FOCUS

• Focus on the debates about:
  – Elected judges vs. appointed.
  – Merit selection
  – Composition of the judicial council
THEMES

• Themes
  – Independent judiciary
  – Freedom from political influence
  – Public accountability
  – Modern court system
Why Are these debates relevant today?

• Role of Constitution in society
• Role of an independent judiciary in a democracy
“A Judiciary for Alaska”

Note: The instructors are indebted to “A Judiciary for Alaska” presented at the 2005 Alaska Bar Historians Luncheon by Justice Warren Matthews (Ret.) in commemoration of the 50th Anniversary of Alaska’s Constitutional Convention. November 8, 2005. Pictured here at the event are: Front Row, L-R: Delegates Seaborn Buckalew, Jack Coghill, Vic Fischer, and George Sundborg. Back row, L-R: Justice Warren Matthews, presenter; Katie Hurley (Chief Clerk), Thomas Stewart (Secretary), Leroy Barker, Chair, Bar Historians Committee
Quiz: Who was the Secretary of the Constitutional Convention and later Administrative Director of the Alaska Court System and a Superior Court Judge?
Preparing for the Constitutional Convention

Thomas Stewart of the Alaska Statehood Committee meets with John Corcoran of the Public Administration Service, a non-profit organization affiliated with the Council on State Governments, to prepare handbooks for convention delegates.

Anchorage Daily Times, July 8, 1955
Convention Secretary Thomas B. Stewart, Back, with Convention Consultants
Quiz: Name two reasons why Tom Stewart recommended Fairbanks in winter for the Constitutional Convention.
Quiz: Why were there 55 delegates? How were delegates chosen?
The Judiciary --- Guardian Of Rights Of Citizens

by Thomas B. Stewart
Executive Officer
Alaska Statehood Committee

One of the greatest challenges, and simultaneously, one of the rarest opportunities, will face the delegates of the Alaska Constitutional Convention in the problem of designing a judiciary for the future of Alaska. The challenge is great because the judiciary rests the ultimate protection of the fundamental rights of persons traditionally guaranteed by our American federal and state constitutions; only a well-designed judiciary can efficiently and fairly perform this guardianship function. The opportunity is rare because Alaska, not having as a Territory its own judicial system, is free to choose from the best modern concepts of a judiciary without being hampered by that resistance to change which so often characterizes long-established systems.

The people of Alaska have grown accustomed to a federal judiciary provided by presidentially appointed judges and a system of district commissioners. With statehood, some of these services must be replaced by a state judicial system. This is a crucial changeover. Not only must the new state judiciary administer justice promptly and impartially, but it will have the added task of interpreting the new constitution. These interpretations can have an important effect on the future of the state.

The issue of what principles and concepts might be embodied in the constitution in a judiciary article can well be considered in terms of three basic topics: (1) the organization of the court system; (2) the personnel of the system, including qualification, selection, tenure, and related matters; and (3) administration of the system created.

In recent times there has developed a surprising unanimity of opinion among both practitioners and theorists as to the remedies for defects in existing state systems. Practicing attorneys, judges, legal theo-
“...[I]n the judiciary rests the ultimate protection of the fundamental rights of persons traditionally guaranteed by our American federal and state constitutions; only a well-designed judiciary can efficiently and fairly perform this guardianship function.”

--Thomas Stewart
Alaska’s Constitutional Convention Delegates
1955-56
Convention Executive Committee: L-R, Front: Frank Peratrovich, First Vice President; William A. Egan, President; Ralph J. Rivers, Second Vice President; L-R, Back: Mildred R. Hermann, Temporary President; Doris Ann Bartlett; Thomas B. Stewart, Secretary; Katherine T. Alexander (Hurley), Chief Clerk.

Quiz: Who was the sole Alaska Native delegate to the Constitutional Convention?
Members of the Committee on the Judiciary: L-R, Front: R.E. Robertson; George M. McLaughlin, Chair; Maurice Johnson. L-R, Back: Thomas C. Harris; Ralph J. Rivers; Irwin L. Metcalf; Warren Taylor.
GEORGE MCLAUGHLIN
Committee Chair
Attorney
Anchorage
THOMAS C. HARRIS

Businessman

Valdez
MAURICE T. JOHNSON
Attorney
Fairbanks
IRWIN L. METCALF
Merchant
Seward
R. E. ROBERTSON
Attorney
Juneau
WARREN A. TAYLOR
Attorney
Fairbanks
Greetings...

