



Alaska Judicial Council

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NINTH REPORT
TO SUPREME COURT AND LEGISLATURE
1976 - 1977

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INTRODUCTION

The Alaska Judicial Council is created by Article IV, section 9 of the Alaska Constitution. The Council consists of the Chief Justice of the Supreme Court of Alaska, who serves ex officio as Chairman, three lay members appointed by the Governor, and three attorney members appointed by the Board of Governors of the Alaska Bar Association following a bar election. In the past two years John E. Longworth, a commercial fisherman from Petersburg, was appointed by Governor Hammond to succeed Lew Williams, a newspaperman from Ketchikan; and attorneys Michael A. Stepovich and Joseph L. Young were reappointed to the Council by the Board of Governors of the Alaska Bar Association. The other Judicial Council members are Kenneth L. Brady, an Anchorage businessman, Robert H. Moss, a Homer commercial fisherman, and Juneau attorney Michael M. Holmes. Michael L. Rubinstein, an attorney, has held the position of Executive Director since July of 1975.

The Alaska Judicial Council has two constitutionally mandated functions: (1) nominating qualified candidates for judicial office; and (2) conducting studies on the administration of justice in Alaska and reporting to the Supreme Court and the Legislature concerning its findings and recommendations. As a result of legislative action in 1975, the Judicial Council is charged also 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 provide information to the voting public concerning each judicial officer evaluated. The 1975 legislation provides also that the Council may offer a recommendation as to whether a judge or justice should be retained in office or rejected.

Prior to fiscal year 1974 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. Council meetings were scheduled at erratic intervals, and there was little continuity between meetings.

Since 1974 the Judicial Council has had a full-time executive director and staff, additions which have greatly altered its scope and level of function. Hon. Jay A. Rabinowitz, former Chief Justice of the Supreme Court of Alaska, said in his State of the Judiciary Message on 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.

IMPROVEMENT OF THE JUDICIAL SELECTION PROCESS

Knowing that the quality of justice in the State of Alaska can be no better than the quality of the men and women who comprise the judiciary itself, the Judicial Council has steadily made efforts to revise and improve its procedures for nomination of qualified candidates for judicial office.

All judicial applicants are required to submit examples of their legal research and writing. These written materials are reviewed by the Council to aid in evaluation of the professional skills of the candidate, his or her capacity for legal reasoning, and the candidate's ability to communicate clearly in writing. Each candidate is also required to submit a partial list of litigated cases in which he participated as an advocate. The case files may be reviewed and, in appropriate instances, a Judicial Council member or members may speak with the judge or the opposing attorney for a confidential assessment of the applicant's legal ability, diligence and integrity. The Judicial Council

has developed a comprehensive application form to elicit background information about all candidates. This also serves to guide the personal interview of each candidate along pertinent lines of inquiry.

JUDICIAL VACANCIES FILLED

In 1976 six persons were appointed to judgeships by the Governor pursuant to nomination by the Alaska Judicial Council. Allen T. Compton was appointed to the superior court bench in Juneau; John Bosshard III was appointed to the district court bench in Homer; Duane K. Craske was appointed to the superior court bench in Sitka; Jay F. Hodges was appointed to the superior court bench in Fairbanks; Christopher Cooke was appointed to the superior court bench in Bethel; and James C. Hornaday was appointed to the district court bench in Homer.

In 1977 Warren W. Matthews was nominated by the Council and appointed by the Governor to the Supreme Court of Alaska. Also in 1977, pursuant to Judicial Council nominations, the following persons were appointed to judgeships: Robin Taylor to the district court bench in Wrangell/Petersburg; Mark C. Rowland to the superior court bench in Anchorage; and Beverly W. Cutler to the district court bench in Anchorage.

In 1978 the Governor appointed Milton M. Souter to the superior court bench in Anchorage and Steven R. Cline to the district court bench in Fairbanks, after receiving the

nominations of the Judicial Council. On February 10, 1978 the Council nominated Glen Anderson, L. Eugene Williams and Ethan Windahl as candidates qualified to fill a vacancy on the district court bench in Anchorage. As of this writing, the Governor has not yet exercised his power of appointment.

