

FOLDER NO.

410.4

REPORT OF COMMITTEE ON STYLE AND DRAFTING

Constitutional Convention
Committee Proposal/2
Enrolled/Style and Drafting
January 18, 1956

CONSTITUTIONAL CONVENTION OF ALASKA

COMMITTEE PROPOSAL NO. 2

Introduced by Committee on Judiciary Branch

RESOLVED, that the following be agreed upon
as part of the Alaska State Constitution:

THE JUDICIARY

Judicial
Power and
Jurisdiction

1 Section 1. The judicial power of the State
2 is vested in a Supreme Court, a Superior Court,
3 and courts established by law. The jurisdiction
4 of courts shall be prescribed by law. The courts
5 constitute a unified judicial system for opera-
6 tion and administration. Judicial districts shall
7 be established by law.

Supreme
Court

8 Section 2. The Supreme Court is the highest
9 court of the State, with final appellate jurisdic-
10 tion, and consists of three justices, one of
11 whom is Chief Justice. The number of justices
12 may be increased by law upon the request of the
13 Supreme Court.

Superior
Court

14 Section 3. The Superior Court is the trial
15 court of general jurisdiction and consists of

1 five judges. The number of judges may be changed
2 by law.

Qualifications
of Justices
and Judges

3 Section 4. Supreme Court justices and
4 Superior Court judges shall be citizens of the
5 United States and of the state, licensed to
6 practice law in the State, and possessing any
7 additional qualifications prescribed by law.
8 Judges of other courts shall be selected in a
9 manner, for terms, and with qualifications pres-
10 cribed by law.

Nomination
and
Appointment

11 Section 5. The Governor shall fill any
12 vacancy in an office of Supreme Court Justice or
13 Superior Court Judge by appointing one of two or
14 more persons nominated by the Judicial Council.

Approval or
Rejection

15 Section 6. Each Supreme Court Justice and
16 Superior Court Judge shall be subject to approval
17 or rejection on a nonpartisan ballot at the first
18 general election held more than three years
19 after his appointment. Thereafter each Supreme
20 Court Justice shall be subject to approval or
21 rejection in a like manner every tenth year and
22 each Superior Court Judge every sixth year.

Vacancy

23 Section 7. The office of any Supreme Court
24 Justice or Superior Court Judge becomes vacant
25 ninety days after the election at which he is

1 rejected by a majority vote or for which he fails
2 to file his declaration of candidacy to succeed
3 himself.

Judicial
Council

4 Section 8. The Judicial Council consists of
5 seven members. Three attorney members shall be
6 appointed for six-year terms by the governing body
7 of the organized state bar. Three non-attorney
8 members shall be appointed for six-year terms by
9 the Governor subject to confirmation by a majority
10 of the members of the Legislature in joint session.
11 Vacancies shall be filled for the unexpired term
12 in like manner. Appointments shall be made with
13 due consideration to area representation and with-
14 out regard to political affiliation. The Chief
15 Justice of the Supreme Court is ex-officio the
16 seventh member and chairman of the Judicial
17 Council. No member of the Judicial Council, ex-
18 cept the Chief Justice, may hold any other office
19 or position of profit under the United States or
20 the State. The Judicial Council shall act by
21 concurrence of four or more members according to
22 rules which it adopts.

Additional
Duties

23 Section 9. The Judicial Council shall con-
24 duct studies for improvement of the administration
25 of justice and make reports and recommendations

1 to the Supreme Court and to the Legislature at
2 intervals of not more than two years. The
3 Judicial Council shall perform other duties
4 assigned by law.

Incapacity
of Judges

5 Section 10. Whenever the Judicial Council
6 certifies to the Governor that a Supreme Court
7 Justice appears to be so incapacitated as sub-
8 stantially to prevent him from performing his
9 judicial duties, the Governor shall appoint a
10 board of three persons to inquire into the
11 circumstances and may, on the board's recommenda-
12 tion, retire the justice. Whenever a judge of
13 another court appears to be so incapacitated as
14 substantially to prevent him from performing
15 his judicial duties, the Judicial Council shall
16 recommend to the Supreme Court that the judge
17 be placed under early retirement. After notice
18 and hearing, the Supreme Court by majority vote
19 of its members may retire the judge.