from CONSTITUTION HALL
ALASKA CONSTITUTIONAL CONVENTION
UNIVERSITY OF ALASKA CAMPUS AT FAIRBANKS, ALASKA

A MERRY CHRISTMAS
and a
HAPPY NEW YEAR

CARRO and BOB ROBERTSON
Committee on the Judiciary:  L-R, Irwin L. Metcalf; R.E. Robertson; Maurice T. Johnson; George M. McLaughlin, Chair; Dr. Sheldon D. Elliott, Consultant; Ralph Rivers; Thomas C. Harris, and Edward V. Davis (visitor).  
*Photo by Steve McCutcheon, courtesy of Katie Hurley.*
Studies from the Public Administration Service

Including:

“The Judicial Department”
VII

THE JUDICIAL DEPARTMENT

A staff paper prepared by Public Administration Service for the Delegates to the Alaska Constitutional Convention

November, 1955
Ernest R. Bartley
Author of
“The Judicial Department”

Ernest Bartley, L, confers with Robert Atwood, Chair of the Alaska Statehood Committee
Bartley’s Recommendations for the Judiciary Article

- Keep the Article **SIMPLE**

- Specify that the court system should be **UNIFIED & CENTRALLY ADMINISTERED**

- Consider providing for a **TRIAL COURT** of general jurisdiction

- Consider prescribing **BASIC QUALIFICATIONS** for judges

- Specify a **METHOD OF JUDICIAL SELECTION:** The elective system is not recommended; instead, appointment after screening by a nonpartisan commission is favored, as in the “Missouri Plan”

- Create a **JUDICIAL COUNCIL** with a mix of 3 lawyers and 3 non-lawyers for staggered 6-year terms, and the Chief Justice
Prescribe the **TENURE** of judges. Lengthy fixed terms until a reasonable retirement age is recommended; Missouri Plan combines fixed terms with periodic retention elections.

Decline to address **SALARIES & RETIREMENT**—not proper subjects for the constitution. Just protect against their diminishment during a judge’s term.

Consider methods for **JUDICIAL REMOVAL FOR CAUSE**

Specify **COURT AUTHORITY OVER RULES** of judicial administration and of practice and procedure.

Create a **CENTRALIZED ADMINISTRATION** for the court system with an administrative director appointed by the Chief Justice.
“The Alaskan Constitutional Convention is in the fortunate position of being able to adopt many of the more modern practices sanctioned by such groups as the American Bar Association and the American Judicature Society. The unified court system, the Missouri Plan for the selection of judges, administrative centralization of the judicial system, power in the court’s to establish rules of practice and procedure, the establishment of a judicial council—these and other improvements will necessarily demand a careful consideration with a view toward possible incorporation in the fundamental law of Alaska.”

--Ernest R. Bartley, in “The Judicial Department”
R.E. Robertson’s Original Committee Proposal for the Judiciary Article

Quiz: What two provisions in this draft follow the U.S. Constitution’s approach to protecting judicial independence?
<table>
<thead>
<tr>
<th>Member</th>
<th>Favor a Supreme Court</th>
<th>How many members shall Supreme Ct have?</th>
<th>Shall Supreme Ct have other than appellate jurisdiction?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robertson</td>
<td>Yes</td>
<td>Not less than 3—no more than 7</td>
<td>Only in habeas corpus &amp; other extraordinary writs when no superior judge available</td>
</tr>
<tr>
<td>Metcalfe</td>
<td>Yes</td>
<td>No less</td>
<td>Undecided; favors trial jurisdiction if necessary.</td>
</tr>
<tr>
<td>Johnson</td>
<td>Yes</td>
<td></td>
<td>Only in habeas corpus &amp; other extraordinary writs when no superior judge available</td>
</tr>
<tr>
<td>Harris</td>
<td>Yes</td>
<td></td>
<td>Right to sit in cts of original jurisdiction when needed.</td>
</tr>
<tr>
<td>Rivers</td>
<td>Yes</td>
<td></td>
<td>Such original case corpus &amp; jurisdiction other exceptions as any ordinary writs be necessary to complete determination of any case on review.</td>
</tr>
<tr>
<td>Taylor</td>
<td>Yes</td>
<td></td>
<td>Undecided; favors trial jurisdiction if necessary.</td>
</tr>
<tr>
<td>McLaughlin</td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Term of Supreme Court Judges.**

- Robertson: 6 yrs., Missouri Plan
- Metcalfe: 9 yrs., under Missouri Bar Plan
- Johnson: 8 yrs., Missouri Bar Plan
- Harris: Initially 3 yrs. then 7 yrs. Missouri Bar Plan
- Rivers: Governor
- Taylor: Governor
- McLaughlin: Governor