JUDICIAL RETENTION ELECTIONS

In January of 1975 the Judicial Council drafted proposed legislation specifically designed to empower it to conduct and disseminate an evaluation of all judges standing in retention elections. Portions of Titles 15 and 22 of the Alaska Statutes were amended giving the Council authority to carry out a program of evaluation and to disseminate its conclusions in the form of information to the voting public.

In accordance with the new law, the Judicial Council undertook the Alaska Judicial Survey in 1976, the first retention election year since the legislation was passed. To achieve a broad evaluative base, surveys were conducted by mail among three separate populations: members of the Alaska Bar Association, members of the Alaska Peace Officers Association (APOA), and jurors who had served during the preceding year. The survey instruments, which were employed in the evaluation of six district court judges, three superior court judges, and one supreme court justice, were designed by the Judicial Council staff after consultation with a political scientist on the staff of the Institute for Social Research of The University of Michigan at Ann

Arbor. Members of the judiciary, the bar and the APOA also assisted in the design of the survey instruments. The results of the mail surveys were analyzed with the aid of a computer at The University of Michigan and were presented in a report dated August 30, 1976.

After analysis of the ratings of each judge, the Council found that only one individual presented substantial difficulty. The Council provided this judge with advance notice of the unfavorable survey results and afforded him the opportunity to make an explanation. Various tests were then performed on the survey data to verify the results. Members of the Council interviewed persons in the judge's community to ascertain whether there was significant "political" block voting, or any other unreliable or contaminating factor that may have biased the evaluation. Finally, it was decided that the survey was indeed reliable and indicated a negative evaluation was appropriate. To fulfill its duty to provide information to the voters the Council published informational notices in newspapers in the judicial district where this judge had filed for retention. However, despite the information provided, which included portions of the results of the survey data, the judge was retained in office by the voters.

In order to improve upon the judicial evaluation and retention election process the Judicial Council continues to seek suggestions and information from all interested

persons. All state court judges have been asked to provide their comments on how the retention election system might be improved. We are presently experimenting with a citizen court watcher program which we hope will provide another dimension to the evaluation. Conferences with the Lieutenant Governor and his staff may result in additional space in the voter pamphlet for presentation of the results and analysis of the 1978 judicial survey.

STUDIES AND REPORTS ON THE
ADMINISTRATION OF JUSTICE

A. Alaska Public Defender Agency in Perspective

In January of 1974 the Judicial Council published the first in-depth analysis of the Public Defender Agency in Alaska. 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 budget limits. The report focused upon the caseload of the Alaska Public Defender, the quality of representation provided to the indigent accused, and a number of problems and criticisms directed at that agency from within and without.

The report was presented to members of the Judiciary Committees of both houses of the Legislature; as a result, legislation was adopted in conformity with the Judicial Council's recommendations. Provision of Title 18

of the Alaska Statutes (The Alaska Public Defender Agency Act) were amended to provide for the court appointment of substitute public defenders in conflict-of-interest cases, and to provide for compensation of such substitute public defenders by the court itself, pursuant to a published fee schedule.

B. Report on Court Fee Structures

In February 1974, the Judicial Council published a report analyzing some of the fiscal operations of the court system with particular attention to its various filing fees. The Council's recommendations, which concerned modification of surcharges on support payments, fees in adoption cases and recording service fees, were substantially adopted by the Alaska Court System.

C. Study of Courts of Limited Jurisdiction

At the request of the Anchorage Bar Association and the Supreme Court, the Judicial Council undertook an evaluation of the district court to determine whether a single-level trial court might be preferable to the present dual-level structure. A final report on this subject was not published, however, because the Council staff lacked the necessary resources for a full-scale evaluation of this complex subject. Nevertheless, the inquiry itself generated significant effects by provoking consideration of the possibility of combined superior/district court judgeships for certain areas of the state. The Council concluded that

where a community of a certain critical size and caseload volume was served by a resident district court judge, economies of administration and the judicial needs of the people might be realized most effectively by appointment of a resident superior court judge who would handle the normal district court calendar as well as superior court matters. This rationale has led to the appointment of superior court judges in Kodiak, Sitka and Bethel, all of whom also handle district court matters along with their superior court cases.