Retirement

20 Section 11. Justices and judges shall be
21 retired at the age of seventy except as provided
22 in this article. The basis and amount of
23 retirement pay shall be prescribed by law. Re-
24 tired judges shall render no further service on
25 the bench except for special assignments as
26 provided by court rule.

Impeachment

1 Section 12. Impeachment of any justice or
2 judge for malfeasance or misfeasance in the
3 performance of his official duties shall be
4 according to procedure prescribed for civil
5 officers.

Compensation

6 Section 13. Justices, judges, and members
7 of the Judicial Council shall receive compensa-
8 tion prescribed by law. Compensation of
9 justices and judges shall not be diminished
10 during their terms of office, unless by general
11 law applying to all salaried officers of the
12 State.

Restrictions

13 Section 14. Supreme Court justices and
14 Superior Court judges while holding office may
15 not practice law, hold office in a political
16 party, or hold any office or position of profit
17 under the United States, the State or its
18 political subdivisions. Any Supreme Court
19 justice or Superior Court judge filing for
20 elective public office forfeits his judicial
21 position.

Rule-
making
Power

22 Section 15. The Supreme Court shall **make**
23 and promulgate rules governing the administra-
24 tion of all courts. It shall make and promulgate
25 rules governing practice and procedure in civil

1 and criminal cases in all courts, which rules
2 may be changed by the Legislature by two-thirds
3 vote of the members elected to each house.

Court
Administra-
tion

4 Section 16. The Chief Justice of the Supreme
5 Court shall be the administrative head of all
6 courts. He may assign judges from one court or
7 division thereof to another for temporary service.
8 The Chief Justice shall, with the approval of
9 the Supreme Court, appoint an administrative
10 director to serve at his pleasure and to super-
11 vise the administrative operations of the judicial
12 system.

Office
of
Profit

13 Section 17. Service in the armed forces of the
14 United States or of the State is not an office
15 or position of profit as the term is used in this
16 Constitution.

First
Judicial
Council
(Transi-
tional)

17 Section 18. The first members of the
18 Judicial Council shall, notwithstanding Section 8,
19 Article _____, be appointed for terms as follows:
20 three attorney members for one, three and five
21 years respectively, and three non-attorney members
22 for two, four and six years respectively. The
23 six members so appointed shall submit to the
24 Governor nominations to fill the initial vacancies
25 on the Supreme Court, including the office of

- 1 Chief Justice. Once the Chief Justice is appointed,
- 2 he shall assume his seat on the Judicial Council.

ENROLLED

Constitutional Convention
Committee Proposal/2/Enrolled
December 15, 1955

CONSTITUTIONAL CONVENTION OF ALASKA

COMMITTEE PROPOSAL NO. 2

Introduced by Committee on Judiciary Branch

ARTICLE ON THE JUDICIARY

RESOLVED, that the following be agreed upon as
part of the Alaska State Constitution:

Judicial
Power

1 Section 1. The judicial power of the State is vested in
2 a Supreme Court, a Superior Court, and such other courts
3 as the Legislature may establish. The jurisdiction of
4 the respective courts shall be prescribed by law and the
5 courts shall constitute a unified judicial system for
6 purposes of operation and administration.

Supreme
Court

7 Section 2. The Supreme Court is the highest court of the
8 State with appellate jurisdiction and consists of three
9 justices, one of whom is Chief Justice. The number of
10 justices may be increased by law upon request of the
11 Supreme Court.

Superior
Court

12 Section 3. The Superior Court is the trial court of
13 general jurisdiction and consists of five judges. The
14 number of judges may be changed by law.

Nomination
and
Appoint-
ment

15 Section 4. Justices of the Supreme Court and judges of
16 the Superior Court are appointed by the Governor on
17 nomination by the Judicial Council as provided in this
18 article.

