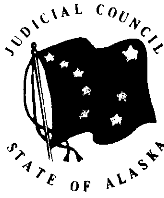

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JUDICIAL DISTRICTING:

FINAL REPORT

January, 1975

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INTRODUCTION

In July, 1974, the Alaska Judicial Council published a Judicial Districting Report With Proposed Recommendations. This Report included a history of judicial districting, a statement of problems with the present districting scheme, discussions of the complexities involved in reforming judicial district boundaries, and tentative recommendations (1) for the creation of seven judicial districts, (2) for reforms in the judicial retention election process, and (3) for a constitutional amendment to expedite judicial district boundary changes in the future.*

The Report was distributed to all judges, bar associations, legislators, mayors, city councils, native regional corporations, and many other interest groups. Comments and criticisms were requested. During September and October, 1974, the Judicial Council held public hearings in Bethel, Valdez, Nome and Barrow. Summaries of these public hearings are contained in Appendix I at pages 1-12. Testimony on judicial districting was also taken during an Anchorage public hearing in August, 1974.

In addition to the public hearings, there has been considerable dialogue, a number of resolutions and one alternative plan on judicial districting--all coming from such diverse forums as the Minto Bush Justice Monitoring Committee, the Alaska Federation of Natives' Annual Convention, the Committee of Presiding Judges, and a Regional Conference of Southeastern Judges.

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*Copies of the earlier Report are availabe upon request from the Office of the Executive Director, Alaska Judicial Council.

The issues of judicial districting are presently being considered by the Alaska Supreme Court, and have been added to the agenda for the Alaska Trial Judges' Conference scheduled for January 15-18, 1975. Three of the four presiding judges of the Superior Court (Judge Sanders dissenting) and the administrative director of the Alaska Court System have issued a detailed report recommending a reduction to three judicial districts.

This Final Report by the Judicial Council includes much of the substance of the July report plus discussions of issues which have arisen during the ensuing months, and, the final recommendations of the Judicial Council to the Legislature and the Supreme Court.

In summary, the Judicial Council recommends as follows:

(1) There should be seven judicial districts generally defined as (i) Southeastern Alaska, (ii) the Prince William Sound-Copper River area, (iii) Southcentral Alaska and the Alaska Peninsula, (iv) the Interior, (v) the Lower Yukon-Kuskokwim region, (vi) the Bering Sea-Kobuk region, and (vii) the North Slope.

(2) The judicial retention election provisions of the Alaska Election Code should be revised to provide that a judge shall seek voter approval in all judicial districts in which he was originally appointed, and in any judicial district without a residing judge of the same jurisdictional level whenever the assigned judge has served at least 90 days during each of the preceding three years of his term.

(3) The Judiciary Title of the Alaska Statutes should be amended to provide that the presiding judge of any judicial district without a residing superior court judge shall be the regularly assigned judge to that judicial district, and to provide that the chief justice may assign the presiding judge of a judicial district without a residing judge for such periods exceeding 90 days annually as necessary to fulfill the judicial servicing needs of that judicial district.

(4) Article IV, section 1 of the Alaska Constitution should be amended in part to provide that judicial district boundaries shall be established by the Legislature, or by the Supreme Court submitting proposed changes of judicial district boundaries to the Legislature during the first ten days of any regular session. Such proposed changes shall become effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The reasoning behind these recommendations is contained in the following four chapters. The members and staff of the Judicial Council stand ready to answer any further questions or provide further testimony on the subject of judicial districting.

CHAPTER I

JUDICIAL DISTRICTS IN PERSPECTIVE

With the exception of the irregular forays and limited government brought to Nineteenth Century Alaska by the military, the first administration of any U.S. Government services was that provided under the Organic Act of 1884 which made Alaska a "civil and judicial district" with a governor, district judge, clerk of court, marshal, four deputy marshals, and four commissioners who functioned as justices of the peace.[1/] On June 6, 1900, Congress increased the number of federal district judges from one to three. The incumbent judge, Melville C. Brown, continued his appointment in "Division No. 1" which included all of Southeastern Alaska. The two new appointees, Arthur H. Noyes and James Wickersham, divided the rest of the territory into two additional divisions bounded by a line from the mouth of the Colville River to Mount McKinley, then southwest along a line bisecting the Alaska Peninsula.[2/] In 1909, the area south of the Alaska Range became still another judicial division, served from Valdez by the newly appointed Judge Edward E. Cushman. Judicial divisions essentially accommodated the dogsled and riverboat transportation patterns of the time.

With the growth of government in the territory, these judicial divisions designed to accommodate transportation patterns became common service areas for virtually all federal government agencies. As early as 1912, they became divisions for election districts in the territory.[3/] They defined geographic areas of the state that over the years emerged as distinguishable

"regions" with quite independent identities. Thus, by the second decade of the Century, regional "centers" were clearly discernible at Nome, Fairbanks, Valdez (later succeeded by Anchorage) and Juneau. By the time of the Constitutional Convention in 1955-56, the "judicial divisions" had achieved a significance far beyond administration of only the justice agencies. This is evident from the fact that the judicial district boundaries of 1955 were largely unchanged from the boundaries of 1909 despite such radical changes in transportation modes as the completion of the Alaska Railroad, a greatly expanded highway system, and the advent of air travel.

It is uncertain whether the framers of the state government intended that judicial districts should continue as service areas for all agencies under the new state government. They do indicate in discussions at the Constitutional Convention an awareness of the "political" significance of judicial districts;[4/] and the First Legislature did re-enact as state boundaries the territorial judicial districts.[5/] In any event, the significance of judicial districts as administrative units of government diminished considerably after statehood. Over the years, virtually all state agencies have created their own peculiar service area boundaries according to their different servicing programs. Election district boundaries (which were subdivisions of judicial district boundaries under the statehood apportionment) have been redesigned in 1966, 1972 and again in 1974, so that the existing judicial district boundaries have lost all relevance to legislative election districts. New industrial and economic developments during the past few years have resulted in important changes in communication and transportation

patterns, in population and commerce patterns, and in other ethnic, regional and even judicial demands--to the extent that the present judicial district boundaries are not only obsolete but indeed dysfunctional.

The only entity of state government that still functions by judicial districts for any significant purposes is the Alaska Court System, and even in this narrow context the significance of judicial districts is greatly diminished and remarkably different from territorial days. Basically, the only important functions still being performed by the judicial districts are:

(1) defining the boundaries for the retention elections of judges,[6/]

(2) defining the regional administrative jurisdiction of presiding superior court judges,[7/] and

(3) defining venue (place of trial) for criminal cases and disputes over real property.[8/]

Because it expressly is not the goal of this study to explore the possibilities for rejuvenating a districting scheme for all governmental services, or to design judicial districts for broader administration of many governmental services, the remainder of this Report is limited to discussions of the remaining functions enumerated above and to a proposal designed to accommodate those functions.[9/]

CHAPTER II

JUDICIAL RETENTION ELECTIONS

Under Alaska's "merit selection" system for judgeships, judicial candidates are screened and nominated to the governor by the Alaska Judicial Council. The governor then appoints a judge from this list of nominees submitted to him.[10/]

In order to ensure a re-evaluation of the judge's performance, the merit selection system also provides that periodically a judge must stand in a nonpartisan, uncontested popular election, at which time the electorate votes either to confirm or reject his appointment. District court judges are subject to approval or rejection at the first general election held more than one year after their appointment, and subsequently every four years.[11/] Superior court judges must place their names on the ballot at the first general election held more than three years after appointment, and subsequently every six years.[12/] Supreme Court justices are subject to retention elections at the first general election held more than three years after appointment, and subsequently every ten years.[13/]

The Alaska Election Code provides that Supreme Court justices run statewide in their retention election, and that trial judges seek approval in the judicial district where they were originally appointed, or in the judicial district where they have served "the major portion" of their term.[14/] Presumably, a "major portion" of a judge's term is some amount of time greater than one-half of the term. In any event, no judge has ever served

a "major portion" of his term in another judicial district, and hence since statehood all trial judges have stood for retention election only in the district where they were originally appointed.

The major problem with having retention elections according to obsolete judicial district boundaries is that a given judge's election district oftentimes is different from the area of the state he serves. This problem has existed in some measure for years, but recently was exaccerbated by the introduction of administrative "service areas" for the Alaska Court System. As the map in Appendix II (page 1) shows, the presently obsolete judicial district boundaries divide part of the Wade Hampton region from the rest of Southwestern Alaska. The antiquated boundaries also include the North Slope in the same district as Western Alaska, despite the fact that there are no regular transportation patterns between these two regions.