D. Final Judicial Districting Report

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 bases for judicial retention elections. The Judicial Council report advocated that election district boundaries be re-drawn to conform to the election of the judges who actually served the geographic areas in question. The creation of additional judicial districts defined along the lines of existing court service areas was also advocated by the report. Such districts would better reflect the actual organization of the State of Alaska with respect to economics, demography and transportation routes. The Council's report, including specific draft legislation to accomplish the recommended results, was presented to the Legislature. Thus far, no legislative action has been taken.

E. Bail and Sentencing Studies

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 during fiscal year 1975. These studies were prepared with funds provided by a grant from the Law Enforcement Assistance Administration (LEAA) of the United States Department of Justice; they were published in March of 1975. The Judicial Council reports on bail and sentencing were the first comprehensive statistical studies of these subjects ever done in Alaska. Follow-up reports, offshoots of the preceding two documents, were prepared by the Council in late 1975. These were entitled Repeat Bail Recidivists and Sentences of Five Years or Greater in Length. The first of the latter two reports analyzed judicial performance in cases in which persons had repeatedly committed crimes while on release pending trial; the second focused on cases in which persons received particularly lengthy sentences.

Continuing its inquiry into sentencing patterns and practices, in August of 1976 the Council commenced an in-depth statewide study of felony sentences. The purpose of the study, performed at the request of the Alaska Legislature, was to identify the particular factors about crimes and the persons committing them which most influenced the lengths of the sentences imposed on these persons.

In order to determine which factors contributed most significantly to sentencing outcomes, substantially every felony sentence rendered in Alaska between August 1974 and August 1976 was reviewed. Approximately 87 discrete informational items about each case were systematically collected and analyzed by computer. Two statistical analyses were performed: a one-way analysis of variance (screening) to determine which factors affected the sentencing decision and which played no real part, and a multiple regression analysis to determine the independent contribution to sentence lengths of each of those remaining variables found to have importance. The results of the sentencing study were published in a report dated April 1977, Alaska Felony Sentencing Patterns: A Multivariate Statistical Analysis (1974 - 1976).

Using its study as a data base, the Judicial Council has proposed legislative reforms dealing with sentencing. Specifically, the concept of presumptive sentencing was first introduced to the Department of Law and to the Legislature through the efforts of the Judicial Council. The Judicial Council Executive Director worked as a member of the subcommittee on sentencing of the Criminal Code Revision Subcommittee, which has presented a revised criminal code to the Legislature. The Council's sentencing data continues to be used by the Legislature, the courts, and the criminal justice agencies.

The Judicial Council plans to continue its statistical analysis of sentencing patterns in Alaska to help develop guidelines for use in corrections, parole, and sentencing. It is hoped that these efforts will promote a more informed and rational exercise of discretion, not only by the courts, but by all criminal justice agencies responsible for making discretionary decisions affecting the lives and freedom of persons convicted of crimes as well as the safety and welfare of the general public.

F. The Grand Jury in Alaska

An interim report on the grand jury system in Alaska, published in April 1975, was prepared under a federal grant for the Alaska Judicial Council. This report analyzed the functions of the grand jury and the preliminary hearing and made recommendations concerning the appropriate uses of both procedural devices in Alaska criminal litigation. Since the publication of its report, the Judicial Council has strongly advocated the use of preliminary hearings in most felony prosecutions. These hearings were advanced in lieu of the routine use of the grand jury, which the Council concluded has largely failed in its intended function as a case screening mechanism.

As a result of the Council's recommendation preliminary hearing procedures have been tentatively adopted in Anchorage; such hearings will be used in most felony cases this year. The Judicial Council staff will undertake

an analysis of the effect of these hearings upon existing patterns of felony prosecution, dismissal, conviction and appeal.