**How is Chief Justice chosen?**

- Robertson: Governor
- Metcalfe: Governor
- Johnson: Governor
- Harris: Governor
- Rivers: Governor
- Taylor: Governor
- McLaughlin: Governor

**Favor a Superior Court of General Jurisdiction.**

- Robertson: Yes
- Metcalfe: Yes
- Johnson: Yes
- Harris: Yes
- Rivers: Yes
- Taylor: Yes
- McLaughlin: Yes

\[ Y = \text{means member will yield on point} \]
<table>
<thead>
<tr>
<th>Name</th>
<th>How many members shall Superior Court have?</th>
<th>Term of Superior Court judges?</th>
<th>Mandatory retirement age of judges of the</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robertson</td>
<td>5, one for each judicial division, one at lg. Chief Justice to assign forums</td>
<td>Life term, subject to Missouri Pl. Plan</td>
<td>No</td>
</tr>
<tr>
<td>Metcalfe</td>
<td>4 or more</td>
<td>4 yrs, Missouri Plan</td>
<td>75 yrs</td>
</tr>
<tr>
<td>Johnson</td>
<td>5 or more</td>
<td>7 yrs Missouri Plan</td>
<td>65 yrs</td>
</tr>
<tr>
<td>Harris</td>
<td>4 or more</td>
<td>5 yrs Missouri Plan</td>
<td>70 yrs</td>
</tr>
<tr>
<td>Rivers</td>
<td>one or more</td>
<td>6 yrs &amp; Trial term thereafter than 7 yrs on retention under Missouri Bar Plan</td>
<td>70 yrs</td>
</tr>
<tr>
<td>Taylor</td>
<td>5</td>
<td>12 yrs under Missouri Plan</td>
<td>None, otherwise 75 yrs.</td>
</tr>
<tr>
<td>McLaughlin</td>
<td>4 or more</td>
<td></td>
<td>70 yrs</td>
</tr>
</tbody>
</table>

- Robertson's role: 5, one for each judicial division, one at lg. Chief Justice to assign forums.
- Metcalfe's role: 4 or more.
- Johnson's role: 5 or more.
- Harris's role: 4 or more.
- Rivers's role: one or more for each judicial division established by the legislature.
- Taylor's role: 5.
- McLaughlin's role: 4 or more.

**Term of Superior Court judges?**
- Life term, subject to Missouri Pl. Plan.
- 4 yrs Missouri Plan.
- 7 yrs Missouri Plan.
- 5 yrs Missouri Plan.
- 6 yrs Trial term thereafter than 7 yrs on retention under Missouri Bar Plan.

**Mandatory retirement age of judges of the Superior Court**
- Supreme Court:
  - No: 75 yrs.
  - No: 75 yrs.
- Superior Court:
  - No: 65 yrs
  - Y: 70 yrs
  - Y: 70 yrs
  - Y: 70 yrs
  - Y: 70 yrs
  - None, otherwise 75 yrs.
<table>
<thead>
<tr>
<th></th>
<th>Robertson</th>
<th>Metcalf</th>
<th>Johnson</th>
<th>Harris</th>
<th>Rivers</th>
<th>Taylor</th>
<th>McLaughlin</th>
</tr>
</thead>
<tbody>
<tr>
<td>Methods of removal</td>
<td>Initiated by Alaska Bar or House of Reps, &amp; tried before Senate; 2/3 Senate vote necessary to impeach.</td>
<td>Same as State officials generally.</td>
<td>Initiated by Alaska Bar or House of Reps, &amp; tried before Senate; 2/3 Senate vote necessary to impeach.</td>
<td>Removal for cause by Judicial Council</td>
<td>Removal for cause by Judicial Council</td>
<td>Undecided; prefers Robertson-Johnson method.</td>
<td></td>
</tr>
<tr>
<td>Minimum salary for judges</td>
<td>as legislature shall determine</td>
<td>as legislature shall determine</td>
<td>as legislature shall determine</td>
<td>as legislature shall determine</td>
<td>as legislature shall determine</td>
<td>as legislature shall determine</td>
<td></td>
</tr>
<tr>
<td>Methods of Appointing Judges:</td>
<td>By Governor</td>
<td>By Governor</td>
<td>By Governor</td>
<td>By Governor</td>
<td>By Governor</td>
<td>By Governor</td>
<td></td>
</tr>
<tr>
<td>From list of 3 names submitted by Alaska Bar Asso; or in alternative FROM Judicial Council</td>
<td>From list of 3 names submitted by the Judicial Council</td>
<td>From list of 3 names submitted by judicial council</td>
<td>From list of 3 names submitted by judicial council</td>
<td>From list of 3 names submitted by judicial council</td>
<td>From list of 3 names submitted by judicial council</td>
<td>From list of 3 names submitted by judicial council</td>
<td></td>
</tr>
<tr>
<td>Favors direct election of judges</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td></td>
</tr>
<tr>
<td>Rule making power vested in Supreme Court to make rules for all courts?</td>
<td>Yes, absolute</td>
<td>Yes, but not absolute</td>
<td>Yes, but absolute; rule may be changed by 2/3 vote of legislature which may be overruled by veto of governor</td>
<td>Yes, but absolute; rule may be changed by 2/3 vote of legislature which may be overruled by governor</td>
<td>Yes, but absolute; rule may be changed by 2/3 vote of legislature which may be overruled by governor</td>
<td>Yes, absolute; but would consent to provision for overruling by legislature but not by governor</td>
<td></td>
</tr>
<tr>
<td>Name</td>
<td>Yes</td>
<td>No</td>
<td>Undecided</td>
<td></td>
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<tr>
<td>Robertson</td>
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<tr>
<td>Metcalfe</td>
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<tr>
<td>Johnson</td>
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<tr>
<td>Harris</td>
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<td>Rivers</td>
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<tr>
<td>McLaughlin</td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