In an effort to overcome administrative difficulties discussed in greater detail in Chapter III, the Supreme Court created the Bethel Service Area and the Barrow Service Area, superimposed across existing judicial district boundaries. (See Appendix III, at page 1 .) The reforms were unquestionably an improvement in the provision of judicial services to these regions of the state; however, it resulted in even greater confusion between the population a judge serves and the population who vote in the retention election of that judge.

For example, Bethel and the Lower Yukon-Kuskokwim region are presently served by a superior court judge assigned on a temporary, part-time basis from Anchorage. However, because that

judge resides in the Anchorage district (Third Judicial District) and serves a "major portion" of his term in the urban district, the people of the Lower Yukon-Kuskokwim are totally disenfranchised from voting for or against the judge who adjudicates all felonies and all major civil cases in their region. Rather absurdly, the people of the Lower Kuskokwim instead vote in the retention election of all Fairbanks superior court judges, whom they never see; and the people of the Lower Yukon instead vote in the retention election of the Nome superior court judge, who has not been the judge assigned to serve them since the creation of the Bethel Service Area.

Similarly, Barrow and most of the North Slope (excluding the Pipeline Corridor) are presently served by a superior court judge assigned on a temporary, part-time basis from Fairbanks. However, because that judge resides in the Fairbanks district (Fourth Judicial District) and serves a "major portion" of his term in that urban district, the people of the North Slope are totally disenfranchised from voting for or against the judge who adjudicates all felonies and major civil cases in their region. Instead, they cast their vote in the retention election of the Nome superior court judge, who has not been the judge assigned to serve them since the creation of the Barrow Service Area.

In addition to the total disenfranchisement of affected electorate described above, the present combination of obsolete judicial districts and administrative service areas causes substantial dilution of voting power in some regions of the state. For example, the local, residing district court judge in Bethel stands

for retention election across the whole judicial district, which includes Fairbanks and the Interior--areas where that judge never serves and is unknown to the electorate. The dominant, urban vote of Fairbanks can either carry or defeat the Bethel judge contrary to the wishes of the people in Southwestern Alaska, and despite the fact that the judge's services never affect Fairbanks. On the other hand, the people of the Lower Yukon never get to vote in the retention election of this judge because they are in a different judicial district.

It is doubtful any reasonable person would deny the absurdity of a judge serving one population and standing for election before another population. The judicial retention election provision assumes that attorneys and residents of a region know the judges who serve them, and do not know judges from other regions (who do not serve them) well enough to vote intelligently.[15/] The more difficult question however is deciding how judicial retention election districts should be reorganized, and the answer to this question requires first some policy statements concerning the purposes of the retention election process.

Retention elections are an integral part of the merit selection process as conceived and promoted across the United States, and as adopted in Alaska. Mr. Glen Winters, past executive director of the American Judicature Society, observed that from early years the concept of "merit selection" has embodied <u>all</u> of the following elements:

(1) a commission

(2) composed of judges

(3) and lawyers

(4) and laymen

(5) to submit nominations

(6) to the governor

(7) for appointment

(8) subject to tenure by non-competitive elections.[16/]

[Emphasis added.]

Mr. Winters noted that there have been many compromises of the merit selection process before adoption in various states, but that the above are the basic elements of the plan. Hence, as a policy matter, the Judicial Council acknowledges that the retention election component is not a mere appendage or a last-minute compromise of the merit selection and tenure process, but rather an important component always intended to be an operating part.

The next question concerns what functions the retention election process should serve. Ideally, it would serve as an evaluation process of the judicial qualities of individual judges. However, history indicates both in Alaska and elsewhere that the few judges who have been rejected by the popular vote are most often rejected on the basis of a general, political or judicial issue rather than on the basis of their own incompetence as a judge. For example, the only judge ever rejected by the electorate in Alaska was Justice Arend of the Supreme Court. His defeat came in the context of a hotly contested dispute between the Alaska Bar Association and the Alaska Supreme Court, with the Bar Association organizing a campaign against him. Persons present

at the time and privy to the depth of the controversy agree that any one of the three justices of the Supreme Court up for retention election would have received the same opposition from the Bar. The personal qualifications of Justice Arend were unimportant, if considered at all.

But simply noting that judges rejected in retention elections in the past have often been victims of "issues" rather than victims of their own shortcomings as judges, does not lead to a conclusion that judicial retention elections should be de-emphasized or eliminated. First, it must be noted that no state with a merit selection process has ever attempted to develop a meaningful program for informing the electorate on the criteria for evaluating judges in retention elections. This basic problem of lack of information to the electorate was acknowledged by representatives from most states with merit selection programs at the March 21, 1974 Conference on Judicial Merit Selection and Tenure sponsored by the American Judicature Society. In Alaska, only during the past few months have the Alaska Judicial Council, the Alaska Bar Association, and other interest groups attempted to develop criteria and provide the electorate with some dialogue on the personal qualifications of judges. The effort is far too new and undeveloped to allow a conclusion that the tenure provision of the merit selection process does not work.

Secondly, one should not conclude too hastily that rejection of a judge by the electorate because of broader "issues" rather than because of personal qualifications is necessarily an undesirable phenomenon. On the one hand it definitely is not

desirable to have judges influenced by the popular emotions of the moment; but on the other hand, it definitely is desirable to have judges sensitive over the years to the expressed judicial servicing needs of the people whom they serve. To the extent there is a possibility (not necessarily an actual occurrence) of a judge being rejected on an "issue," an effective check is inherent in the retention election process ensuring that that judge will remain sensitive to changing patterns of social needs.

Finally, from a more general viewpoint, it is important for public confidence in the state judiciary that the electorate continue to have some role in choosing judges and influencing judicial policies--howsoever slight the influence actually is, and howsoever seldom the power of rejection actually is exercised.[17/] It may indeed be a personal tragedy and an immediate loss to the public when a judge otherwise qualified is rejected on an issue, however the history of retention elections indicates that rejections occur very infrequently (only once in fifteen years in Alaska). As a matter of policy, one must balance the infrequent personal tragedy and immediate loss against both the enhanced sensitivity of all judges to changing public needs, and the increased confidence in the judiciary by a public "steeped" in the democratic tradition.

Among those persons who maintain that the only legitimate purpose of retention elections is to evaluate the personal qualifications of each judge, there are some who also believe that this limited function is presently being served more efficiently and more effectively by state commissions on judicial qualifications. The above-mentioned Glen Winters of the American Judicature Society

has been one noteworthy advocate of this point of view.[18/] However, even if one assumes that the retention election process and the Alaska Commission on Judicial Qualifications are designed to serve the same functions (and that retention elections have no other functions), it is premature to conclude that in Alaska either institution should be de-emphasized or eliminated in favor of the other. At this point in time, no one can state from experience that either process has greater potential than the other as a tool for ensuring the highest quality judiciary. Any proposal to weaken or eliminate either the retention election process or the Commission on Judicial Qualifications should be discouraged until new ideas and programs have been devised, implemented and tested for both institutions.

Assuming then that the retention election process is both viable and important in Alaska's judicial scheme, and acknowledging that there presently are serious malalignments of districts causing dilution and disenfranchisement of some people, one must then decide how new districts should be designed. This decision requires some preliminary discussion of the level of judicial accountability to the public that is desirable.

The degree of compunction a judge feels toward an electorate is definable along a continuum of "types" of judicial tenure systems. Federal judges are appointed for life and are never accountable to an electorate. There have been criticisms that this system is contrary to basic notions of democracy, and that some of these judges tend to think of themselves as "little gods." Whether one agrees that the situation is so extreme, it is at least possible

to say that the federal tenure system does not foster, in any compelling manner, sensitivities by judges to public interest in policy making.

At the other extreme, many states have a process whereby judges are popularly elected in contested elections. As many people from these states will attest, this system too often results in highly politicized judges selected because of popular appeal rather than judicial skills, and encumbered on the bench by constant political pressures interfering with judicious decision-making.

The selection and tenure system in Alaska is a modification from both of the above extremes. The Alaska system is designed to make judges sensitive in a broader sense to their policy role in a democracy, and thus periodically accountable to the public for their judicial demeanor, skills and experiences; but it is also designed specifically to guard against judges feeling pressured in their immediate decision-making process by the political emotions of a majority at any given moment or even in a given year.

The question then is how broadly or narrowly an electorate should be defined in order to achieve the desirable judicial "sensitivity" while also guarding against creating political "pressures" on judges. One important resource in this query is the Minutes of the Alaska Constitutional Convention. While the framers of our state judicial system do not speak in great detail on the issue, they do indicate some parameters within which the inquiry should proceed.

