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Name: Judiciary Branch comments, Arthur Hippler, Rabinowitz, Kleinfeld, Ingraham, Davis, Ashenbrenner, Hippler

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Notes: Original on 10-inch reel. Master copy on CD.

[Recording begins with unclear talking.] The bar thought that there was [unclear]. [Unclear talking.] There's boom economy in 4th Judicial District. [Unclear.] The speaker says that they have been less than successful in attracting [unclear] and they still can't [unclear].

3:02 [More unclear talking.] [Unclear discussion.]

4:54 A man wonders if [unclear] can comment now and [unclear] if the activities of the bar [unclear]. [Unclear talking.] There's no reason to have a superior court judge in Nome.

7:47 [An unclear question.] The previous speaker says that he doesn't know what the judges get per diem, but if a Nome judge is going to spend lots of time in Anchorage, he should live there. [Unclear talking.]

If they get enough qualified people, it would be good to combine them in larger area and split the court into divisions. They could take the younger judges and put them in misdemeanor division or in the civil cases. In Fairbanks, the district court and the superior court are both overloaded. Often, they can't get judges into the superior court because lots of cases are falling on judges of district court. Cases that come to superior court are important and usually need to be heard right away. The speaker isn't sure if this has ever been discussed but says that it's perhaps not that important since they have hard time getting qualified people to apply to superior court.

In bush area, they can justify [unclear] if they also handle district court functions. It's economical.

In Nome, they had a magistrate, a district court judge, and a superior court judge. One judge could have done all those functions in Nome, but they had three judges.

11:28 The speaker thinks that the majority plan is a good plan. He questions whether election really serves a useful function. The only judges [unclear] who were involved with highly political controversy that the speaker doesn't want to get into. Other than that, he's not sure [unclear].

There's another body that has risen through the legislation that's not mentioned in the article at all. It should be included in the judiciary article, and that is the judicial qualifications commission. If a judge is really unqualified, a commission would be set up to assess the qualifications and remove the judge.

13:16 In a federal system, one is appointed for life. There's a book out called [unclear talking] that shows how incompetent people [unclear talking]. The judicial council functions well in Alaska, and the speaker noticed that shortly after statehood, there were lots of people [unclear talking.] The speaker doesn't think that happened. One time that politics has influenced judicial council was during Democratic administration when democrat judges were appointed. [Unclear]. Any unqualified judges haven't been elected and the speaker thinks everything has worked very well.

15:02 The rule-making power is very good. The speaker thinks that it's also good that the legislature can, by a majority, overrule a rule which keeps the court in check.

One of the amendments is rotating the chief justice when the court system is just set up. Now the court elects the chief justices who are rotated every three years [unclear comment]. A good thing about that system is that it reduces the misuse of power. Bad thing about it is that it doesn't allow any one person to really form his court like they can do in the federal system. That could be discussed.

Also, the administration of the court needs to serve at the pleasure of the chief of justice but now it serves the entire court. [Unclear comment of what happens if they don't like the administrator.]

17:51 The speaker thinks that the only bad thing about that [referring to the previous comment] is that it tends to [unclear] individual bureaucracy while the speaker doesn't like bureaucracy. The bureaucracy is self-perpetuating when nobody is checking on it. [Unclear discussion and comments.]

Another speaker says that making the system responsive to 5 men would professionalize [unclear]. [Unclear talking.]

21:11 Yet another man says that there were some comments in the bar that the administrative office does very little [unclear] and there were only few of them and very little [unclear] and interference from [unclear] of the court. Now there are a tremendous number of them and not much work to do because they like to intervene and send out questionnaires and forms to be filled out.

Another man says that when he mentioned the bureaucracy, he wasn't talking about the administrative [unclear]. A part of the anti-[unclear]. [Unclear talking.]

A man's voice says that it's an echo of underpopulated, warm, and slow type of service they could render in early territorial days of the court system. He says he doesn't agree with Judge Burger and that the questionnaires are intending to find out what lawyers are thinking and how the system is operating. They have a 15 million dollar operation with 8 people in the office building, not counting the secretaries. [Unclear talking.]

