Council has requested additional funds in its FY'77 budget for a special investigator on a contract basis to inquire into the backgrounds of candidates for judicial positions. The Council has determined that an independent investigation is preferable to reliance upon existing outside agencies to perform this function; especially since the strictest confidence must be maintained lest qualified applicants be discouraged from seeking judicial office.

JUDICIAL QUALIFICATIONS COMMISSION

The Judicial Qualifications Commission has requested the assistance of the office of the Executive Director of the Alaska Judicial Council in the preparation of revised rules of procedure for the former Commission. These rules will aid the Judicial Qualifications Commission in assuming an increasingly active and vigorous role in maintaining high ethical and professional standards in sitting

judges. The Judicial Council will submit proposed drafts of rule revisions to the Qualifications Commission for its approval or rejection in March of 1976.

STUDIES AND REPORTS
ON THE ADMINISTRATION OF JUSTICE

A. Alaska Public Defender Agency in Perspective
(January 1974)

This was the first in-depth analysis of the Public Defender Agency from its inception up until the date of the report's publication. This report discussed and analyzed the history of the Agency, and the legislative discussion and debates leading up to its creation, comparing its intended and proposed level of funding with its current functioning and fiscal endowment. The report focused upon the caseload of the Alaska Public Defender, the quality of representation of the indigent accused, and various problems and criticisms directed at that agency from within and without. The Council's report was presented at a meeting among members of the Alaska Judicial Council and members of the Judiciary Committees of the Senate and the House of Representatives. The President of the Senate and the Speaker of the House were also in attendance.

As a result of the Judicial Council's report, legislation was adopted amending provisions of Title 18 (the Alaska Public Defender Agency Act) and providing for the

appointment of substitute public defenders in conflict of interest cases directly by the court, rather than by the Public Defender Agency itself, as was the previous practice. The Act was also amended to provide that compensation of substitute public defenders be accomplished by the court and pursuant to a published court fee schedule rather than under a minimum Bar fee arrangement. These changes were also in conformity with the Judicial Council's recommendations. [AS 18.85.130(a)].

B. Report on Court Fee Structures (February 1974)

This report analyzed some of the fiscal operations of the court system with particular attention to its various filing fees. The Council recommended against the general 3% surcharge required of all persons making support payments through the court trustee's office. Instead, the Council recommended that collection fees be assessed only against delinquent individuals, and not against family members who were in fact diligent in meeting their obligations. This recommendation was adopted by the Court. Other recommendations adopted by the Alaska Court System concerned modification of fees in adoption cases and recording service fees.

C. Study of the Courts of Limited Jurisdiction

At the request of the Anchorage Bar Association, the Tanana Valley Bar Association and the Supreme Court of Alaska, the Judicial Council commenced an evaluation of the

district court concept. The purpose of the evaluation was to determine whether a single-level trial court was preferable to a dual-level trial court consisting of one court of limited jurisdiction (the District Court) and one court of general jurisdiction (the Superior Court).

An interim report to the Judicial Council noted that Council staff lacked the necessary resources and expertise for a full-scale evaluation of this proposal. Contacts were made with the Western Regional Office of the National Center for State Courts at San Francisco in an attempt to secure expert assistance to perform this evaluation. However, the requisite technical assistance was not forthcoming.

Although no final report on this subject has been published, the inquiry itself generated significant effects by opening up for closer consideration the possibility of combined Superior/District judgeships, and the advantages of this alternative in certain locales in Alaska. In at least one instance the Council concluded that where a community was served mainly by a resident District Court judge, (occasionally assisted by a non-resident traveling Superior Court judge), economies of administration and the judicial needs of the people might be met most effectively by appointment of a resident Superior Court judge who would also handle the usual District Court calendar of misdemeanor criminal cases and civil cases of under \$10,000 or \$15,000 in jurisdictional limit. This was the rationale leading to

the appointment of Roy H. Madsen as Superior Court judge for the Third Judicial District at Kodiak. A similar situation exists at Sitka, and the Council has sought legislative authorization for an additional Superior/District Court judgeship to serve that community.