On December 9, 1955, the delegates discussed the retention election provision for judges. Delegate Jack Hinckel from Kodiak

asked for an amendment to the proposal of the Judiciary Committee to change the term "voters of the state" to "qualified electors." He explained,

> My reason for it is that I feel that the present wording might be construed to mean that an election confirming the reappointment of a judge or the continuing of a judge would have to be a statewide election, and I object to that. I think the judge should merely be confirmed by the people in his jurisdiction.19/ [Emphasis added.]

The amendment was referred to the Judiciary Committee with Hinckel's consent. The next day, Hinckel asked unanimous consent that the words "of the state" be deleted. When asked to explain his amendment, Hinckel repeated,

> The object in making the request was that I felt if it was left worded as it is that there is the possibility of interpretation that all elections of confirmations of judges for the superior and supreme court for the statewide election and I felt that the superior court judges should be confirmed by the people under their jurisdiction.20/ [Emphasis added.]

Delegate George W. McLaughlin of Anchorage, Chairman of the Judiciary Committee, reported,

> Merely to confirm Mr. Hinckel, he did discuss the matter with the Judiciary Committee, and we unanimously agreed that it would not change the deletion of the words, "of the state" on line six, page two would not change the meaning and would effectuate the purpose that Mr. Hinckel sought. In other words, the Judiciary Committee unanimously consents.21/ [Emphasis added.]

There were no objections from the delegation to the unanimous consent request, and thus the words "of the state" were ordered deleted from the retention election provision.

The discussion indicates that the framers of the Alaska Constitution intended that judges should not run in a statewide

election, but should run only in a region that defines the "jurisdiction" they serve. Similarly, the Honorable Ralph E. Moody, who was chairman of the Judiciary Committee of the First Legislature in 1959 noted in a recent letter,

> Concerning the matter of retention elections, the Judiciary Committee proposed that a superior court judge would file for election only in the district where he was appointed or where he served a major portion of his term. This proposal was based on the belief that attorneys and residents of a judicial district would know the judge who served the bulk of his term there and would not know judges from other districts well enough to vote intelligently.22/

One can conclude that if, in 1959, elections by "jurisdiction" meant judicial districts that reflected regional interest groups as they were then defined, retention elections in 1974 should not be according to district boundaries undisputably obsolete, but rather by boundaries defining contemporary regional interests.

Hence, a Bethel district court judge should not stand for election in Anchorage or Fairbanks, but only in an area defined to include "the people in his jurisdiction." An Anchorage judge providing all superior court services to Bethel should stand in a confirmation election in Southwestern Alaska because these people also are "the people in his jurisdiction." Conversely, an Anchorage or Fairbanks judge should not have his name placed on the ballot in Southwestern Alaska if he in fact does not provide judicial services to that area.

Looking again at the Minutes of the Constitutional Convention, there is evidence that the delegates anticipated at least four judicial districts in 1955, and more judicial districts (greater regional definition) as time went on. Delegate Ralph Rivers

of Fairbanks commented to the Convention,

> [The state] is going to have to be broken up into areas. Now you can call those areas "districts" or you can call them "divisions" of the superior court. There is no question but what there will be an area--jurisdictional area down in Southeastern, with a judge or two judges. There will be one here [Fairbanks], one at Nome, perhaps one at Anchorage for headquarters. We might have a fifth judicial area which will have another judge or a sixth as time goes on.23/ [Emphasis added.]

Hence, the delegates at the Constitutional Convention contemplated some form of regional election, and they specifically thought in terms of four judicial districts in 1955 with ideas that more would be proper as time passed. The four judicial districts contemplated in 1955 and enacted in 1959 represented the regional interests of that time. Today, after nearly twenty years, the commercial, industrial and ethnic issues and interests have changed drastically in character and increased substantially in number.

Assuming then that new sectional developments and new regional interests require re-definition of judicial retention election districts, it is nonetheless extremely important to continue to guard against creating situations whereby judges might be subjected to extraneous and undue political pressures in rendering their decisions. Three of the seven judicial districts recommended by the Judicial Council (see Chapter IV for detailed descriptions) have become the focus of criticism that judges will suffer undesirable political prssures. These three districts are the Lower Yukon-Kuskokwim, the Bering Straits-Kobuk, and the North Slope regions. Each of these districts is predominantly Eskimo.

Two of the districts approximate the boundaries of a single regional corporation. All three districts are "rural areas" with only one small town (Bethel and Barrow respectively) in each of two districts, and two small towns (Nome and Kotzebue) in the third district.

The argument is that in districts with such relatively homogeneous, socio-economic and ethnic definition, there is a likelihood that "single interests" can exert undesirable influences on judicial decisions. For example, if a native regional corporation sued a party from outside the judicial district, the judge who must stand for retention election in the district could be subject to pressures that might compromise the impartiality of his judicial decision.

There are, however, a number of safeguards against such an occurrence in these rural districts. First, it is incorrect to generalize that native people or ethnic interests are so single-minded or unified. Secondly, reflection on the past few years indicates that cases of region-wide interest have arisen very infrequently. Thirdly, similar reflections on cases arising during the past few years indicates that there will always be a few cases of regional interest no matter how homogeneously or heterogeneously the district is defined. Recognizing this, it is most important to ensure that there is some relief from these infrequent regional pressures on a judge. One such escape is the right of either party in any lawsuit to exercise a peremptory disqualification of the judge.[24/] Any competent attorney will certainly disqualify a judge if he feels that his client's right to a fair trial might

be placed in jeopardy because of regional pressures. Also, one should assume that any competent judge who feels that his impartiality and legal objectivity are threatened by the issues raised in a given case, will disqualify himself from that infrequent case.

In conclusion, the recommended judicial districting scheme by the Alaska Judicial Council is designed to accomplish two broad retention election purposes (plus a number of administrative purposes discussed in the following chapter): (1) to correct the present discrepencies between service areas and election areas, and (2) to realign district boundaries according to present-day descriptions of areas of common regional interests. The details of how the recommended districts accommodate commerce patterns, transportation patterns, economic and ethnic interests, etc. are set forth in Chapter IV.

CHAPTER III

JUDICIAL ADMINISTRATION

Article IV, section 1 of the Alaska Constitution provides that "[t]he courts shall constitute a unified judicial system for operation and administration." Article IV, section 16 provides that there shall be one statewide administrative director appointed "to supervise the administrative operations of the judicial system." The statewide unified court system created by the framers of the Alaska Constitution is a nationally reputed showpiece for many states attempting to combat and reform deeply entrenched problems of sectional decision-making and hence inefficient judicial administration. Alaska must continue to guard against such fragmentation of judicial administration.

However, the fact that Alaska has a "unified" court system for administrative purposes does not mean that there should never be any administrative subdivisions, or that "regional" servicing needs should not be administered according to unique needs. Furthermore, while fragmentation of administrative decision-making is undesirable for the unified court system, there remain indisputable advantages to coordinating the inevitable subdivisions of administration with the units of judicial services which, in turn, should constitute retention election districts.

One of the few purposes of judicial districting that was quite clearly in the minds of the framers of the Alaska Constitution was providing defined regions of the state for purposes of ensuring adequate judicial services to small towns and rural areas. Delegate

George M. McLaughlin of Anchorage introduced a motion amending the Judiciary Article to include the sentence presently found in Article IV, section 1 of the state Constitution, "Judicial districts shall be established by law." Delegate Steve McCutcheon of Anchorage questioned the advisability of placing this power in the legislature rather than in the Supreme Court. McLauglin responded,

> The reason for the introduction . . . was the concern of some members that they might be deprived of districts or there might be an attempt by the proposal (the Article on the Judiciary) to do away with court houses in certain areas. . . . We felt that the legislature could act wisely on the matter and particularly in view of the fact that it would have the very persuasive recommendations of the judicial council on the subject. It was a matter we felt should be left to the legislature and could be changed from time to time as is required.25/

Delegate Maurice T. Johnson of Fairbanks indicated his sentiments as follows:

> Now I feel that . . . by leaving it up to the legislature, should any one area feel they are not being properly taken care of by judicial division, they have the recourse of going to their member of the legislature and asking for some remedy, but if it is left entirely up to the supreme court, then you are subjecting these judges to political pressure when it is our desire under the entire system to have that court free from such pressure, if it is at all possible to do so.26/

On the Convention floor, Delegate Victor C. Rivers of Anchorage asked McLaughlin, "What is the extent you intend to cover with this particular amendment? How broad an interpretation would we have to assume it had when we're voting on it?" McLaughlin responded,

> The legislature could, the creation of judicial districts would imply that the legislature can say that a justice of the

> superior court shall sit at such and such a place and hold regular sessions of court at such and such a place. That would be subject always to the right of the chief justice of the supreme court to assign them elsewhere to take care of the burden of duty. The presumption is that the legislature would designate those courts where they are most needed, but they could change it from time to time as is required. 27/

While the delegates to the Constitutional Convention intended some measure of legislative control over the administration of judicial services, it is important to remember that a great amount of flexibility and discretion was left to the unified Court System. Over the years since statehood, most major improvements in judicial services have not been heralded by legislation, but have emerged as policy decisions from within the judiciary. Indeed, the problems of judicial districting and the extreme obsolescence of the present judicial districts provide an extreme example of how reforms finally emerged from within the Court System in the form of "service areas" after years of legislative inaction toward improving judicial divisions.