**Supreme Court to make rules for administration of all courts?**

- No, except Chief power
- Vest Supreme
- Undecided
- Overruled by legislature.

**Inferior courts to be created?**

---

**Shall the Superior Court have power to remove all inferior court judges?**

- Yes, upon proper accusation.
- No, Judicial Council
- No, Inferior Ct Judges
- Yes, subject to rules of Supreme Ct.

---

**Favor creation of a judicial council consisting of following membership?**

- No objection.
- Council to consist of 7, from Alaska Bar and 3 apptd by the Governor.
- Not acceptable to Chief or Associate Justice serving on Committee.
Minimum qualifications of Supreme Court Judges:

Robertson
Citizen of U. S. & Alaska; 5 yrs practise in Alaska. 10 yrs practice in Alaska.

Metcalf
10 yrs practice in Alaska.

Johnson
Citizen of U. S. & Alaska; 10 yrs practice in Alaska.

Harris
10 yrs practice in Alaska.

Rivers
5 yrs practice in Alaska.

Taylor
5 yrs practice in Alaska.

Mcloughlin

Minimum qualifications of Superior Court Judges:


10 yrs practise in Alaska.

Citizen of U. S. & Alaska; 5 yrs practise in Alaska.

10 yrs practise in Alaska.

10 yrs total of which at least 7 yrs in Alaska.

Minimum age: 35 yrs.
Hard Work: R.E. Robertson rests at Constitution Hall
Cover Letter from Judiciary Committee to Convention President William A. Egan

December 5, 1955

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.
Judiciary Committee Proposal Relayed to the Full Convention

December 5, 1955

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 a Supreme Court, a Superior Court, and such other courts as the Legislature may establish. The jurisdiction of the respective courts shall be prescribed by law and the courts shall constitute a unified judicial system for purposes of operation and administration.

Supreme Court

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

Superior Court

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

Nomination and Appointment

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

Committee Proposal No. 2 - page 1
CONVENTION DEBATES
On the Judiciary Article Relevant to Judicial Selection and Retention

✓ Method of Judicial Selection
  • Appointment or Election?
  • Implementing Constraints on the Governor’s Choices

✓ Composition of the Alaska Judicial Council
  • Balancing lawyers and public members evenly
  • Legislative confirmation of public, not lawyer, members

✓ Ensuring Public Accountability
Regular Judicial Retention Elections
Method of Judicial Selection
Appointment or Election?

*Judiciary Committee Recommendation:*
“The Missouri Plan”
Appointment by Governor from nominees selected by Judicial Council
“Being an attorney, I know the background of the appointment system of judges. Being an Alaskan I have lived under the appointment system so long that I feel that I should have the right to vote for these judges. The thought behind this I believe and the thought of the Judiciary Committee no doubt is to keep judges out of politics. In my opinion this appointment method will bring judges into politics more so than an election by the people. For that reason and in regard to many other reasons which I do not want to take up the time of the Convention to discuss now, I am opposed to the appointment by the governor on nomination by the judicial council.”

- ROBERT MCNEALY
“As Chairman of the Judiciary Committee, I feel in answer to the argument presented here and the proposal to strike, I feel it proper to point out to the Convention that I, probably in this Convention, was the only elected judge present in this Convention. I was twice elected as municipal Magistrate for the City of Anchorage. I might point out, not in vanity or pride but as a factual argument that I never lost, and never won by less than double the vote of any other candidate. The last time I ran my recollection is that I won four to one. If any man should be in favor of the elective system, it should be I....”