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 applicant for block grant funds was to formulate and carry out a comprehensive set of standards and goals for its criminal justice system. The Alaska Judicial Council was given the directorship of a Task Force on Standards and Goals for the Alaska courts. The task involved the systematic identification of Alaska's specific criminal justice problems, setting clear goals to address these problems, and setting standards to indicate the conditions necessary for goal achievement. The Task Force consisted of representatives of all components of the criminal justice process, including inmates of correctional institutions, the Commissioner of Health and Social Services, police, judges, employees of the Division of Corrections, representatives of Alaska Native groups, and others.

By approval of the Governor's Commission on the Administration of Justice, and after public hearings, the standards and goals developed by the Courts Task Force were adopted. It is expected that these standards and goals will continue to provide guidance for effective resource allocation, as well as for future legislative action in the field of criminal justice.

H. Study of the Elimination of Plea Bargaining

In March of 1976 the Alaska Judicial Council received a discretionary grant from the National Institute of Law Enforcement and Criminal Justice under which the Council was to undertake a massive evaluation of the effects of the Attorney General's policy purporting to abolish plea bargaining in the state. Because of the implications of this evaluation for every aspect of criminal justice, and because of the difficulty in obtaining an accurate "picture" with only a single evaluative method, the Judicial Council is utilizing several congruent approaches to its study of the impact of this new policy. These include a multivariate statistical analysis of all felonies for which arrests were made during the year preceding the policy change and the year following it; a less detailed statistical analysis of misdemeanors filed during the same two periods; a study of management-related factors; a series of in-depth interviews, several rounds of survey questionnaires and an analysis of the legal and social implications of the policy change. The two-year program of evaluation allows for the development of a perspective concerning those changes which are clearly temporary responses only, and those which may represent significant, lasting readjustments. The hypotheses offered by scholars and practitioners for and against the elimination of plea bargaining will be compared with the actual results of an across-the-board ban on this practice here, giving

other jurisdictions a firmer foundation for any steps they may wish to take in this direction.

An interim report on the elimination of plea bargaining was published by the Judicial Council in May 1977. This report described those aspects of the evaluation completed during the first year of the project: the misdemeanor study based on court system data, interviews with judges, police, defendants and lawyers, and a mail survey of the entire Alaska Bar Association. This report indicated in part that sentence bargaining had been virtually eliminated; that although the rate of trials increased substantially since the policy change, at least with regard to misdemeanors, the length of time to dispose of misdemeanors cases actually declined substantially; and that misdemeanor sentences have increased in severity, all since the policy change.

In July of 1978 the Judicial Council will publish a much more comprehensive final report on the purported elimination of plea bargaining in Alaska. 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 undertaken will provide a base of information which can be employed for a variety of useful purposes by the Legislature, the courts, corrections, police, and other interested agencies. Toward this end, the plea bargaining Advisory Board

will meet with the Attorney General at the conclusion of the project to discuss possible modifications of prosecutorial policy suggested by the Judicial Council's findings. The Judicial Council may thereafter assist the Department of Law and the Alaska Court System in the design, implementation and evaluation of any program of action adopted at this conference. Because the Attorney General's policy effected the most sweeping ban on plea bargaining instituted anywhere in the United States, this evaluation and its aftermath are of considerable interest outside the State of Alaska.

I. The Anchorage Citizen Dispute Center

In January of 1977 the Alaska Judicial Council received a grant from the Law Enforcement Assistance Administration (LEAA) to evaluate the need for and feasibility of establishing an alternative mechanism for resolving certain kinds of civil and criminal disputes in Anchorage. As reflected in the Council's October 1977 report entitled the Anchorage Citizen Dispute Center, violence was very often found as a direct outgrowth of friction between relatives, friends, business associates, and other persons in a continuing relationship with each other. The magnitude of the problem is apparent from the statistics cited in the Council's findings: half of all Anchorage assault and battery police incident reports in 1976 involved persons living together in the same household; in 90% of all reported assault and battery incidents, the aggressor and the victim were previously

acquainted. A substantial percentage of these reported cases never result in any arrest, and of those arrests that do occur, relatively few result in conviction. Frequently, precisely because the disputants have a personal relationship with each other, the injured party simply refuses to press charges. Yet in about half of the cases police officers specifically noted that without some resolution of the problem violence was likely to reoccur in the future.