Prior to December, 1973, the Lower Yukon-Kuskokwim was administered from three judicial districts. The boundaries of the Fourth Judicial District still follow the waterway transportation route from Bethel to the Interior, and include Fairbanks and points east to the Canadian border. (See Appendix II at page 1 .) Despite ethnic, cultural and linguistic similarities, the Lower Yukon area (Wade Hampton) is split from the Lower Kuskokwim area and included in the Second Judicial District serviced from Nome. There are no direct, commercial airline routes from the Lower Yukon area to Nome, and no direct, commercial airline routes from Bethel to Fairbanks.

Lower Yukon transportation and communication patterns flow with ethnic interests to Bethel; and all commercial airline routes from Bethel go first to Anchorage, which is in the Third Judicial District.

The confusion in judicial administration had been illustrated time and again: Because of the transportation problems between Nome and the Lower Yukon, the presiding judge of the Second Judicial District authorized the district court judge in Bethel (Fourth Judicial District) to act on his behalf for cases originating in the Lower Yukon. Magistrates in the Lower Yukon dealt with the district judge in Bethel because of ethnic ties and transportation capabilities to Bethel. A person arrested on a felony charge in a Lower Yukon village (Second Judicial District) often was transported to Bethel (Fourth Judicial District) for a preliminary hearing, and then transported to Anchorage (Third Judicial District) for trial. In the meantime, his file might be mailed to Fairbanks which is in the same judicial district as Bethel. Situations arose where superior court judges traveled from Anchorage to hold court sessions in Bethel, only to find that the files had been sent to Fairbanks. Judge Sanders traveling from Nome to Bethel for trials lost two days each way because he had to go first to Anchorage, and then wait until the next day for a flight to Bethel.

On November 28-29, 1973, Chief Justice Jay A. Rabinowitz convened a meeting in Bethel to examine the problems of administration and to formulate interim solutions. The conference was attended by a broad group of people representing all components of

the justice system and its administration. In two sessions totalling about eight hours, the decision was made and a program implemented to create a single judicial "service area"[28/] roughly bounded from Point Romanof in the west, east to the Kuskokwim River as far north as McGrath, and then south to the present boundary between the Third and Fourth Judicial Districts which follows the watershed divide of the Kuskokwim River and Bristol Bay. (See Appendix III at page 1 .)

A single, superior court judge was assigned from Anchorage to spend as much time as necessary each month in Bethel to administer judicial needs, to provide a measure of judicial continuity not achieve in the past by assigning different judges for Bethel court sessions, and to provide an opportunity for a single judge to develop some experience and expertise in meeting the judicial needs of the region. A Bethel deputy clerk was hired to file actions, and to answer questions that might arise when the judge is not in town. Grand jury sessions were begun on a regular basis in Bethel; petit jury selection procedures were revised to meet local population characteristics; the Department of Health and Social Services was asked to vacate space in the existing court building to provide additional space for judicial needs; an assessment of law library deficiencies was made by a supreme court law clerk; a separate accounting unit was created for more efficient fiscal management; and the Bethel people were informed of the pending capital budget request of the Alaska Court Sytem for the necessary funds to build a much needed new court bulding.

On April 18-19, 1974, a similar conference was held in

Barrow with similar goals of improving the administration of justice along the North Slope. By this time, the legislature had already enacted S.B. 232 extending the northern boundary of the Second Judicial District to include all of the North Slope Borough. However, serious problems of administration remained unsolved by that legislation. Judge Sanders, the only superior court judge of the district, lost four days in travel time (two days each way) whenever he traveled from Nome to Barrow to hold court sessions. Commercial travel routes and schedules required him to fly from Nome to Fairbanks where he had to wait until the next day for a flight to Barrow.

Like the earlier Bethel conference, the Barrow conference resulted in both the creation of a new "service area" for administrative purposes, and considerable improvements in judicial services.[29/]

These experiences with "service area" units of administration illustrate a number of interesting points for purposes of defining judicial districts. First, it is apparent that judicial district boundaries, however obsolete, will never be an insurmountable barrier to improved judicial administration. There is no law requiring the Alaska Court System to administer its services according to district boundaries, and the Court System obviously can if necessary establish "service areas" which may be either subdivisions or combinations of judicial districts.

Secondly, the creation of the Bethel service area and the Barrow service area indicates not only that the Lower Yukon-Kuskokwim and the North Slope are severable for administrative

purposes, but also that administration and the provision of services improves substantially when these regions are serviced individually, as the people of these regions attested in public hearings held by the Judicial Council. (See Appendix I at page 1-12.)

Thirdly, it should be noted for purposes of later discussion of the seven-district proposal of the Alaska Judicial Council that the Court System presently is operating with an administrative system of six subdivisions of the state discernible as follows:

(1) First Judicial District (Southeastern Alaska)

(2) Third Judicial District (Southcentral Alaska)

(3) Fourth Judicial District with Lower Kuskokwim severed (Interior)

(4) Second Judicial District with North Slope and Wade-Hampton severed (Seward Peninsula-Kobuk)

(5) Bethel Service Area (Lower Yukon-Kuskokwim)

(6) Barrow Service Area (North Slope except Pipeline Corridor)

The recommendation of the Judicial Council for seven judicial districts is substantially similar to this present practice of administrative subdivisions.

If the present service areas were to become judicial districts, quite obviously there would be some judicial districts in the state without residing superior court judges. This Report does not include recommendations concerning whether there should be a residing superior court judge in such locations as Bethel, Barrow and Valdez.[30/] That decision requires a separate study

of the present caseload, the "present-potential" caseload, and the indicators of future needs.

Rather, the recommendations contained in this Report assume a continuation of the present administrative policy exercised with regard to the service areas: a single Supreme Court Order assigning one superior court judge from Anchorage and Fairbanks both to handle all cases in Bethel and Barrow respectively and to act as the administrative judge of the new judicial district.

The Alaska Court System recently implemented a healthy consolidation of administration throughout the state. Presiding judgeships at the district court level have been eliminated so that there is only one administrative judge for each judicial district.[31/] Clerical functions for the superior court and the district court have been merged in Anchorage, Fairbanks and Juneau. Most importantly perhaps, "area court administrators" have been hired in Anchorage, Fairbanks and Juneau. These regional administrators work directly for the presiding judges in the three cities, as expeditors and supervisors.

Because Nome and the Second Judicial District have only two judges and no serious backlog problems, no "area court administrator" was necessary for Western Alaska. The same will be true of Southwestern Alaska, the Prince William Sound-Copper River region, and the North Slope. Whether they are judicial districts or service areas, they will presently be served only by one part-time judge, and hence will not have the administrative problems requiring a professional administrative staff.

On the other hand, if the Office of the Administrative

Director chooses to bring these new judicial districts under the direction of an area court administrator for purposes of coordinating the schedule of that judge serving part-time in another location, there are no legal obstacles to designating an area court administrator to serve more than one judicial district. For example, the Anchorage court administrator could be designated to coordinate activities of all judges traveling from Anchorage to Valdez, Bethel, and Kodiak. In other words, the area court administrator would be designated for all of Southern Alaska, including three judicial districts created primarily for retention election purposes Similarly, the Fairbanks court administrator could be designated for the North Slope, or all of Northern Alaska.

As a general rule of court management, the number of judges fulfilling functions as administrative judges should be kept to an absolute minimum. In furtherance of this policy, the Alaska Supreme Court recently revised its Rules of Administration to eliminate presiding district court judges and designate the presiding superior court judge of the judicial district as the only administrative judge in the district.[32/] Also by Supreme Court orders, the two superior court judges designated to serve Barrow and Bethel were assigned the limited responsibilities of administrative judge for these two service areas.[33/] Hence, there are presently six superior court judges assuming administrative responsibilities throughout the state, and two of these judges have only the limited responsibility of administering a single-judge service area. The Judicial Council proposal for seven judicial districts would require only that the judge presently assigned to the Valdez

area officially be designated the administrative judge for his region, and would not require any greater time commitment or responsibilities from the present six administrative judges.

