



THE STATE OF THE JUDICIARY

A MESSAGE BY

CHIEF JUSTICE JAY A. RABINOWITZ

TO THE FOURTEENTH ALASKA LEGISLATURE

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INTRODUCTION

Some fourteen years ago Alaska's Legislature, by Senate Concurrent Resolution, expressed the view that a communications gap existed between the Legislature and the Judiciary and therefore requested that an Annual State of the Judiciary Address be presented to a joint session of the Legislature. Despite the necessary and inevitable tensions inherent in a tripartite form of government grounded upon a Separation of Powers philosophy, I concur in the view that understanding can be strengthened by this splendid opportunity afforded to the Judiciary. For I think it clear that Alaska's constitutionally mandated doctrine of separation of the legislative, executive, and judicial branches of government does not negate the necessity for each branch of government to communicate and cooperate on matters of mutual concern where such efforts do not impinge on the constitutional scheme of checks and balances envisioned by Alaska's Constitution.

At the outset I'd like to advance a caution or two. First, for the most part the daily workings of the Alaska Court System are anything but front page news. Rather our judges and administrative personnel all engage in the quiet, intense, and often tedious task of shepherding thousands of cases to resolution. Cases that at times can be terribly complex and protracted yet all of which invariably affect the liberty, lives and property of thousands of

Alaskans annually. Second, in the course of the report, I do not intend to give you an indepth statistical analysis of the workings of all levels of our court system; for that data can be found in the Alaska Court System's 1984 Annual Report. What I do intend to achieve is to highlight some of the more significant developments, problem areas, and statistics that are relevant to the current status of the Alaska Court System. Third, under Alaska's Constitution the Chief Justice is selected by vote of the sitting justices to serve a term of three years. In October of 1984 Chief Justice Edmond Burke's term expired. To the extent this report reflects creditably on our performance, it is due in considerable extent to Chief Justice Burke's nonflamboyant, even-keeled and eminently reasonable stewardship of the Alaska Court System.

APPELLATE COURTS

Supreme Court

1984 saw 541 cases filed in the Supreme Court of Alaska. In this same period of time the Supreme Court closed out a total of 567 cases. The 541 filings in 1984 represent a 6% increase over the 1983 level of filings. Dispositions in the Supreme Court increased 5% over the number of cases disposed of in 1983.

Of particular significance to appellate litigants and the bar is that the average disposition time (i.e., the time from the filing of a notice of appeal to publication of an opinion or dispositive order) was once again shortened. This continued positive development is reflective of the increased use by the Supreme Court of summary dispositions in those cases which are considered to have little or no precedential value.

Reduction of appellate delay is a shared goal of all members of the Supreme Court. Our appellate justices and judges are fully cognizant of the necessity for dispatch in the appellate decision-making process and will continue to approach the problem with the requisite degree of flexibility and open-mindedness necessary to achieve further reductions in the appellate decision-making process.

Court of Appeals

The Court of Appeals is a three-judge intermediate court of criminal appeals which the Legislature created approximately four years ago in response to the Alaska Court System's documented request. Recently, I appointed Judge Alexander O. Bryner to serve another two-year term as Chief Judge. Judge James K. Singleton and Judge Robert G. Coats together with Chief Judge Bryner have fashioned an admirable record for this tribunal. In 1984, 527 cases were filed in the Court of Appeals and this tribunal disposed of 526 cases. As with the Supreme Court, the Court of Appeals decreased the average disposition time for both felony merit appeals (505 days from notice of appeal) and misdemeanor merit appeals (303 days). Sentence appeals disposition times for both felony and misdemeanor sentence appeals were also significantly decreased.

Given the Legislature's cooperative response to our previous requests for additional central staff research personnel for the Court of Appeals, this three-judge tribunal has been able to meet the pressing demands of its heavy case loads. In my opinion, the Court of Appeals is working at maximum case levels and thus any attempt to broaden its subject matter jurisdiction, given the present number of judges, would be both unrealistic and ill-advised.

Superior Court as an Appellate Court

Although the superior court's primary function is that of a trial court of general jurisdiction over civil, criminal, and family matters it is also vested with limited appellate jurisdiction. In this regard the Superior Court has intermediate appellate jurisdiction over appeals from administrative agencies (i.e., Worker's Compensation Appeals), appeals from District Court civil trials, as well as appeals from District Court misdemeanor convictions at appellant's election.

Recently the Supreme Court has received suggestions from the Anchorage superior court judges concerning alternative methods of handling these various appellate functions which are presently vested in the superior court. We are in the process of studying these proposals and, if deemed necessary and appropriate, will request in the future legislative changes in the allocation of appellate functions within the Alaska Court System.