Approval or 1 Section 5. Each justice of the Supreme Court and
Rejection 2 each judge of the Superior Court shall, at the
by Voters 3 next general election following a period of three
4 years after his appointment, be subject to approval or
5 rejection by the voters on a non-partisan ballot in the
6 manner provided by law. Every ten years after approval
7 each Justice of the Supreme Court, and every six years
8 after approval each judge of the Superior Court, shall
9 again be subject to approval or rejection by the voters
10 in the same manner.

Vacancy in 11 Section 6. If, at any election, a majority of the
Judicial 12 voters declare that any justice or judge shall not
Office 13 be retained in office, the office shall become
14 vacant ninety days after the election and shall be
15 filled by the method of selection provided in this
16 article. If a justice or judge fails to file, in
17 advance of the election as prescribed by law, a
18 declaration of his candidacy for election to
19 succeed himself, his office shall become vacant ninety
20 days after the election, and shall be filled by
21 the method of selection provided in this article.

Qualifi- 22 Section 7. To be eligible for appointment, Justices
cation of 23 of the Supreme Court and Judges of the Superior
Judges 24 Court shall be citizens of the United States and of

1 the State, who have been admitted to practice law in
2 the State and possess such additional qualifications
3 as may be prescribed by law.

Other
Courts

4 Section 8. Judges of other courts shall be selected in
5 the manner and for the terms and subject to eligibility
6 qualifications to be prescribed by the Legislature.

Selection
of Judges

7 Section 9. Whenever there is a vacancy in an office of
8 Justice of the Supreme Court or Judge of the Superior
9 Court, the Governor shall fill the vacancy by appointing
10 one of not less than two qualified persons who shall
11 have been nominated by a non-partisan judicial council
12 established and organized as provided in this article.

Judicial
Council;
How
Selected

13 Section 10. The Judicial Council consists of six mem-
14 bers chosen in the following manner: On the basis of
15 appropriate area representation the governing body of
16 the organized State bar shall appoint three members of
17 the bar to serve as members of the Judicial Council for
18 terms as specified in this article. Three non-attorney
19 members representing different major areas shall be ap-
20 pointed by the Governor for terms as specified in this
21 article, subject to confirmation by a majority of the
22 members of the Legislature in joint session assembled.
23 The six members so appointed shall be compensated as
24 provided by law.

Judicial

25 Section 11. After the members first appointed to the

Council; 1 Judicial Council have submitted to the Governor the
Chairman- 2 names of nominees for appointments to fill the initial
ship and 3 vacancies in the Supreme Court, including the office of
Quorum 4 chief justice, and the justices have been appointed and
5 qualified, the chief justice shall thereafter be ex-
6 officio a seventh member and the chairman of the Judi-
7 cial Council which shall continue to act by the affir-
8 mative vote of at least four of its members in accord-
9 ance with rules which it shall promulgate governing its
10 own procedure. No member of the Judicial Council, other
11 than the chief justice, may hold any office of the state
12 or of the United States while a member of the Council.

Judicial 13 Section 12. The terms of members of the Judicial Coun-
Council; 14 cil shall be six years, except that the attorney mem-
Terms of 15 bers first selected shall be appointed to terms of one
Office 16 year, three years and five years respectively, and the
17 non-attorney members first selected shall be appointed
18 to terms of two years, four years and six years respec-
19 tively. In the event of vacancy, a successor shall be
20 appointed to fill the unexpired term in the manner pro-
21 vided for initial appointment.

Judicial 22 Section 13. In addition to nominating qualified persons
Council; 23 for appointment to fill court vacancies, the Judicial
Additional 24 Council shall be responsible for conducting studies
duties 25 from time to time for improvement of the administration

1 of justice, including such matters as court structure,
2 rules of procedure and administration of the courts, and
3 for making reports and recommendations to the Supreme
4 Court and the Legislature at intervals of not more than
5 two years. The Judicial Council shall also perform such
6 other specific duties as are assigned to it by law.

Retirement 7 Section 14. Whenever the Judicial Council certifies to
for 8 the Governor that any justice of the Supreme Court ap-
Incapacity 9 pears to be so incapacitated as substantially to prevent
10 him from performing his judicial duties, the Governor
11 shall appoint a board of three persons to inquire into
12 the circumstances and, on the board's recommendation, the
13 Governor may retire the justice. For judges of other
14 courts, if a judge appears to be so incapacitated as sub-
15 stantially to prevent him from performing his judicial
16 duties, the Judicial Council shall recommend to the
17 Supreme Court that the judge be put under early retire-
18 ment. After notice and hearing, the Supreme Court by
19 vote of a majority of its members may retire the judge.