As another general rule of court management, single-judge administrative districts generally are considered inefficient. California, for example, has proposed the elimination of all single-judge districts in the state. However, Alaska poses extremely different physical characteristics and governmental servicing problems requiring specially designed organizational structures and administrative methods. Alaska does not have a transportation or communication network that makes the state easily accessible or readily integrated for administrative purposes. The Alaska economy manifests such sharp contrasts as between ethnic villages with a subsistence economy and metropolitan areas with a money economy. Moreover, the urban socio-economic population is concentrated in the Southeastern Panhandle and the southeastern quarter of continental Alaska. Fully three-quarters of continental Alaska is culturally distinct, isolated and relatively inaccessible, and hence manifests quite different judicial servicing needs.

Under these conditions, some administrative structure more creative and more functional than the ideal for judicial administration in the contiguous states must be adopted. As noted above, the recommended seven judicial districts would recognize distinctive regional servicing needs and would acknowledge in law the present service areas of the Court System, with no additional judicial bureaucracy required except to designate the judge assigned to Valdez as the administrative judge for that region.

Finally, if the present service areas were legally designated as judicial districts, any presently existing confusion regarding which judge administers which part of the state would be eliminated. The presiding judge in Fairbanks would no longer have legal administrative authority over the Lower Kuskokwim area, and the presiding judge in Nome would no longer have legal administrative authority over the Lower Yukon area or the North Slope. Instead, the administrative authority would rest clearly and singularly in the presiding judge of the new judicial districts, viz, the presently designated administrative judges of the service areas.

In summary, the proposal for seven judicial districts corrects many of the present problems with judicial retention elections, without requiring any significant changes from present court management of the six subdivisions comprised of districts and service areas. Indeed, the upgrading of service areas to legally recognized districts will legitimize the presently exercised administrative authority of the judges assigned to service areas, and will eliminate any present confusion of their authority with the authority of the presiding judge of the judicial district from which the service area has been severed.

CHAPTER IV

RECOMMENDATIONS

A. AS 22.10.010 AND RELATED STATUTES SHOULD BE AMENDED TO PROVIDE FOR SEVEN JUDICIAL DISTRICTS AS DEFINED IN APPENDIX V OF THIS REPORT.

Appendix IV contains a map showing the new judicial district boundaries proposed by the Judicial Council. These boundaries are the result of much study of a variety of factors, and much consultation with people throughout Alaska. In the context of attempting to improve the definitions of judicial retention election districts while also accommodating the needs of judicial administration, such factors were considered as transportation, commerce and communication patterns, economic interests and cultural, ethnic and linguistic similarities. To the limited extent possible, future plans for economic development, transportation changes and population shifts were also considered.

Some modifications of ideal geographic or ethnic regions were required to accommodate the pre-eminently important transportation needs, especially in western and northern Alaska. The ideal ethnic region in southwestern Alaska would include Bristol Bay. However, there are no regularly scheduled commercial airline routes between Bethel and Bristol Bay. Thus, servicing Bristol Bay from Bethel would require travel through Anchorage--an absurd administrative inefficiency which could

only result in deteriorating judicial services to Bristol Bay.

Similarly, the upper Kuskokwin region (McGrath and Medfra) were not included in the southwestern district because commercial and mail planes to this area originate in Fairbanks and Anchorage rather than in Bethel.

There are no commercial airline routes from Bethel to Nome, or Nome to Barrow. All of these towns are the hubs of mutually exclusive regions from the viewpoint of transportation and commercial patterns.

Because judicial district boundaries define "venue" (place of trial) for real property disputes,[34/] and because it is assumed that most real property disputes in rural areas of the state during the next decade will involve the native regional corporations, the boundaries of regional corporations were followed wherever they coincided with other desirable factors in defining a region. Hence, the Southeastern District embraces all of SEALASKA Corporation. The Prince William Sound-Copper River District embraces all of AHTNA, Inc. except a finger of land extending over to Cantwell, and two-thirds of Chugach Natives, Inc. The eastern coast of the Kenai Peninsula is the area of Chugach Natives, Inc. which could not be included because the transportation, commercial and cultural affinity of that area is toward Anchorage and southcentral Alaska.

The Southcentral-Aleutian District includes all of Cook Inlet Region, Inc., Bristol Bay Native Corporation, Koniag, Inc., and The Aleut Corporation. The northern boundary of

this district deviates slightly from native corporation boundaries to include the finger of AHTNA, Inc. land near Cantwell, and to avoid "zigzagging" across the highway near Mount McKinley.

The Lower Yukon-Kuskokwim District includes all of Calista Corporation, plus a small sector of the southwest corner of Doyon, Ltd. because the few villages in that sector (Holy Cross, Anvik, Shageluk, Holikachuk, Dikeman and Iditarod) have a greater affinity to Bethel than to Fairbanks.

The Bering Straits-Kobuk District embraces all of Bering Straits Native Corp., and all of NANA Regional Corporation except a few square miles above 68° latitude. These excluded NANA lands are within the North Slope Borough boundaries, and both the executive director of NANA and the mayor of the North Slope Borough agreed that these lands would be better placed in the North Slope District.

On the North Slope, it was apparent that both the North Slope Borough and the Arctic Slope Regional Corporation were potentially important entities of real property. The decision was to follow the boundaries of the North Slope Borough for the judicial district, leaving out only small sectors of Arctic Slope land below 68° latitude that is not being considered for land selection in any event.

Finally, the Interior District embraces all of Doyon, Ltd. except the small Lower Yukon section discussed above, and a small section in the northeastern corner (Brooks Range) which is part of the North Slope Borough.

The proposed judicial districts also attempt to follow the Supreme Court service areas, with some notable exceptions. In the Lower Yukon-Kuskokwim District, the northern boundary of the Bethel Service Area was lowered to exclude Medfra and McGrath for reasons stated above. The east-southeast boundary of the Bethel Service Area is modified very slightly to follow regional corporation boundaries rather than the old judicial district boundaries.

On the North Slope, the Barrow Service Area was modified to include the northern sector of the pipeline corridor in the North Slope District rather than in the Fairbanks-Interior District. Colonel Dankworth of the Alaska State Troopers indicated at the April, 1973 meeting to consider the Barrow Service Area that he had no preference for whether the Prudhoe area was serviced from Fairbanks courts or Barrow courts, as he anticipated most trooper work to be merely service of process. As noted by one Barrow resident during public hearings held by the Judicial Council (see Appendix I), if an Eskimo commits a crime in a predominantly white region, he is tried in that region; if a white commits a crime in a predominantly Eskimo region, he should not enjoy the special treatment of being tried back in his urban, white region. All factors considered, it was decided that the whole of the North Slope Borough and most of the Arctic Slope Regional Corporation should constitute a judicial district.

Finally, as noted in earlier discussions, the proposed

judicial districts follow roughly the six administrative subdivisions of the Alaska Court System today. The Bethel Service Area (the proposed Lower Yukon-Kuskokwim District) is serviced by an Anchorage judge. The Barrow Service Area (the proposed North Slope District) is serviced by a Fairbanks judge. What remains of the Second Judicial District since the creation of the service areas is western Alaska (the proposed Bering Straits-Kobuk District), which is serviced from Nome. The remainder of the Fourth Judicial District (the proposed Interior District) is serviced from FAirbanks. Southeastern Alaska continues to be a separate district.

The only change from the present administrative subdivisions is the addition of a seventh, the Prince William Sound-Copper River District. The reasons for proposing this region as a separate judicial district are multifold. First, like the Lower Kuskokwim region, the sparsely-populated Prince William Sound-Copper River region has virtually no voting power in judicial retention elections so long as it is included in the same judicial district as a heavily populated metropolitan region. Secondly, under the present administrative arrangement, the people of Valdez feel that they have not received adequate judicial services. (See Appendix I.) Their complaints are similar to complaints heard from Bethel and Barrow prior to the time those two regions became separate service units. Separating the Prince William Sound-Copper River area from Anchorage might contribute to similar improvements in services by virtue of a more distinctive administrative identity.

Moreover, the Prince William Sound-Copper River area is experiencing some of the most traumatic changes in the state from "pipeline impact." The growth, new development, and associated problems are certain to raise substantial amounts of litigation. The decisions made by the judge or judges during these formative years will have long ranged impact on the direction and rate of growth in this region. Hence, this judge or these judges should be regularly assigned on a permanent basis to ensure continuity, and should be given incentive to learn the problems and needs of the region through retention elections which have some greater significance than is presently true with dilution of voting power by the overwhelmingly large Anchorage population.