-GEORGE MCLAUGHLIN
“When the elective system came in it was approximately the middle of the Nineteenth Century. It was found inadequate because of the fact that we will be confronted here in Alaska with not a nonpartisan judiciary, but a judiciary that in substance would be dictated and controlled by a political machine. I am a partisan myself, but I don't believe that our judiciary should be subject to the influences where they would have to go to any clubhouse to secure their nomination or have to secure funds and sometimes excessive and exorbitant funds for the purposes of being elected. I might also point out that one of the dangers of the elective system is the fact that a judge, whenever he makes a decision, he has to keep peering over his shoulder to find out whether it is popular or unpopular. If we determine the validity of our laws in terms of popularity as the general acceptance, we are then not a government of laws on which we pride ourselves. It is not the function of the judge to make the law, it is his function to determine it; and the way to keep them independent is to keep them out of politics.”

- George McLaughlin
“The judges (in an elective system) had to file in a competitive political field every two years, and there was always that undercurrent that litigants were contributing to the judges’ campaign funds...It does not seem to be right that a man sitting on the bench should be the subject of contributions from various and sundry people, either presently litigants or people with cases pending. The best soap-box orator often times gets elected and your better attorneys...would hesitate to throw their hats into the ring and get into that kind of a circus...So I think it is positive with some decency of approach (that) the judicial council will seek for the best available timber.”

-RALPH RIVERS
“The result (of an elective system) was that the judiciary was not and could not be independent, depending on the whims of the time...Now the elective system has much to recommend it, but likewise it has much against it. In the creation and maintenance of an independent judiciary, and I believe without qualification ...that all of us here want an independent judiciary, a judiciary that will not be swayed by the public will at any particular moment, a judiciary that will not be subject to political pressure, a judiciary that will not be subject to pressure from the executive branch of government.”

-EDWARD DAVIS
"I have had almost fifteen years experience in serving with the Justice Department and as part of that I had charge of the jail at Seward for nearly fourteen years where we had from three to thirty inmates in the jail. Here is an observation from having a ringside seat of all this activity going on and taking part in it. I wish to make an observation that there is a great lack of uniformity in the distribution of justice and it is also my personal observation that lack of uniformity is due to probable pressures being exerted. Perhaps people who are fortunate to be wealthy can employ extra good lawyers and put on a real good case before the court and jury and thereby a man with money gets a lighter sentence than the person who does not have money. That is my criticism of the judicial system--lack of uniformity. To illustrate roughly, maybe I have seen a man get ten years for manslaughter for killing a man and another sentence maybe fifteen years for just shooting a leg off. There is lack of uniformity. So speaking sincerely from my heart, I ...believe this proposal here does it, it makes the judiciary courts strictly nonpartisan and as near independent so that they can be fearless and interpret the law equal to all and special privilege to none..."

- Irwin L. Metcalf
“Mr. McNealy says, ‘Well, we have had judges appointed here for many years. I would like to protect those men.’

Perhaps Mr. McNealy has practiced under those appointed judges so long he is like the prisoner who after many years begins to love his chains.”

-WARREN A. TAYLOR

Fairbanks Delegate
Attorney
“Now in examining these two different methods of selecting a judge--first, if he is appointed by a judicial committee and approved by the governor, he should have these two qualifications--ability and integrity. It is certain, almost one hundred percent certain, that a man with ability will be selected. If he campaigns and that election goes to the people, that is not so certain because the candidacy will be open to any attorney. There are attorneys of all degrees of fitness for that office, of course. On the other hand, if the judicial council appoints a man, there is no guarantee of his integrity, but certainly these people are well acquainted with him and there is a greater guarantee than if he were selected by popular vote. So in balancing one method against the other, in my own mind I would say that by election you have no guarantee whatever of ability. You do have nearly one hundred per cent guarantee if appointed. In integrity, you have no guarantee whatever of integrity in election. In appointment you have some guarantee of integrity. I believe that this Committee report that outlined the system of selection of our judges ... is just about as perfect as can be, it's not perfect, nothing's perfect, but I think it is a system we want...”

-Frank Barr
Fairbanks Delegate, Pilot, U.S. Marshal
“Mr. President, at this moment we are at the heart of the problem of creating an independent judiciary. Some of us have not always been proud of segments of the legal profession in Alaska, but at this moment I am very proud of this Committee of five lawyers and two laymen who have recommended this plan and this proposal to us. If this proposal is adopted, I shall be and shall continue to be proud of not only the legal profession in Alaska, but of the Alaskans who in their search for an independent judiciary have drawn the very best from the studies and the constitutions of forty-eight states and have rejected the poor and the second rate.”