Minor civil cases may also present problems to the average citizen. Landlord-tenant disputes appeared to be particularly troublesome. Those who seek resolution in the courts are sometimes frustrated by delay, or by the technical requirements of the rules of evidence and procedure which might preclude a party from telling his whole story. For others, the cost of hiring an attorney and financing a law suit is often prohibitive in view of the amount in controversy.

In light of these findings, the Judicial Council has proposed that a citizen dispute center be created in Anchorage to handle certain disputes arising out of ongoing relationships. Such a center would provide a cheaper, more flexible, and more accessible method of settlement than is now available through the formal legal process. Instead of placing legal blame on one of the parties, the proposed citizen dispute center would use techniques such as mediation and binding arbitration to formulate workable, practical settlements of grievances. Disputants would be encouraged

by trained mediators to tell their full stories, including the history and background of the events leading up to their conflict. Such background facts, often vital to an understanding of the source of a dispute, might be deemed irrelevant or immaterial in the context of formal court proceedings. Since the dispute center would approach problems from a practical human viewpoint, settlements reached through mediation may prove to be more satisfying and durable than those arrived at with the intervention of courts and lawyers.

The Judicial Council's report recommends that the citizen dispute center be staffed by rotating panels of volunteer hearing officers. A typical panel might consist of one lawyer and two non-lawyer volunteers, with all volunteers receiving formal training in arbitration and mediation. No dispute would be mediated by the center unless the parties consented and signed a written agreement to abide by the decision of the panel.

Plans for establishing a citizen dispute center in Anchorage on a pilot basis are now being formulated by the Alaska Court System with the full cooperation of the Judicial Council. By 1979 a Citizen Dispute Center is expected to be operational.

J. Citizen Action Project

In January of 1977 the Judicial Council received a grant from LEAA to undertake a citizen action project. One facet of this project deals with citizen evaluations of

judges running for retention; members of the project's court watcher group regularly attend court proceedings to observe the performance of judges.

This project is also concerned with providing lay citizens with an opportunity to become informed about various aspects of the criminal justice system. After recruitment of volunteers and an orientation program, participating citizens were organized into groups according to their areas of interest--juvenile justice, corrections/probation, jury selection, plea bargaining and court watching. Each group has received a first-hand look into its particular area of concern through tours of facilities and meetings with practitioners in the system. It is hoped that informed, well conceived criticisms of the criminal justice system by concerned citizens will increase public awareness of the problems within the system and promote public support for any needed reforms.

K. Bush Justice

In 1977 the Judicial Council performed a criminal justice administration needs assessment for the middle and lower Kuskokwim-Yukon River areas. Data regarding thirty-four villages was collected from Alaska State Trooper files and was analyzed to determine the specific criminal justice needs of this area of rural Alaska. This assessment is currently being used to aid the Magistrates' Advisory Committee of the Supreme Court in defining the role of the

village magistrate and in providing alternative forms of legal services to rural areas. The Judicial Council is continuing its research and analysis of data from bush areas to determine the kinds of legal and criminal justice services that would be most effective.

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As may be seen by the number and scope of the projects recently undertaken by it, the Alaska Judicial Council is attempting fully to execute its constitutional mandate; in so doing it has expanded its scope considerably in recent years. Information systematically compiled and analyzed by the Council provides the Legislature, the courts, and all of the justice agencies with an informed and rational basis for accomplishing reforms. At the same time, improvements in the methods and practice of judicial nominations have provided this state with better judges at the service of all Alaska's citizens.

March 2, 1978

Michael L. Rubinstein
Executive Director

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