24:41 Another man says that when the constitution was written, it didn't occur to the delegates that the supreme court would be split and that one judge would live in Anchorage, one in Juneau, and one in Fairbanks. That brings a burden of travel and the speaker doesn't think that that was what was intended.

Another man says that that's an excellent point. [Unclear talking.] Geographical split has been maintained and the Supreme Court has been [unclear]. That's an ongoing problem. Majority of the work flow is generated in Anchorage. More than 80% of the work is there and it doesn't make sense to split anymore.

[Partially unclear discussion.]

27:00 Another man says that Judge Lewis and Hampton say that work is there if one combines superior and district court [unclear] and [unclear] service to the communities. If one is willing to travel, one can keep oneself more than occupied.

The speaker continues saying that they have one Native superior court judge who is at Kodiak, and says that he has visited places where no superior court judge or any tangible representative of a court system has ever visited. If they want to bring the Anglo-American justice system to people from different cultures, they have to have educated judges. [Unclear.]

Another man says that he doesn't disagree and that he thinks it's important for judges to get around. He doesn't think that it's necessarily important that they have the judges [unclear]. He thinks that maybe [unclear]. Certainly, they are going to

have superior court judges here and there and there's no need for a magistrate and a district judge in addition.

29:02 A man wants to comment from the point of view of a practicing lawyer about placing district judges in Fairbanks and Juneau even when most of the appeals are in Anchorage. For substantial periods of time, Fairbanks judges have tried more cases than Anchorage judges even when there are three judges as compared to 8.

Something that sometimes happens in hotly contested cases is that the party seeks some interlocutory release during the course of the trial or immediately after, where they need the Supreme Court. When the litigants are big and wealthy, they can afford to fly their lawyers down to Anchorage to seek media release.

Unless litigants are wealthy, and unless they have Supreme Court judges in the two other major communities of the state, the only people who can effectively use Supreme Court for interlocutory review are big and wealthy litigants, or litigants in Anchorage.

There's the hardship and expense of travel for Supreme Court judges in Fairbanks and Juneau, but there's also value for the litigants of moderate means in having judges present in Fairbanks and Juneau.

31:08 A man's voice comments that in the article he's read, are talking about functional problems under beautiful theoretical [unclear]. His experience is that [unclear] values in the article are spread on a vast geographic area with cultural differences. One of the values they give up when pulling all the judges and justices into a central location is having familiarity with different locations and different problems throughout the state. That's a value they are going to lose.

Nevertheless, the number of cases is so small that it would save money to come from Anchorage to Fairbanks those 10 times a year when an interlocutory relief is filed. [Unclear talking.] The previous speaker comments that without political considerations, they have wasted incredible amount of time with being geographically separated.

33:10 Another man says that Peter Ashengrander wasn't present during the bar fight and doesn't sit in the Alaska court system so he can have somewhat of a different perspective so he might have a different perspective on constitution as a theory of judiciary article.

Peter says that the judiciary article created three institutions: The Supreme Court, the superior court, and the judicial council. They have heard discussions about the functions of each of the institutions. When one writes a constitution and creates institutions like the Supreme Court, one hopes that they will grow and be able to meet challenges that were unforeseen in 1956. One of the problems that have developed is the one of retention election. One is trying to get people to register to vote and give them information about the judges. One could read about all of the judges even if they were in Anchorage and not in one's ballot.

Another man says that when one reads the pamphlet, one would be disappointed but on the other hand, they should be happy because that's the first time judicial council gives them any information at all.

35:07 The speaker says he wants to comment on that because more and more, they are hearing frustration about why judges should have to be lawyers. The speaker says that that may be because of Watergate. Although the judges came off better than anyone else, it made people realize that lawyers aren't as sacrosanct as they have been and perhaps people will look at their function more carefully. The problem might be that the judges don't run for offices in the first place and they don't make any promises. Then when one sees them on the ballot, one can't evaluate their performance against what they promised to do. The judge candidates only have recommendations.

