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A man's voice starts introducing people:

Judge Edward Davis was born in Idaho and he came to Alaska in 1939 after graduating from college and law school in Idaho. He's been to Alaska longest out of the panelists, and was a delegate for the constitutional convention. He was in private practice for 20 years and became a superior court judge in 1959. He retired from Superior Court bench in 1973 but has continued working elsewhere.

Justice J. A. [Unclear] was born in Philadelphia and received his degree from Harvard Law School in 1952. He came to Alaska, had private and public positions in his law practice. He became a superior court judge for the 4th judicial district of Fairbanks in 1960. After 5 years of that, he got appointed to the supreme court of Alaska. He was the chief justice from 1972 to 1975.

2:02 Art Hippler is an associate professor of Anthropology at Institute of Social and Economic Research and his doctorate is from University of California, Berkley. He has published papers with Stephen Conn about the systems they have in Alaska that provide judicial services in rural areas. They are responsible for the idea of conciliation boards that are discussed later.

Peter Aschenbrenner is substituting for Barry Jackson who got sick and asked Peter to substitute for him. Peter graduated from law school at Berkeley in 1971, and has practiced in Alaska since 1972. He served part-time as a magistrate for Fairbanks and has done some scholarly work with comparative law.

3:51 Miller Ingraham graduated from Columbia College in 1955 and Colorado law school in 1958 and came to Alaska in 1961. He was admitted to the Bar in 1962 and he's been in private practice of law ever since. He was the president of Alaska Bar Association in 1970-1971.

The speaker says he'd like to begin with Judge [Edward V.] Davis, who, as the delegate to the convention, can discuss what the provisions of the judiciary article are, as well as talk about the transition to statehood.

5:57 Davis says that he'd like to commence by going back to what Alaska [unclear] was at the time of constitutional convention and after it became a state. They had the old judicial divisions. They had First Division that encompassed Southeast areas, Second Division consisted of Nome, Kotzebue, and everything north and west from there, and the Third Division had Anchorage, Cordova, Valdez, Seward, and everything south and west from there. Lastly, the Fourth Division had Fairbanks, Big Delta, and everything north and east of Fairbanks. The judges were appointed by the President of United States and they were appointed for specific times. They were political appointments.

In many cases, judges were people with no contact with Alaska at all but were appointed for political purposes. That's not all bad since they had some good judges. They had some bad ones too.

7:50 That was the setup that existed when the Constitutional Convention happened in College, Fairbanks, in November of 1955. People will notice in judiciary article that it covers [unclear]. They can assume that judiciary is something that people in Alaska don't get too excited about unless they have either a very bad judge or a particularly good judge. Mostly the judiciary branch just takes care about its business without much intervention.

Davis noticed during his 17 years on the bench that they rarely have anybody watching what is going on in the courtroom. They have had people who call themselves court watchers over the years who tried to see that people got judged properly but outside of few things that have caught people's attention, daily work of the courts remains unobserved by people.

He's been talking with one of their Supreme Court judges who were at constitutional convention delegates and Davis was sure that [unclear].

12:18 Davis didn't mean to say that courts aren't serious business and people must be satisfied with how courts are working because if they aren't, it's only [unclear talking].

When a judge sentences somebody for violating the law, the judge tries to [unclear] and sometimes they should incarcerate a man more time than he is given.

14:27 Their constitution covered approximately 3 pages. [Unclear] bill of rights that there are 22 sections in bill of rights and just by looking at it, Davis notices 8 of those sections have to do with [unclear]. [Lists sections.]

17:37 Considering juries, Davis is leaving out [unclear], but taking everything else. Three quarters of the court business is taken up with [unclear] but the rest is handled with [unclear, jury?] and even in superior court, there's not over 10% of that 10% that are tried by 12 man jury. [Unclear] tried by 6 man jury.

[Unclear talking.] Judges are appointed from a panel that consists of chief justice and 6 other people out of whom 3 are lawyers and 3 are laymen. A panel must name at least 2 people and the governor takes 2 or more people [unclear]. That applies to district court, Supreme Court and a superior court that were mentioned in the constitution. The legislature may establish other courts if it wishes, and they did do that when establishing district judges, magistrates, and one or two others.

21:17 [Unclear] legislature provided that if they found a judge who was unable or unwilling to do his duties, they would have a hearing. [Unclear] duty to remove a judge who either wouldn't or couldn't do his duty. Davis believes he's the only one who got stuck with [unclear].

Judge Cooper became unable to carry out his duties as a superior court judge and for a long time, the rest of them hoped that he would get better and nothing would have to be done but eventually they had to do it and so they held a hearing where they decided that Cooper should be removed.

Since that time, there has been a constitutional amendment that provides how one removes a judge who is unable to fulfill their duties. That doesn't fall on the presiding judge anymore.

23:09 The provisions provided that there wouldn't be any less than 5 superior court judges. That was obsolete by the time they had statehood, which was a year before they had [unclear]. By the time they set up a judiciary, there were 8 superior court judges. The constitution provided that legislature had the right to set up how many judges there should be and the legislature set 8 who were divided between Southeastern Alaska, Anchorage, Fairbanks and Nome.

Davis says that now they have 20 justices.

25:11 They started with three superior court judges in Anchorage, and now they have 8. There's a judge in Kenai and one in Kodiak, and they are shortly getting one to Kodiak. Bethel used to be in Fourth Division, which means that it was with Fairbanks because those days Pan American was still operating from Fairbanks to Bethel and Kuskokwim area. That's not the case anymore and there's no direct service from Fairbanks to Bethel but between Anchorage and Bethel, which is why Anchorage has been servicing Bethel. Now they have a superior court judge in [unclear].