D. Final Judicial Districting Report (January 1975)

After an exhaustive study of the judicial districts of Alaska, the Judicial Council concluded that the present district boundaries were obsolete in all respects except to serve as a basis for the retention election process. In this regard, however, the report noted several irrational elements inherent in these districts even for election purposes. For instance, Bethel residents cast votes for or against judges who serve Fairbanks, and not Bethel. Votes for or against the Superior Court judge serving Bethel are in fact cast by the people of Anchorage. The residents of Barrow are served by a Superior Court judge who is retained or rejected on the basis of votes cast by residents of Nome.

The Judicial Council report advocated that election districts be re-ordered to conform to the election of the judges who actually served the geographic area in question. The report further advocated the creation of additional judicial districts defined along the lines of existing Supreme Court service areas. These districts would better reflect the actual organization of the State with respect to

economics, demographic factors and transportation routes. The Council's report also included specific draft legislation to accomplish the recommended result. This legislation is now pending before the Legislature, along with countervailing proposals submitted by the Alaska Court System. Regardless of what legislative action is ultimately taken with respect to judicial re-districting, the impetus for reform in this area was undoubtedly generated by the Judicial Council's 1975 report.

E. Bail and Sentencing Studies (March 1975)

In order to provide a data-base for criminal justice legislation, the Judicial Council undertook a comprehensive review of the bail and sentencing practices of the Superior Court for the Third Judicial District at Anchorage. These studies were prepared with funds provided by a grant from the Law Enforcement Assistance Administration of the United States Department of Justice; they are the first such comprehensive statistical studies ever done in this area in Alaska. Data uncovered by these documents is now being used by the Criminal Code Revision Commission in its efforts to update the substantive criminal law. Follow-up reports, offshoots of the preceding two documents, were recently prepared by the Council. These are entitled Repeat Bail Recidivists and Sentences of Five Years or Greater in Length. The latter two reports analyzed judicial performance in cases in which persons have repeatedly committed

crimes while on bail, and cases in which persons have been sentenced to particularly lengthy periods of incarceration.

F. The Grand Jury in Alaska (April 1975)

This interim report was prepared on contract for the Alaska Judicial Council, also under a federal grant. The report's recommendations concerning the functions of the grand jury and those of the preliminary examination have generated substantial controversy in the legal community and among laymen. The Judicial Council is currently in the process of studying the recommendations in this report, and considerable research and analysis of this issue has been undertaken between April 1975 and the present date. The final recommendations of this study will come before the Judicial Council for action in March 1976.

G. Standards and Goals for the Courts

Pursuant to the Crime Control Act of 1973, and the policies of the Law Enforcement Assistance Administration (LEAA), each State and Territory in the United States is embarking upon the process of formulating and carrying out a comprehensive set of standards and goals for its criminal justice system. This is an extremely complex and challenging assignment and is an integral part of the comprehensive planning activities now being undertaken by the Criminal Justice Planning Agency and state and local criminal justice agencies nationwide. The task involves ascertaining the

existence of Alaska's specific criminal justice problems, fashioning goals to address these problems, and setting standards that indicate the conditions necessary for goal achievement. These efforts roughly parallel those of the National Advisory Commission on Criminal Justice Standards and Goals, whose comprehensive guidelines for courts were first promulgated in January of 1973.

The Alaska Judicial Council, through its Executive Director, was given the directorship of a task force on standards and goals for the Alaska courts. This task force consists of representatives of all components of the criminal justice process, including inmates of correctional institutions, the Commissioner of Health and Social Services, police, judges, people from the Division of Corrections, representatives of Alaska Native groups, and others. A separate set of standards and goals is also being developed for the rural areas of the State in recognition of the particular problems and needs of these bush communities.

As of this writing the Courts Task Force has developed a preliminary standards and goals statement which was approved by the Governor's Commission on the Administration of Justice for submission to public hearing. Following this approval, the Council and the Task Force will now seek citizen and agency participation through a process of public hearings, conferences with affected operational agencies, and opinion polls, all to be accomplished prior to the adoption of a final statement of standards and goals. This

statement will then serve as the foundation for a comprehensive criminal justice plan which, it is expected, will provide guidance for effective resource allocation, as well as for future legislative action in the field of criminal justice.