Retire- 20 Section 15. Except in cases of early retirement because
ment for 21 of physical or mental infirmity each justice and judge
Age 22 shall be retired at the age of 70, on such retirement pay
23 as may be prescribed by law, and shall render no further
24 service on the bench, except for special assignments as
25 are provided by court rule. The basis and amount of re-

1 tirement pay for justices and judges who retire or are
2 retired at an earlier age shall be prescribed by law.

Impeach-
ment of
Judges

3 Section 16. Impeachment of any justice or judge for mal-
4 feasance or misfeasance in the performance of his offic-
5 ial duties shall be effected as generally prescribed by
6 law for State officials.

Compensa-
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7 Section 17. The justices and judges shall receive for
8 their services such compensation as is prescribed by law,
9 which shall not be diminished during their respective
10 terms of office, unless by general law applying to all
11 salaried officers of the State.

Ineligi-
bility to
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Offices

12 Section 18. No Justice of the Supreme Court or Judge of
13 the Superior Court, while serving as a justice or judge,
14 may practice law, hold office in any political party, or
15 hold any office or position of profit under the United
16 States, or the State or a political subdivision of the
17 State, and shall, if he files for elective public office,
18 thereby forfeit his judicial position. Compensation for
19 service in the State Militia or the armed forces of the
20 United States is not "profit" as that term is here used.

Rule-Mak-
ing Power

21 Section 19. The Supreme Court shall make and promulgate
22 rules governing the administration of all courts of the
23 State. It shall also make and promulgate rules govern-
24 ing practice and procedure in all civil and criminal
25 cases in all courts, which rules may be changed by the

1 Legislature only upon a two-thirds vote of the members
2 elected to each house.

Court Ad-
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3 Section 20. The Chief Justice of the Supreme Court shall
4 be the administrative head of all the Courts in the State.
5 He may assign judges from one court or division thereof
6 to another for temporary service. For other phases of
7 court administration the Chief Justice shall, with the
8 approval of the Supreme Court, appoint an administrative
9 director to serve at his pleasure and to supervise the
10 administrative operations of the judicial system.

Judicial
Districts

11 Section 21. Judicial districts shall be established
12 by law.

Constitutional Convention
Committee Proposal/2
December 5, 1955

ALASKA CONSTITUTIONAL CONVENTION
REPORT OF THE COMMITTEE ON
JUDICIARY BRANCH

Hon. William A. Egan
President, Alaska Constitutional Convention

My dear Mr. President:

Your Committee on the Judiciary Branch presents for your consideration and adoption its proposed Judiciary Article.

The Committee proposal, while incorporating many of the ideas contained in Convention Proposals Numbered One, Twelve, and Twenty-two which were referred to the Committee, is a Committee substitute.

The Committee has included a section-by-section commentary on the proposed Judiciary Article.

Respectfully submitted,

George M. McLaughlin, Chairman,
Thomas C. Harris,
Maurice T. Johnson,
Irwin L. Metcalf,
Ralph J. Rivers,
R. E. Robertson,
Warren A. Taylor.

Constitutional Convention of Alaska

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	2	a Supreme Court, a Superior Court, and such other courts
	3	as the Legislature may establish. The jurisdiction of
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Supreme Court	7	Section 2. The Supreme Court is the highest court of the
	8	State with appellate jurisdiction and consists of three
	9	justices, one of whom is Chief Justice. The number of
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	11	Supreme Court.
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	16	the Superior Court are appointed by the Governor on nomi-
	17	nation by the Judicial Council as provided in this
	18	article.