Davis says that to his understanding, there's no reason for having three judges [unclear] outside of Anchorage. The reason given for the fragmentation of the court system is that they are trying to service bush area. In urban areas, people can make their wants and needs known but sometimes people in the bush can't.

28:45 Davis feels that they are [unclear] the court system more than they should. Davis says that it's hard to keep the judge in Kodiak busy. He's only been to Bethel once, recently, and he thinks there's even less excuse for having a superior court judge in Bethel than there is to have one in Kodiak and the Aleutian Islands.

He doesn't know what the best way to service those areas would be. They are entitled to have service, but Davis isn't sure what the best method would be. They have to be careful not to end up with a superior court judge in every small community that thinks they should have one.

31:00 It costs a lot of money to support a superior court judge and support staff and Davis thinks there must be a better way. They ought to be looking for that better way.

Davis says that he sees a tendency to build empires. He sees it all over in the court system.

They started with three superior court judges and while the work load has grown, it hasn't grown that much [enough to justify having 8 judges]. Davis says he doesn't know if they had far too few when they started or if they have too many now. They have district attorneys, public defenders, court personnel, and court support personnel everywhere where they have a court. Davis thinks they should be careful to see that they don't raise a bureaucracy that they can't live with.

33:11 In last 20 years, the State of Alaska has grown and each of “these people have shown a minimum need.” They have to be careful to see that the need is really there and that they don’t see the scale grow too much because it’s far too big now. For example, they have a big and busy court house in Anchorage, and not that much more business than since they started the court system in 1959. Davis is sure that they need to make sure that bureaucracy doesn’t get out of hand.

A man’s voice thanks Davis and addresses Justice Rabinowitz and says that he’s in a unique position to review how the constitution and the judiciary article in general have worked in practice, having been in Supreme Court and superior court for many years. He further asks what kinds of disputes have come before the Supreme Court that involved the judiciary article and how philosophies have evolved, as well as the kind of judicial bureaucracy Judge Davis was talking about.

35:14 Rabinowitz says he’s going to direct his answer to the students, and introduces their chairman who has been on payroll [unclear] represents an attitude that is unfortunate for the state judiciary. The application [unclear] chairman Kleinfeld distinguished himself in an academic career, had a private practice in Fairbanks and [unclear] Supreme Court throughout the years, having graduated from Harvard law school.

Rabinowitz continues that it’s important to look at what kind of a document the founding fathers came up with. First of all, the constitution of Alaska and the document in its entirety reflected what happened in Philadelphia 200 years ago. It adopts the three branches of government, checks and balances, but Alaska’s constitution is a unique judiciary article in that it was quite innovative.

36:01 There is an intense power struggle in New York State amongst politicians and judicial reformers. New York has tried for years to reform their system and their reformations are remarkably similar to what Alaska started with.

One unique feature in Alaska’s article is merit selection. In New York, judgeships are bought and sold whereas in Alaska, one doesn’t have to be in a political party or be backed up by any power group in a state. [Unclear.] Their judicial council screens applicants for judgeship and other than meeting minimum criteria, any lawyer in the state is free to apply to superior, supreme, and district courts. They

have taken out the indebtedness to political parties and power blocks for one to gain judgeship. Judge is, in theory, beholden to no one.

39:15 [Jay Andrew] Rabinowitz asks if the judge is really beholden to no-one, and says that unlike in federal system where one is appointed for life, Alaskans have retention elections. Retention elections idea was from Missouri.

People should ask whether the system is ideal and whether it gives them better judges and if it's democratic.

In retention elections, they don't run against anybody and there's no campaigning. The voters are merely asked if they want a judge to have another term.

Rabinowitz says that they might be, as Judge Davis said, misunderstood, and wonders how the voters would know what the judges have done during their term.

Besides the fundamental problems of selection and detention, another unique feature of their system is that there's tremendous power invested in chief justice and the administrative director because they have a unified court system with state-wide funding. They don't have little separate city-states with their own court systems and there's no city financing for any portion of their court system.

42:24 Another controversial idea is that rule-making power is vested in the Supreme court of Alaska. They can govern the way cases flow to their courts. They don't have legislature telling them how to run their business. The idea of the founding fathers was that the people who "engage with this every day" ought to have the power to determine how they are going to proceed with their business. They have merit selection, limited voice for people who decide who should be retained, unification with the people on top, and no dependency on political subdivisions for financing.

In theory, it's a beautiful article. It has been changed through necessity. The volume of the cases in the Supreme Court has increased, and they can no longer know everyone involved.

44:42 The document must be a constitutional document, and a broad mandate that has flexibility in it so it can meet changing conditions. There was growth in population and economy, change from primitive to more sophisticated crimes, and change from subsistence to commercial economy which all lead judges having to

be familiar with areas of the law they hadn't had to deal with before. They also no longer can have urban focus.

When Rabinowitz was a [unclear], he made the first trip to Fort Yukon in 1960 to try a case out there as a superior court judge. Local bar members wondered why a Harvard [educated] justice was brought to try the Natives, but Rabinowitz thinks that that attitude no longer prevails.

46:09 Now there's great economic power and development in rural areas. Judge Davis wondered why they should have superior court justices in Bethel, but the speaker argues that the people there are full citizens of the state of Alaska and there are 20,000 people within the radius of 15 miles there.

The point concerning the document is that it isn't working in a vacuum.

[End of the recording happens suddenly.]