-John S. Hellenthal
Anchorage Delegate Attorney
OUTCOME FROM THE FULL CONVENTION:

Amendment to require judicial elections rejected by a vote of 51 - 2
Composition of the Alaska Judicial Council

• Balancing lawyers and public members evenly
• Legislative confirmation of public, not lawyer, members
“The complement of our judicial council, that is three selected directly by the bar association, three appointed by the governor, and the chief justice being ex officio member. The constitution of our judicial council is exactly the same as that in the State of Missouri...

What is the theory? The theory is you have a select group. The lawyers know who are good and they know who are bad. The laymen represent in substance the public in order to protect them in substance from the lawyers, but they are confirmed by the senate for one reason. The laymen in the committee insisted upon it so that we would have a broader base and the governor himself would not necessarily be able to nominate to the judicial council, his own house.”

- George McLaughlin
“The reason, Mr. President, for that is that is the very essence off the so-called Missouri Plan. The three who are appointed by the bar represent a craft in substance, the theory being, and it has worked out in Missouri, that they best know their brothers, and they are there based solely on their professional qualifications but selected because they would represent, in theory, the best thinking of the bar and they are there solely because they represent their craft. In essence, there is nothing undemocratic about it because of the fact that we know by its very nature that the judges of the supreme and superior court will be attorneys. The three lay members are in substance those who represent the public.”
“In terms of whether or not the lawyers would pick the poorest or the best, my answer to that is the answer of Benjamin Franklin, who in arguing for appointive system pointed out that it would be very advisable to have an appointive system under the Federal Constitution because of the fact that every lawyer, having determined that a judgeship was open, would promptly designate and recommend the most successful of his brothers in order to steal his practice. Do the lawyers, do they have a vested interest in the proposition? Definitely they do, but as craftsmen or professional men they know best who is the most desirable. Will you get unanimity on that judicial council? If the Alaska Bar Association or if any bar association in this Territory or in the United States can be used as an example, as long as you have three lawyers you will have three different opinions. It is probably the most democratic and probably the only efficient system that has yet been devised.”

- George McLaughlin
“The purpose for this amendment is that I foresee that the nonattorney members of this board are going to be subject to all the ills of political skulduggery on the floor of the senate or the joint house assembled, and I see that if we are going to pick the judges on nonpartisan basis, that it should be left up to your representative of the government, the highest official in the executive branch which is your governor. That is the reason why I voted for the amendment to strike that, the acceptance or confirmation by the senate. I think if we are going to accept some of them by the senate confirmation, we should accept them all.”

-Jack Coghill

Arguing for legislative confirmation of all council members.
“Coldly and calculatingly if this motion is passed you might as well tear up the whole proposal and provide for the election of judges, because then it would be more efficacious and more democratic. The whole theory of the Missouri plan is that in substance, a select and professional group, licensed by the state, can best determine the qualifications of their brothers. The intent of the Missouri Plan was in substance to give a predominance of the vote to professional men who knew the foibles, the defects and the qualifications of their brothers. It is unquestionably true that in every trade and every profession the men who know their brother careerist the best are the men engaged in the same type of occupation. That was the theory of the Missouri Plan. The theory was that the bar association would attempt to select the best men possible for the bench because they had to work under them. If you require confirmation of your attorney members you can promptly see what will happen…no longer is the question based solely on the qualification of the candidate for the bench...All you have is one other political method of selection of your judges.”

- George McLaughlin
“The purpose of the draft as now written is to have a non-partisan selection of these lawyer members, and the minute you adopt something like this, you are making a partisan proposition out of it. We want that to carry through to a non-partisan selection of judges, so I think our thinking is quite clear.”

- Ralph Rivers
“Now, I would like to speak personally of the matter of politics involved. I don't think that running for a judgeship either, should be a popularity contest. But here we have three laymen appointed by the governor, three lawyers appointed by the bar association. I am looking ahead to a situation of this kind that will arise where a governor appoints three laymen...and they are beholden to the governor. The governor, be he Republican or Democrat, tells these three laymen, ‘Here is Jones and Smith here now, they have been good party workers, they helped get me into office. Now, I want you three laymen on the board, Jones and Smith should be rewarded, so I want you to come up with their names.’ Then the three lawyer members don't agree. They want two different members to be appointed, so they come up with two. The three laymen members say to the governor, ‘What are we going to do?’ the governor says ‘Hang tough.’ ... So I can see an absolute stalemate in that regard.”