Approval or
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1 Section 5. Each justice of the Supreme Court and
2 each judge of the Superior Court shall, at the
3 next general election following a period of three
5 years after his appointment, be subject to approval or
6. rejection by the voters of the State on a non-part-
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8 ten years after approval each justice of the sup-
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13 Section 6. If, at any election, a majority of the
14 voters declare that any justice or judge shall not
15 be retained in office, the office shall become
16 vacant ninety days after the election and shall be
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10 administrative operations of the judicial system,

Constitutional Convention
Committee Proposal/2
December 5, 1955

ALASKA CONSTITUTIONAL CONVENTION
Commentary on the Judiciary Article

(Sec. 1 Judicial Power)

This section establishes the basic court structure and also provides needed flexibility for future enlargement by the addition of such local or other courts as the Legislature may deem necessary. The concept of a unified court system is in accord with the fundamental and minimum standards of judicial administration approved and supported by the American Bar Association.

(Sec. 2 Supreme Court)

The initial membership of the Supreme Court is fixed at three justices, one of whom is the chief justice. The provision for future enlargement by the Legislature is qualified by the provision that such enlargement be requested by the Court. A similar provision is found in the new constitution of Puerto Rico and is designed to prevent the number of justices from being increased for any purpose other than to meet the needs of judicial business.

(Sec. 3 Superior Court)

The placing of general trial jurisdiction in a single court, with as many judges thereof as may be necessary to handle the volume of cases, is in line with modern development, and is reversing

the former trend toward a complex structure of specialized courts that has so greatly impeded efficient judicial administration in many states. The Legislature will be free, however, to create lower or other courts as may be necessary, and to determine the jurisdiction of courts and the geographical extent of their authority.

(Sec. 4 Nomination and Appointment)

The main features of the plan for judicial selection sponsored by the American Bar Association and embodied in the Missouri Plan, are summarized in the Association's handbook on judicial administration as: "(1) appointment by governor from list submitted by a nominating committee, the nominating and appointing authority being divided between two agencies; (2) periodic submission to the electorate with no opposing candidate, or 'running against the record.'" Both of these features are incorporated in the selection plan here presented.

(Sec. 5 Approval or Rejection)

The American Bar Association's handbook states: "The ideal solution is to provide that, after a specified period of service, and periodically thereafter, the appointee should either come up for reappointment or should go before the people at a general election on the basis of his record and with no opposing candidate. The latter alternative is probably preferable, especially since it retains for the voters an opportunity to participate in the process

of judicial selection in about the only way in which they can effectively do so. The able judge has little to fear from such a system, while it does permit removal of a judge whom experience has shown to be plainly unqualified or who has become unfit to continue on the bench." It can be added that the type of plan here provided has functioned effectively in Missouri and also in California, where a comparable requirement has applied to appellate judges for more than twenty years.

(Sec. 6 Vacancy in Judicial Office)

In order to allow time for selecting a successor as well as for completing the judicial business remaining before a judge's service terminates, a period of 90 days is allowed after the election at which he is rejected or for which he fails to file. The provision for having a justice or judge file a declaration of his intention to be a candidate to succeed himself is a feature of both the Missouri and the California Constitutions. The details of such declaration such as its form and the time limits for its filing are properly, however, left to the Legislature as herein contemplated.

(Sec. 7 Qualification of Judges)

The requirements of citizenship and of minimum periods of membership in the bar and residence are comparable to those in a majority of states. It should be noted that the section refers to admission and residence "in the State", which will, by general provision elsewhere in the Constitution, presumably and necessarily be defined to include the predecessor Territory.

(Sec. 8 Other Courts)

This section confirms and implements the Legislature's authority to create such additional courts as may be needed, with appropriate methods of selection and qualifications for appointment.

(Sec. 9 Selection of Judges)

The appointment of justices and judges by the Governor from a list of several qualified persons selected by a non-partisan nominating agency is an essential feature of both the American Bar Association and the Missouri plans. The Association's handbook suggests that the nominating body should include laymen as well as lawyers, and that "If the state has a judicial council meeting these qualifications it may well serve as the nominating agency". The present article embodies this approach.

(Sec. 10 Judicial Council; How Selected)

Selection of lawyer members by the state bar association and of non-lawyers by the Governor, both groups of members on a geographical representation basis, is a recommended feature of the Missouri Plan and has been adopted herein. The American Bar Association handbook's comments: "Nomination by a body of this sort, composed of high caliber men, should not only produce better judges but also remove any likelihood of improper motivation in their selection."