B. AS 22.10.130 SHOULD BE AMENDED TO PROVIDE THAT THE PRESIDING JUDGE OF ANY JUDICIAL DISTRICT WITHOUT A RESIDING SUPERIOR COURT JUDGE SHALL BE THE REGULARLY ASSIGNED JUDGE TO THAT JUDICIAL DISTRICT; AS 22.10.140 SHOULD BE AMENDED TO PROVIDE THAT THE CHIEF JUSTICE MAY ASSIGN THE PRESIDING JUDGE OF A JUDICIAL DISTRICT WITHOUT A RESIDING JUDGE FOR SUCH PERIODS EXCEEDING 90 DAYS ANNUALLY AS NECESSARY TO FULFILL THE JUDICIAL SERVICING NEEDS OF THAT

JUDICIAL DISTRICT; AND, AS 15.35.080 AND AS 15.35.100(b) SHOULD BE AMENDED TO PROVIDE (i) THAT A JUDGE SHALL SEEK APPROVAL IN ALL JUDICIAL DISTRICTS IN WHICH HE WAS ORIGINALLY APPOINTED, AND (ii) IN ANY JUDICIAL DISTRICT WITHOUT A RESIDING JUDGE OF THE SAME JURISDICTIONAL LEVEL WHENEVER THE ASSIGNED JUDGE HAS SERVED AT LEAST 90 DAYS DURING EACH OF THE PRECEDING THREE YEARS OF HIS TERM.

This recommendation is premised on two assumptions: (1) that there are reforms in the boundaries of judicial districts such that more regions of the state are acknowledged, and, (2) that some of these new judicial districts will not have a residing superior court judge in the immediate future.

The purposes of this recommendation are (1) to ensure that districts without residing judges are serviced with the continuity of a single, assigned, permanent part-time judge (rather than on an ad hoc basis of assigning whichever judge happens to be available, or on the basis of convenience to the urban court calendar), and (2) to provide for some limited possibility of retention elections in the new judicial districts prior to the day when the region warrants a full-time residing judge.

Many persons interviewed in the course of this study felt that all of the above regions should have at least one residing judge immediately, who would travel to urban areas to

assist those caseloads during slow periods. Arguably, there would be no significant difference between having a judge reside in the urban area and serve the rural area part-time, and having the same judge reside in the rural area and serve the urban area part-time. However, the Judicial Council makes no recommendation regarding the location of judges, but instead provides the above recommendation on the assumption that the present policy of urban judges serving rural regions will continue.

Because a judge handling fully 100% of the criminal and civil caseload in a rural region may never spend "the major portion" of his term in that region and hence will never be subject to a retention election there, the above recommendation provides a modification that applies only to judicial districts without a residing judgeship. In such cases, a judge would have his name placed on the ballot if he served with a level of continuity of at least 90 days during each of the preceding three years. This ensures that he has had ample opportunity to "know" his district, and that the electorate in the district also knows him.

C. AS 22.10.150 SHOULD BE AMENDED TO PROVIDE THAT IN ANY JUDICIAL DISTRICT WITHOUT A RESIDING SUPERIOR COURT JUDGE, WHERE A MAJORITY OF THOSE VOTING IN THE DISTRICT REJECT THE ASSIGNED JUDGE'S CANDIDACY, HE OR SHE SHALL NOT FOR A

PERIOD OF FOUR YEARS THEREAFTER BE APPOINTED OR ASSIGNED TO FILL ANY VACANCY IN THE COURTS OF THAT DISTRICT.

The present statute provides that if a judge is rejected in a retention election, he shall not be appointed to fill any judicial vacancy in the state for a period of four years. If a judge assigned to two districts is confirmed in one and rejected in the other, it would be unduly harsh to deprive that judge of his confirmed position, or to deprive the people of the district which confirmed him of his future services. In every case, the interests and the concerns of the two districts served by the judge will be sufficiently distinct to make it possible that a judge perfectly competent to serve in one district might prove wholly unsuitable in the other. Given the contrast, total exclusion from judicial service during the four years following a rejection in one district is unreasonable and unnecessary.

This recommendation also provides a measure of flexibility from Recommendation B requiring retention election upon reaching ninety days of service in another district during each of the preceding three years. No judge in the state is required to file for retention election. If a judge fails to file a candidacy, he or she simply leaves the bench without confirmation or rejection. With the revision provided in this recommendation, any judge wishing to continue services beyond ninety days, but not wishing to stand for a confirmation election, simply can refuse to file for the retention election in that district.

While the stigma of a public rejection is avoided, the consequence is that the judge cannot serve in that district during the next four years, and hence the effect is the same as if the judge's name was submitted on the ballot and he or she was rejected.

D. ARTICLE IV, SECTION 1, OF THE ALASKA CONSTITUTION SHOULD BE AMENDED TO PROVIDE THAT JUDICIAL DISTRICTS SHALL BE ESTABLISHED BY THE LEGISLATURE OR BY THE SUPREME COURT, AND THAT DISTRICT BOUNDARY CHANGES BY THE SUPREME COURT SHALL BE SUBMITTED TO THE LEGISLATURE DURING THE FIRST TEN DAYS OF ANY REGULAR SESSION, AND SHALL BE EFFECTIVE FORTY-FIVE DAYS AFTER SUBMISSION OR AT THE END OF THE SESSION, WHICHEVER IS EARLIER, UNLESS DISAPPROVED IN A CONCURRENT RESOLUTION BY A MAJORITY OF EACH HOUSE.

This constitutional amendment is intended to broaden the possible sources for initiating districting reforms in the future, while also keeping what is inevitably a decision with political implications primarily in the province of the legislature. Either the legislature or the supreme court could initiate boundary revisions, but any revisions or new districts created by the supreme court would be subject to legislative veto at the next regular session. Thus, if revisions were

seriously needed and the legislature was initially unresponsive or adjourned, the supreme court could ensure that the issue at least would be considered by the legislature at its next regular session. Even with the amendment however, the legislature continues to have its present power to revise district boundaries or to create new districts at any time.

FOOTNOTES

1. Naske, An Interpetative History of Alaskan Statehood. Alaska Northwest Publishing Co., Inc., 1973, p. 2. Gruening, The State of Alaska. Random House, 1968, pp. 33-52. Nichols, Alaska: A History of Its Administrations, Exploitation and Industrial Development During the First Half Century Under the Rule of the United States. Arthur H. Clark Company, 1924, p. 72.

2. Wickersham, Old Yukon Tales-Trails-Trials. West Publishing Co., 1938, pp. 3-5, 11, 38 and 56. Nichols, Alaska, supra n. 1 at 180-83.

3. Naske, supra n. 1 at 31. The Organic Act of 1912 provided that senators and representatives to the new territorial legislature would be chosen equally from the four judicial divisions.

4. Official Minutes of the Alaska Constitutional Convention, December 12, 1955, pp. 723, 727-28.

5. Ralph E. Moody, chairman of the Senate Judiciary Committee of the First Legislature, and Thomas B. Stewart, a state senator on that committee, introduced a proposal for three judicial districts. As Moody (now a superior court judge) recently recalled the event in a letter to Stewart (also now a superior court judge),

> After approaching the legislators from the then Territorial Second Judicial District with this proposal, we realized there was absolutely no chance for passage of a three-district bill. The Second District legislators would not consider a bill that might deprive them of a resident superior court judge. The compromise measure that the Judiciary Committee ultimately proposed was a bill to establish four districts, along the lines of the former territorial judicial divisions. This measure was, of course, adopted by the legislature. [Letter to Honorable Thomas B. Stewart, November 18, 1974]

Parodoxically, in the very next sentence of his letter, Moody continues, "I do not recall any attempt to draw the districts in order to recognize regional political interests." Yet his own reference to the opposition from Western Alaska and the need for a "compromise measure" undisputably derive from regional political interests, or, as stated by Delegate George M. McLaughlin at the Constitutional Convention, ". . . the concern of some members that they might be deprived of districts or there might be an attempt . . . to do away with court houses in certain areas." [Official

Minutes, supra n. 4 at p. 723.]

6. AS 15.35.080 and AS 15.35 100(b).

7. AS 22.10.130 defines the duties of the presiding judge as assigning cases within the district, supervising judges and court personnel within the district, and expediting business within the district. For a more detailed statement of the duties and responsibilities of presiding judges, see, "Report of the Committee on Duties and Powers of Presiding Superior and District Court Judges" reprinted in Supreme Court Order No. 183, June 26, 1974.

8. AS 22.10.030.

9. Some critics have argued that the Judicial Council study of judicial districting gives unbalanced emphasis to some functions of judicial districting. The fact of the matter is that those few functions are the only remaining functions of judicial districts, and hence the study focuses thusly with no intention of attempting to revitalize disgarded functions or create new functions for the districts.

10. Alaska Constitution, Art. IV., § 5.

11. AS 15.35.100.

12. AS 15.35.060; Alaska Constitution, Art. IV, § 6.

13. AS 15.35.030; Alaska Constitution, Art. IV, § 6.

14. AS 15.35.080 and AS 15.35.100(b).

15. For evidence of this intent in the First Legislature, see the letter of the Honorable Ralph E. Moody, November 18, 1974, supra n. 5 at 2.