- Robert McNealy
Chief Justice as Tie-Breaker

HURLEY: Mr. President, I would like to address a question to Mr. McLaughlin ... In Section 11 you mention that "the chief justice shall thereafter be ex officio a seventh member and the chairman of the judicial council? And then mention that it requires an affirmative vote of four of its members. Does the term "ex officio member" restrict his voting rights in that group?

MCLAUGHLIN: It does not restrict his voting rights at all.

HURLEY: In the matter of a tie he would have a vote?

MCLAUGHLIN: He does anyway.
OUTCOME FROM THE FULL CONVENTION:

Amendment to require legislative confirmation of lawyer members of the council rejected by a vote of 49 - 4
Ensuring Public Accountability
Regular Judicial Retention Elections
“...the best compromise and the best solution to a vexing problem between those who feel we should have lifetime tenure so judges can be absolutely independent, (and those who feel) we should have short terms so that judges could be subject to the popular will.”

--George McLaughlin, describing the balance the Judiciary Article attempted to achieve on the issue of judicial selection
“What we are trying to prevent are some of the travesties which have existed in some of the states where our judges are picked and plucked directly from the ward political office. Many of the members compromised. We are not happy, in a sense, with the compromise, but the only system that has ever worked apparently in recent years, has been a combination of the appointive and the elective.”

- George McLaughlin
“Now, I am speaking from years of experience as to how the public in general feel about the attorneys and I am in hopes that the Alaska Bar Association will so regulate our own ranks that the attorneys will be considered as professional men and not shysters in the future. But in carrying on this campaign with the general public, unless their minds are changed, they are going to say, "What is the matter, this bunch of lawyers here are trying to get rid of good old Judge Whoozit." So Judge Whoozit comes out, he doesn't have to spend any money campaigning, all he's got to do is tell the reporter, "This bunch of lawyers--I have stepped on their toes in trying to carry out the laws as written and this bunch of lawyers are trying to sabotage me." Judge Whoozit will go back into office by the biggest vote that it is possible to give him. The only ones who will ever vote against him will be the lawyers and there's not enough of them in the Territory to have an effect on the election. If I were a judge and wanted to be continued in perpetuity in office, then I would want the attorneys to come out and recommend against me.”

-Robert McNealy
Alaska Constitution

Adopted by the Constitutional Convention-1956
Approved by vote of the People of Alaska

LEGISLATIVE
Senate (20) — House (60)

EXECUTIVE
Governor
Lt. Governor
Cabinet (Commissioners)
State Agencies

JUDICIAL
- Alaska Court System
- Alaska Judicial Council

Quiz: A third entity was later added to the Judicial Branch by statute. Can you name it?
Alaska’s Constitution
Signed in Fairbanks
February 5, 1956

Personal copy from the collection of R.E. Robertson
The Constitution of the State of Alaska

R.E. Robertson

For your diligent application to the writing of The Alaskan Constitution which protects our divine right to be free, this plaque is gratefully presented.

Fairbanks
Chamber of Commerce
Alaska Drafts A Constitution

A JOB of unanticipated magnitude, undertaken by 55 venerated Founding Fathers at Philadelphia in 1787, was finished last week by 55 men and women at Fairbanks, Alaska.

The United States of America was, in a manner of speaking, completed.

The 55 Alaskans, after 75 days of arduous and earnest labor, dotted the last i and crossed the last t in the State constitution of Alaska. Barring some upheaval of a nature not yet imagined, this will stand as the final document of its kind in the evolution of the world’s foremost nation; Hawaii, the only other territory with a chance for Statehood, drew its organic act in premature hopefulness some five years ago.

‘Fair and Just Treatment’

The Alaska constitution, embracing fifteen articles and three ordinances, bears evidence of patient, intelligent effort. Its framers strove for clarity, brevity and strength, and went frequently for inspiration to the New Jersey constitution, as revised in 1947, the Hawaii constitution, and a model constitution compiled by the National Municipal League.

The result is a happy combination of the old principles and the new order. The Bill of Rights

modern situation in this specific provision:

“The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.”

The constitution as drawn was signed by 54 of the 55 delegates; the lone dissenter put on his hat and went home in protest against the inclusion of a provision that outlaws fish-traps and the exclusion of a “right-to-work” clause. The drafting and signing do not, of course, confer Statehood on Alaska. The constitution has yet to be ratified at the primary election in April. Congress, hitherto oddly reluctant, has yet to vote Alaska—and Hawaii—into the Union.