(Sec. 11 Judicial Council; Chairmanship and Quorum)

Since the establishment of the Judicial Council must precede the nomination of any judges, including the chief justice, the latter

cannot become an ex officio chairman (as he did automatically in Missouri) until after his appointment has been effected. Thereafter, he will serve as a seventh member of the Council. In the event of his incapacity to serve, it is contemplated that rules of the Council will provide for an acting chief justice as his interim successor.

(Sec. 12 Judicial Council; Terms of Office)

This section provides for staggering the initial terms of the Judicial Council so that non-attorney and lawyer members are appointed in alternate years, respectively, and thereafter each successor member will serve for six years. Judge Laurance M. Hyde of the Missouri Supreme Court points out the reason for a similar six-year term in that state as being that, since a governor serves only a four-year term, no one governor will be able to appoint all of the non-lawyer members during any such term, and thereby control to that extent the personnel of the nominating body.

(Sec. 13 Judicial Council; Additional Duties)

This section empowers and directs the Judicial Council, with its experience and vantage-point in the field of judicial administration, to recommend needed improvements in the structure and operation of the court system.

(Sec. 14 Retirement for incapacity)

It is becoming increasingly recognized that provision should be made, as this section does, for relieving a judge from his judicial duties when, as very occasionally happens, his retirement for reasons

other than age or misconduct, becomes necessary to protect the administration of justice. Such retirement of a Supreme Court justice should be done only on recommendation of an outside board, rather than by the Supreme Court itself. This procedure is similar to that adopted in the Constitution for Hawaii. For other judges, removal by Supreme Court proceedings will be effective and adequate, as has been provided in the Constitution of Puerto Rico.

(Sec. 15 Retirement for Age)

The retirement laws for state judges have tended increasingly to adopt 70 as the maximum or mandatory retirement age. However, a retired justice or judge may still be called upon, in many states, for temporary service or special assignment, and this section permits such service to be made possible by court rule.

(Sec. 16 Impeachment of Judges)

Procedure for impeachment of justices and judges should, as here provided, be in accord with that for other State officers.

(Sec. 17 Compensation of Judges)

While compensation for justices and judges should be prescribed by law, it should not be susceptible of arbitrary diminution during office. It should be subject to increase as future needs dictate, and should be subject to decrease only when a general reduction applying to all State officers becomes imperative.

(Sec. 18 Ineligibility to Other Offices)

The prohibition against the practice of law or holding other office by full-time justices and judges is a necessary and desirable one, and has been widely advocated. A similar provision was contained in the proposed new Judicial Article for the State of Illinois.

(Sec. 19 Rule-Making Power)

One of the major factors in New Jersey's remarkable achievement in bringing its trial calendars and court business up-to-date, and in simplifying and expediting the administration of justice, has been the vesting of the rule-making power in the Supreme Court, and the exercise of such power by the Court in adapting the Federal Rules of Civil Procedure to state court practice. The American Bar Association has strongly advocated, as its first and keystone recommendation in its program for reform of judicial procedure: "That practice and procedure in the courts should be regulated by rules of court; and that to this end the courts should be given full rule-making powers." This section places primary responsibility for such rule-making in the Supreme Court, reserving to the Legislature a power to change rules of procedure by a two-thirds vote.

(Sec. 20 Court Administration)

A coequal factor in New Jersey's historic modernization of its judicial system has been the vesting of administrative authority and responsibility in its chief justice, with power to assign judges to courts or areas for temporary service as needed. To assist the

chief justice by supervising the management and housekeeping functions of the courts, both statewide and local, and by furnishing him with accurate and current statistics on court business, an administrative director is essential. This has been demonstrated not only by the economies effected by the Administrative Office of the United States Courts since its establishment in 1939, but also by the fact that nearly a third of the states have since followed the example thus set. Its inclusion in this section will, together with the other provisions contained in this article, place Alaska in the vanguard of jurisdictions whose judicial systems typify the best and most modern principles of efficient judicial administration and will provide the guarantee of a strong, fearless and independent judiciary.