H. LEAA Grant to Study Plea Bargaining

On July 7, 1975, the Attorney General instructed all district attorneys to halt the practice of plea bargaining. The instruction applied to all misdemeanor and felony cases filed after August 15, 1975, making this the most sweeping ban on plea bargaining instituted anywhere in the United States. Because of the national significance of the ban, the Judicial Council was requested by LEAA to evaluate its effects. Alaska is the first statewide jurisdiction to follow the recommendation made by the National Advisory Commission on Criminal Justice Standards and Goals that plea bargaining be eliminated in the interest of justice.

The grant application, which has been submitted to LEAA and is in the final stages of review, allows the Judicial Council to collect data on several thousand criminal cases filed both before and after the plea bargaining ban. The two-year program of evaluation allows for the development of a perspective concerning those changes which are really temporary responses only, and those which represent significant, lasting readjustments. The hypotheses offered for and against the elimination of plea bargaining will be compared with the realities of an across-the-board ban on

this practice, giving other jurisdictions a much firmer foundation for steps they may wish to take in this direction.

The \$300,000 program is expected to start in March of 1976, with a final report due in the spring of 1978. The Project's first several months will be devoted to the development of an evaluation methodology and the accumulation of baseline data. The next twelve months will be used to collect data on case dispositions and sentencing, to observe court proceedings, perform legal research and for other aspects of the evaluation. Finally, six months will be spent in data analysis and preparation of the final report.

While the project's principal stated purpose is to provide an analysis of the significance of eliminating plea bargaining, its usefulness to Alaska is by no means limited to this. The tremendous scope of the data collected and the depth of the analysis to be undertaken provides a base of information which can be employed by the Legislature, courts, corrections, police, and other interested agencies. This, combined with the national significance of the evaluation, will make this project a major focus of Judicial Council efforts during the coming two years.

I. Conferences on Administration of Justice

- (1) November 1973: Bethel Conference on Judicial Administration
[Creation of Yukon-Kuskokwim Judicial Service Area]

March 1974: American Judicature Society Conference on Judicial Selection and Retention

April 1974: Barrow Conference on Judicial Administration

[Creation of Barrow Court Service Area]

June 1974: Minto Bush Justice Conference

September 1974-September 1975: Conferences Leading up to Development of Criminal Justice Center

August 1975: International Conference on acculturation of the Eskimo

STUDY PROPOSALS CURRENTLY UNDER

CONSIDERATION FOR FY'77

1. Study and recommendations concerning provision of justice services to bush Alaska: Magistrates, legal powers of village councils, local autonomy and alcoholic beverage control, conciliation process, employment of paralegals.
2. Study and recommendations regarding juvenile justice needs: The "status offender" and the "first-index delinquent".
3. Follow-up to sentencing studies: Presumptive sentencing-- a rational alternative to "flat time".
4. Study and recommendations concerning problems of landlords and tenants: Rights and remedies.

5. The uses of arbitration and conciliation as an adjunct to the conventional judicial process: Finding an acceptable role for "peoples courts".
6. Study and recommendations concerning consumer frauds and consumer protection: Law and administration.

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The Judicial Council has expanded its scope considerably during the past two years and is now fulfilling its constitutionally mandated role to the limits of its budgetary capabilities. In keeping with its mandate, the Council has decided to hold public hearings as adjuncts to most of its meetings. These hearings, coupled with the Council's role as a research and reporting body, have evolved an additional function for the Judicial Council-- that of liason among the various criminal justice agencies, the public, the Legislature and the Court System. The hearings are open for the discussion of any matters pertaining to the administration of justice, thus providing a forum for the expression of public opinion on matters of general concern. Judicial Council reports will, when appropriate, incorporate or reflect these public concerns and share them with other justice agencies.

The previous two years have been significant ones for the justice system, and years during which the Judicial Council itself has experienced great growth. Even more

significant changes now appear to be at hand; since the curtailment of plea bargaining and the probable future enactment of a new criminal and sentencing code will surely have a massive impact. As the rate of change accelerates, it becomes increasingly important that an independent and analytical overview of such changes be provided to the Supreme Court and the Legislature. It is in providing such perspectives, and in recommending alternatives and possible solutions that the Judicial Council will continue to perform a vital State function.

February 5, 1976

Michael L. Rubinstein
Executive Director

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