16. Winters, "The Merit Plan for Judicial Selection and Tenure--Its Historical Development." 7 Duquesne Law Review 61 at 69 (1968). As Winters points out, the non-competitive election was an integral part of the original proposal by Albert Kales (pp. 65-66); it was an integral part of the plan introduced by Walker B. Spencer in the Louisiana Constitutional Convention of 1921--not as a mere compromise but "prior to [the plan] being amended to bow to political expediency" (pp. 69-70); and it was an integral part of the first state plan actually enacted by Missouri in 1940 (p. 71). Winters observes, ". . . Missouri became the first state actually to put a nominative-appointive-elective plan into operation and make 'Missouri Plan' along with 'Kales Plan' one of the synonyms for merit selection and tenure. 'Spencer Plan' really should be added to that list." (p. 71) [Emphasis added.]

17. "[T]he chief role of the non-competitive election tenure in the future will be [as] a reassurance to people who are steeped in the elective tradition that in adopting a merit plan they are not actually giving up everything but are still retaining an essential part of the elective system, and just getting some needed help in the hard part. Id. at 77.

18. Id. at 75-77.

19. Official Minutes of the Alaska Constitutional Convention, December 9, 1955, p. 641.

20. Id. at 682-83.

21. Id.

22. Letter of Honorable Ralph E. Moody, supra n. 5 at 2.

23. Official Minutes of the Constitutional Convention, December 12, 1955, p. 723.

24. AS 22.20.022.

25. Official Minutes of the Constitutional Convention, December 12, 1955, p. 723.

26. Id. at 727-28.

27. Id. at 725.

28. See generally, Supreme Court Order No. 197.

29. See generally, Supreme Court Order No. 181.

30. At the September 30, 1974, meeting of the Alaska Judicial Council, Judge Thomas B. Stewart, speaking on behalf of three presiding judges (Judges Occhipinti, Taylor and himself) and the administrative director, recommended that the superior court judgeship in Nome should be relocated in Fairbanks, and that all such small towns and rural areas should be serviced from Anchorage and Fairbanks. However, this recommendation does not appear in the written report of the majority of the Presiding Judges' Committee.

In his dissent from the above report, Judge William H. Sanders, presiding judge of the Second Judicial District, recommends that "Each judicial district should have its own superior court judge."

31. Supreme Court Order No. 183, June 26, 1974.

32. Id.

33. Supreme Court Order No. 181 and Supreme Court Order No. 197.

34. AS 22.10.030.

APPENDIX I

SUMMARY OF

PUBLIC HEARINGS ON JUDICIAL DISTRICTING

BETHEL, September 17, 1974

The hearing was called to order by Council member Eugene Wiles at 7:00 p.m. in the Bethel Courtroom. The meeting was attended by Superior Court Judge Eben Lewis; District Court Judge Nora Guinn; Andy Edge, City Manager; Trooper Loren Campbell, Alaska State Troopers; Tom Anderson, Director of Bethel's alcohol program; Chris Cooke, private attorney; Randy Luffberry, district attorney; Myron Angstrom, public defender; Lew Schnapper, Legal Services attorney.

Mr. Wiles asked Mr. Hicks to summarize the judicial districting proposal of the Judicial Council.

Andy Edge recommended that the Council drop the "Indian country" off the top side of the presently proposed judicial district, and take in Dillingham and Alaska Peninsula. He thinks Mr. Peterson, Vice-President of Wien Airlines, can be convinced that the airlines should schedule flights between Bethel and Dillingham. He draws the "Yupik line" south of Anvik, taking in Aniak, including all of Calista and Bristol Bay Regional Corporation in one district. Anvik,

Grayling and Holy Cross would need special consideration, according to Edge.

Judge Guinn agreed with Edge that Dillingham should be served from Bethel. With regard to the residing judgeship, Judge Guinn suggested that it is feasible that Bethel can continue to be served by an Anchorage judge who could also serve Dillingham.

According to Randy Luffberry, Kodiak Western Airlines wants to serve Dillingham and King Salmon. He said however that it is better to have Dillingham served out of Bethel than Anchorage.

Chris Cooke said the Judicial Council should hold hearings or actively solicit comments from the Dillingham-Bristol Bay area. He noted that Bethel would be the fourth largest district if this proposal was adopted. He feels that Bethel will need a residing judge very soon, if not now. He noted that there are three Alaska Legal Services attorneys, one public defender, and one private attorney now residing in Bethel; and one district attorney spending half-time from Anchorage plus Judge Lewis from Anchorage serving from one week to 10 days per month. He noted that the fact of a larger bar means Bethel will generate many more cases. He also notes that there will be many more recording and probate matters to be considered.

Cooke said that regional corporation boundaries and the transportation questions should govern how far up the Kuskokwim the district boundary goes. He suggested that Medfra is too far up and recommended that the boundaries should be drawn along the lines of the regional corporation.

Trooper Loren Campbell noted that the McGrath transportation pattern goes to Anchorage. He said that Stony River is the cut-off point for transportation and commerce patterns to Bethel. Beyond that, all mail flights and charter

flights center in McGrath.

Campbell felt that Dillingham should be included in the Lower Yukon-Kuskokwim Region. He said that planes regularly go to Dillingham but they are not commercial flights. He suggested that it might be possible to fly to Platinum, and get Dillingham based commercial flights to Platinum into the Bristol Bay area.

Lew Schnapper noted that the air taxis in both Dillingham and Bethel are now getting larger planes. He said we should rember that if Bethel and Dillingham are combined in one judicial district, that fact itself will increase the chances of a full-time residing superior court judge being assigned to Bethel.

Randy Luffberry said that he was in favor of including Dillingham in the Bethel district, but that Naknek, King Salmon and Egegik should not be included. Others at the hearing disputed this recommendation. Andy Edge said that we should not design districts for the convenience of lawyers.

Judge Lewis noted that the Nome-Bethel service district had not been viable because of transportation problems, and that the Council should give serious consideration to the inclusion of Dillingham because the districts must be designed to deliver services according to the ability to mobilize quickly. Lew Schnapper said the Council should compare ethnic-socio-economic and administrative conveniences in making the decision. Judge Lewis warned against enacting a plan that can't deliver services. The lines should be reasonably permanent. He noted that the problem with Bethel is the question, "Where is Bethel for filing purposes, etc.?"

Andy Edge noted that nine years ago Judge Guinn was the only one serving the area. He said that since then there have been improvements in

judicial services, but that Bethel is still not getting the services Nome receives. He said that Naknek, King Salmon and Egegik can be serviced from Dillingham because there are charter plan flights from Dillingham.

Judge Lewis suggested that Dillingham and Bristol Bay be a "service area" within the Bethel District. He recommends that all of Bristol Bay should be in the same judicial district, whichever district it is in.

Randy Luffberry noted that all of Bristol Bay doesn't warrant an assistant district attorney. He said that a district attorney goes to King Salmon about every two to three months; to Dillingham about every five to six months; and that a judge goes to Naknek three to four times a year.

Myron Angstrom noted that the Anchorage Public Defender Agency gets clients from Naknek and King Salmon. He noted that there were many problems peculiar to that area, and that there should have been jury trials outside of Anchorage. He also noted that they presently have a bilingual staff of two in Bethel to serve the Yupik people, and hence would be in a better position to offer broader services to the Naknek, King Salmon region.

Tom Anderson said that all of Bristol Bay should be added to the Bethel district to give them better solutions to their problems. He noted that they needed a jury of familiar people--a jury that understands. He said that the judicial district must include Holy Cross and Stony River in the Bethel region. Holy Cross did not get alcoholism services from Doyon, Ltd. when it was separated from the Bethel service area for some time. Troopers serve the Holy Cross area from Bethel, as do the courts. He noted that travel from Holy Cross is efficient to Bethel. He said that Naknek defendants are transported to Anchorage because

there is no long-term jail facility and no public defender in Naknek. If the Council included Naknek in the Bethel judicial district, and brought the defendant to Dillingham, there would be a jail facility and public defender services traveling with the judge from Bethel.

Trooper Campbell noted that the financial cost of sending a defendant to Anchorage with a state trooper is more than the cost of traveling from Bethel to Dillingham. For this reason, he feels it would be less expensive to have Naknek, King Salmon and Dillingham in the Bethel region than in the Anchorage region.

He also noted that the troopers in Bethel have an airplane and have offered it to the public defender, the district attorney, and the judges. He said that the plane could go to Dillingham. A trooper is the pilot. The problem, however, is that the plane may not be available many times when it is in Anchorage for maintenance work or when the trooper pilot is unavailable because of other business.