The problem that has developed in past 20 years is how they are going to inform the public about the retention election. He's pessimistic about people wanting to know very much about judges. They aren't coming to see court cases even to see an average criminal case, but only want to read the results from the newspaper.

37:39 Other questions are what they are going to do about the pressure on the court system and the notion that lawyers have too much power in the court system, and if there's anything that could be done about that. He's not suggesting a public relations campaign but just wants to hear what the concerns are.

A man's voice says that one of the most problematic areas in Alaska has been provision of some sort of dispute-resolution mechanisms towards rural areas because of cultural differences and expanse and all the problems that arise. Art [Arthur] Hippler has done considerable work in the area and the speaker would like him to comment.

Art Hippler says that he was thinking about doing it in a context of a larger overview. Rather than trying to concentrate on any particular aspect of the

constitution, they should keep in mind what it is that the framers [of the Constitution] had in mind that was implicit in their operation. Inevitably, they had to assume that extension of certain kinds of services was going to be essentially a budgetary problem and that eventually they would get the services. The initial operation was going to be constricted by budget and there was some assumption about feeling that most people in state of Alaska would respond well to whatever might occur to them.

39:34 Hippler can be sure is that a number of delegates are aware of cultural differences but says that they didn't take that too much into an account. "They most assuredly, most assuredly, did not consider these in any negative sense." Just [unclear] alluded to two problems that were based on administration of justice in the state of Alaska, especially in bush areas. The first one is logistics: It's very expensive to get anywhere. The second is the quality of population that is being administered to.

Another man asks for a brief overview on what happened. Hippler tells that immediately after the purchase of Alaska from the Russians, American law begun to be [unclear] the first time among the Native peoples of Alaska. Prior to that, people had done very little to uphold the social order in their communities. Hippler wants to make it very clear that especially in Eskimo areas, there was nothing that would have even remotely resembled an adjudicative process that would take a care of a personal dispute. Personal disputes were solved based on who was strongest and who mobilized the largest number of friends. They were uncomfortable societies to live in at the time, endemic with violence, murder and suicide.

41:40 Most people generally agree that Alaska has an excellent court system but it has a tendency to break down when dealing with rural population. A large part of the breakdown is not the fault of the court system.

Prior to contact, people would often cast an offense in non-offensive terms. If a man took something that belonged to someone else, there was a tendency to see it as borrowing so that they wouldn't have to fight about it. Life in those communities was short, brutal and nasty and the oldest Eskimos that lived prior to contact were similar in their accounts, saying that coming of the U.S. law was a beneficial thing for the communities. Immediately upon impact of the U.S. Marshal or the coast guard, the communities were able to actually settle local disputes without murders for the first time ever. Eskimo village council system doesn't predate white contact.

44:12 People assumed in the pre-statehood justice system, that they could let people handle their own problems in the communities. It was partially because of realization that it would be difficult to control a situation that arises thousands of miles away and to figure out what is going on in a community. On a more naïve level, people felt that Eskimos could take care of themselves because they had racist attitudes toward Eskimos, seeing them as inferior people.

The major shift that occurred in administration of justice in the bush after the initiation of village councils that were permitted by the courts to function in a quasi-judicial fashion was the attempt to formally introduce a legal officer, ordinarily in the form of a magistrate.

The introduction of magistrates was almost a disaster for a couple of reasons. The village councils had been able to work together to handle local problems because they operated in non-confrontational way, magistrate was established as a single individual who looked as if he was responsible for decisions over other people's lives without being involved in a group discussion. When magistrate was formed, the village councils stopped handling any problems but magistrate was only able to handle maybe 3 out of 100 cases.

46:36 They suggested initiating things like conciliation boards and such, which were a legal device that allowed a person who has been injured by another to compromise the problem outside of the court and have that compromise accepted by local judiciary officer. That was one way of picking up the slack of minor problems that many people didn't want to bring to the magistrate because they seemed excessive and because they didn't want a single individual to make a decision for them.

[End of the recording.]