Tenting at the Capitol

The Alaskans are both hopeful and determined. The best estimates say they favor Statehood five to one. The delegates (voting 47 to 5) decided to dramatize their case in a manner made famous by Tennessee under similar Congressional discouragement in 1796. They will elect two United States Senators and one United States Representative and send them to Washington with instructions to camp there until admitted to Congress with voting rights and privileges.

Alaska has, of course, every qualification of Statehood and no disabilities. (The same goes for Hawaii.) The new constitution clearly demonstrates a capacity for government. The natural resources and agricultural and mining developments are tremendous.

We have repeatedly urged that Hawaii and Alaska be made the forty-ninth and fiftieth States. We do so again. This time our enthusiasm for Alaska is amplified by the work of the constitutional convention—and by the fact, more or less subtly emphasized in Fairbanks, that the future State of Alaska covers 586,000 square miles. That is real big. Bigger than Texas. Twice as big.
ALASKA RECEIVES STATEHOOD
President Dwight Eisenhower signs the Admission of the State of Alaska into the Union while Alaska Statehood Officials Look On—January 3, 1959

Quiz: Can you name the members of Alaska’s Congressional delegation in this photo?
Alaska’s First Judicial Council, September 1959, Seward
Alaska’s First Supreme Court in Session

circa. 1959

Quiz: Can you name Alaska’s first Chief Justice? Any of the other two justices? Which of these justices went on almost immediately to the federal bench?
November 1959, Juneau

Front Row: Alaska Supreme Court, L-R: Justice Walter Hodge, Chief Justice Buell Nesbett, Justice John Dimond.

Back Row: Alaska Superior Court, L-R: Judge Walter Walsh, Judge Harry Arend, Judge J. Earl Cooper, Judge Everett Hepp, Judge Hubert Gilbert, Judge James von der Heydt, Judge Edward Davis, & Judge James Fitzgerald

**Quiz:** Which judge in this photograph would be the first to lose his seat in a judicial retention election?
Alaska’s First Superior Court Judges

**November 29, 1959, leaving Juneau for judicial training in New Jersey**

L-R, Front Row: Judge James A. von der Heydt; Judge Edward V. Davis; Judge James M. Fitzgerald; and Judge Walter E. Walsh.

L-R, Back Row: Judge J. Earl Cooper, Judge Everett W. Hepp; Judge Hubert A. Gilbert; and Judge Harry O. Arend.
ALASKA COURT SYSTEM

APPELLATE COURTS:

✓ Alaska Supreme Court
✓ Alaska Court of Appeals

(Added by the Legislature 1980)

TRIAL COURTS:

✓ Alaska Superior Court
✓ Alaska District Court

(Added by the Legislature 1968)
TODAY: 71 State Judges in Alaska
Serving 44 Court Locations Statewide
“Alaska is fortunate to have the constitutional guarantee of the merit system for the selection of judges. Our merit system has worked well in Alaska. It has produced high quality judges with integrity and abundant skills and it has kept out corrupting political influences that trouble other states.”

JUDGE THOMAS STEWART
1919-2007
“Alaskans can be grateful for its framers’ commitment to one of the most important cornerstones of democratic government: a strong and independent judiciary. For over half a century, their wisdom has given strength and meaning to the promise of justice for all.”

JUSTICE WARREN MATTHEWS
Alaska Supreme Court, 1977-2009
Chief Justice, Two 3-year terms
“As I have spoken to individuals in Alaska, I have gotten the strong sense that the Judicial Council sees its task as identifying those who will be outstanding judges, without regard to their political party or ideology...

My sense is that over time, this has truly been a merit-selection process and has produced courts with excellent judges...

I think the best selection process is one that truly emphasizes merit, and Alaska’s has succeeded in this regard.”

-ERWIN CHEMERINSKY
Dean, UCLA Law School, 2014
“(Our state judicial system) really changed in 1955 through the wisdom of the...delegates to the Constitutional Convention. They rejected the concept of straight partisan election of judges, and they rejected the Federal appointment scheme which is Executive appointment, confirmation by the Legislature and life-time tenure on good behavior. So they came up at that time...with the Missouri Plan, which is merit-selection, merit-retention. This is probably one of the greatest things that the Constitutional Convention did because, in my view, the Judiciary Article is a splendid example of foresight and incredibly skillful drafting...Now there are about 35 states that have some form of our system, and there isn’t a single state that wouldn’t want our system in full...”

**Justice Jay Rabinowitz**
Alaska Supreme Court
1965-1997
NEXT TIME:

IMPLEMENTING THE JUDICIARY ARTICLE:
The Alaska Judicial Council

ENSURING JUDICIAL ACCOUNTABILITY:
The Alaska Commission on Judicial Conduct