Chris Cooke noted the importance of getting many people mobilized for a lobbying effort.

Judge Guinn said that if we go to Dillingham, we should contact some leaders of the Bristol Bay Regional Corporation.

VALDEZ, September 18, 1974

The hearing was called to order by Council member Eugene Wiles at 7:30 p.m. in the Valdez City Council Chambers. The meeting was attended by Magistrate Kay Bond; Dave Oehler, Chief of Police; Mr. Herbert Leyfeldt, City

Manager; and Messrs. Paul Barrett and Newman Martin, private attorneys.

Mrs. Bond asked how the Matsu Borough boundaries fit into the proposed judicial district boundaries. She also was concerned to know whether there would be any problems with recording. She noted that Montague Island is in the Valdez recording district, as is much of the land on the eastern side of the Kenai Peninsula. She also noted that the recording district reforms proposed by Rick Barrier place Cordova with the Valdez recording district. There is a part-time magistrate in Cordova. She recommends following the recording district boundaries in the Montague Island area. She suggested the Council contact Mrs. Mary Gray, the recorder in Anchorage.

Chief Oehler noted that there had been a coroner inquest jury in Valdez that reached the conclusion that there was not enough evidence to presume death in a particular case. Less than 60 days later, there was an Anchorage hearing where the original finding was overturned, based only on the recorded testimony from the first hearing. He said that the public defender has refused to come to Valdez on at least one occasion. He also said that the response of the district attorneys is slow and shows little consistency. He noted that one district attorney from Anchorage forgot to subpoena witnesses for a preliminary hearing, and that on two different occasions when the judge and others were prepared to go forward with a trial, the case had to be continued because the district attorney had not prepared for trial. He noted that there is no jail in Valdez and hence no possibility for work release because a person is sent to Anchorage.

Mr. Martin noted that when they file complaints by mail in Anchorage, the clerks do not open the mail until they have dispensed with their daily work in the Anchorage area. He had one case where it took 20 days to get a stamp acknowledging receipt. For this reason he feels there is a need for a separate service area in Valdez.

Mrs. Bond complained about the quality of the district court judges serving Glenallen. She suggested the Judicial Council look at case files from Glenallen to see the serious injustices that have been done. The example was given that in one case to reclaim possession of a mobile home which had been leased with a $200 deposit, the lessee argued that he would not return the mobile home until he got the $200 deposit returned to him. The district court judge held only that the $200 deposit was legal. The lessor did not get his trailer back from that decision, and incurred more legal expenses to get a decision on the issue.

Mrs. Bond and the two attorneys claimed that Judge Singleton said he would come to Valdez in mid-September for two weeks. They then heard that Justice Fitzgerald would come only for September 24th, and that Judge Peterson would come for one week. They said that Arthur Snowden, Administrative Director, proposed a service area which was turned down by the Supreme Court. Mrs. Bond claimed that Judge Peterson has been serving one week each month in Whittier, his home town.

According to Mr. Leyfeldt, the City of Valdez has grown from 1,100 to 3,000 in the first six months of 1974. He projected that the population is approxmately 3,500 now.

Mr. Barrett expressed concern that the Judicial Council ensure that judicial district boundaries be coordinated with recording district boundaries, to avoid complications with presently recorded instruments which include descriptions of real property by the judicial district where located.

NOME, October 1, 1974

The hearing was called to order by Council member Michael Stepovich at 7:00 p.m. in the courtroom of the superior court. Council member Thomas Miklautsch was also hearing testimony. Mr. Stepovich asked Mr. Hicks to summarize the tentative proposals, and testimony was then solicited from the Nome residents in attendance.

Superior Court Judge William Sanders was the first person to appear before the Council, giving his "minority report" of the presiding judges. Judge Sanders favored the seven-district proposal but with the caveat that judgeships should not become political. He felt that the report overemphasized the plebiscite issue. With regard to the constitutional amendment empowering the Supreme Court to change judicial districts subject to the approval of the Legislature, Judge Sanders recommended that the procedure should be similar to that used by local government boundary commissions. It would provide that judicial districts could be established by the Legislature, or by the Supreme Court submitting proposed changes to the Legislature during the first 10 days of any regular session, with those changes becoming effective 45 days after presentation or at the end of the legislative session, whichever is earlier unless disapproved by a resolution concurred in by the majority of each House.

With regard to retention elections, Judge Sanders recommended that a non-resident judge should be subject to election in a judicial district only if he has served more than three years of his term in that district. When questioned later, Judge Sanders said that he had misread this recommendation, and that his proposal for changing that recommendation was directed at the length of time a judge should serve from the date of his appointment to the first retention election, rather than the length of time an appointed judge should serve in a judicial district without a residing judge before being subject to retention election. His recommendation was directed at ensuring that no changes occur in the amount of time from original appointment to the first election, and the amount of time from one election to the next. Judge Sanders further recommended that a superior court judge should be appointed for each of the seven judicial districts; and that, if it is impossible to get a superior court judge to live in some of these districts, provisions should be made for a superior court judge permitted to reside in an urban area but assigned to the rural district and subject to approval or rejection in that district.

District Judge Ethan Windahl testified to the Council that the judicial districting study and the unified trial court study have many interrelated features which require that they proceed together. He cautioned the Council that Anchorage and Fairbanks district courts have unique problems not found in rural areas. Judge Windahl noted that the residents of Nome make specific demands on the judicial system, and suggested that the presiding judges of the superior court in urban areas may not appreciate the other services that judges and magistrates undertake in rural areas.

Mr. Bob Scott, assistant to the governor in Nome, recommended that each of the seven proposed judicial districts should have a residing superior court judge. He recommended that the constitutional provision for changing judicial districts should not be amended. He said that the response of the Court System to Bush areas in the past does not leave one confident that the Supreme Court would be any more effective in changing districts than the Legislature.

Mrs. Ruth McClain, representing the Northwest Chamber of Commerce, noted that there is growing activity in the Nome area requiring more rather than less judicial services. She pointed out that there are two new gold dredges which have begun operation and that by next year they expect to employ 150 people year-round and 300 people during the summer. She also noted that the Native Claims Settlement Act was creating considerable more economic and judicial activity in the Nome area. She said that at one point the district attorney's functions were served for Nome from Fairbanks over a period of two years, and that the experience had been very unsatisfactory to the Nome people.

BARROW, October 3, 1974

The hearing was called to order by Council member Thomas Miklautsch at 7:30 p.m. in the Barrow Courtroom. Persons present included Magistrate Sadie Neakok, Mr. Eben Hopson, Mayor, North Slope Borough; Trooper Drew Rotterman, Alaska State Troopers; Mr. Bill Tegoseak, City Councilman; Mr. Andy Schwartz, Alaska Legal Services attorney; and Mr. Nat Olemann of Barrow. Mr. Hicks summarized the tentative proposals of the Judicial Council, and Mr.

Miklautsch asked for comments from the Barrow people.

All present agreed with the concept of seven judicial districts. They also agreed that Point Hope should be included in the North Slope Judicial District, and that the boundaries of the North Slope Judicial District should follow the Borough boundaries rather than the Arctic Slope Regional Corporation boundaries. Trooper Rotterman pointed out that eventually the North Slope Borough would have its own police force serving borough-wide. Mayor Hopson noted that he presently travels to Barter Island and Point Hope at least once a week, and sometimes two or three times a week. He suggested that troopers, judges, public defenders, and district attorneys could travel with him on these flights at any time. Mr. Schwartz pointed out that the Arctic Slope Regional Corporation has a full-time employee scheduling flights to the various villages.

The testimony indicated general dissatisfaction with the fact that the North Slope is producing so much of the state revenues and yet receiving so little services. Mr. Tegoseak noted that they are being penalized with inadequate judicial services because they do not have a high crime rate. He suggested that the functions of a judge are much more than simply trying cases, and that the Alaska Court System has failed to realize this. He said that presence of a judge in Barrow as well as in the villages is extremely important for the people to understand better how the judiciary functions.

Mayor Hopson expressed dissatisfaction with the present service area concept which excludes the pipeline corridor from the North Slope service area. Mr. Tegoseak noted that if he committed a crime in a particular county in Texas, he would be tried in that county despite the fact that he was a native

from the North Slope. He suggested that similarly, a White person committing a crime on the North Slope should be tried in that region rather than being transferred to the urban area of Fairbanks.

In response to a question posed by Mr. Hicks concerning the possibility of undue political pressure on a judge serving regional interests, Mayor Hopson suggested that a judge should disqualify himself if he felt that he could not be impartial. Trooper Rotterman said that attorneys representing clients should disqualify an impartial judge themselves if they are halfway competent attorneys.