Trial Courts

Superior Court

1984 witnessed a statewide increase in case filings in Alaska's superior courts of 11% over fiscal year 1983. Dramatic increases occurred in Palmer - 73%; Kotzebue - 42%, Barrow - 32%; Kenai - 16%, and Ketchikan - 9%. In this past fiscal year a total of 20,460 cases were filed in Alaska's superior courts with Anchorage again the recipient of the bulk of these cases (10,642 cases - 52%), followed by Fairbanks (3,608 cases - 17.6%), Juneau (1,177 cases - 5.8%) and Ketchikan (810 cases - 3.9%). Our statistics further show that Alaska's superior courts are meeting this challenge of increased filings. Dispositions by superior court judges have proportionately kept pace with this significant increase in filings. One further statistic of continuing interest to all Alaskans is that there were 1,846 felony cases initiated in our superior court in 1984 of which 40% were for violent crime prosecutions and 18% for violations of Alaska's drug laws.

As Chief Justice I have named Judge Thomas Schulz as Presiding Judge of the First Judicial District, Judge Charles Tunley as Presiding Judge of the Second Judicial District, Judge Douglas Serdahely as Presiding Judge for the Third Judicial District, and Judge Jay Hodges as Presiding Judge of the Fourth Judicial District. By way of illustration as to how the superior court is attempting to meet this

seemingly ever increasing case load, I think it appropriate to mention some of the approaches that are being employed in the Anchorage area. Since assuming the office of Presiding Judge, Judge Serdahely has created a family court division so that family and childrens' cases will no longer languish on court calendars but instead will receive the expeditious consideration these cases demand. Improved calendaring procedures for the handling of felony cases have been instituted, along with simplification and "fast tracking" procedures for the handling of civil cases. These methods are designed with the twin goals of reducing delays in resolving litigation and also reducing the cost of litigation. Also under study for implementation are mandatory settlement conferences in certain types of civil disputes, arbitration, mediation, and the increased use of pro tem judges to meet the volume of civil litigation confronting the superior court in Anchorage.

District Court

In fiscal year 1984 a total of 141,606 cases were filed in our District Courts throughout the state. 94,882 of these filings were traffic cases and 46,724 were non-traffic cases primarily consisting of misdemeanor prosecutions for drunk driving offenses, drug violations and non-violent crimes. 12,000 of the non-traffic case filings in Alaska's District Courts consisted of small claims.

Total filings in Alaska's District Court statewide represent a 6% increase over filings for the previous fiscal year. Again, as with the superior court, dispositions in the District Court are up significantly over dispositions for the previous year.

RURAL MAGISTRATES

Fifty of the Alaska Court System's Magistrates reside in small towns or villages. I think it important to reemphasize that the presence of these Magistrates in Alaska's predominately Native American villages is often the only effective vehicle for the comprehensible transmission of the rules and workings of our Anglo-American justice system. It is through the presence and hard work of our Magistrates that cultural differences have and are in the continual process of being bridged.

In recognition of the vital role that Magistrates play in Alaska, I have called for a Standing Advisory Magistrates Committee. To this new committee I have appointed Magistrate Lowell Anagick from Unalakleet, Magistrate Geoffrey Comfort from Dillingham, Magistrate George Rukovishnikoff from St. Paul Island, Magistrate Maxine Savland from Hoonah, Magistrate Skip Slater and Superior Court Judge Gerald Van Hoomissen from Fairbanks, and Carole Baekey, who is the Judicial Education Coordinator within our Administrative Office.

One of the primary purposes of this committee will be to keep the Alaska Court System advised of problems in rural Alaska as well as to make recommendations to improve our performance in rural Alaska. The Committee is under a mandate to make specific recommendations regarding the following subjects: criteria for the establishment of

magistrate locations, magistrate salaries, and magistrate duties. Also to be studied is the impact various Village Police Officer Programs have had on judicial services in affected villages.

OPERATING AND CAPITAL BUDGET REQUEST

The Alaska Court System's operating budget request for this coming fiscal year is modest. In fiscal year 1984 the Alaska Court System's budget was \$36,960,000, an amount which represents 2% of the state's 1984 total general fund operating budget. Out of these funds 5 Supreme Court Justices, 3 Court of Appeals Judges, 29 Superior Court Judges, 14 District Court Judges, 60 Magistrates, and 579 full-time Alaska Court System employees were faced with the formidable task of processing 163,138 cases in 55 locations stretching from Pt. Hope, to St. Paul Island, to Ketchikan.

Given the current status of crude oil prices on the international and domestic markets and concomitant declining revenue projections for the State of Alaska, I want to assure you that the Alaska Court System will, in good faith, undertake reasonable efforts to allocate scarce judicial resources in order to operate efficiently within projected budget constraints. But it should be apparent to all that with an increasing population and a quickening economy our existing judicial resources can be stretched only so far. In this regard the decision was made in formulating this year's modest budget request not to ask for additional superior court positions for Palmer, Kenai, Dillingham, and Ketchikan. Although in all candor I should apprise you that we will continue to carefully monitor these

locations and when warranted present to you documented requests for additional judgeships.

Regarding capital requirements - we perceive a pressing need for expansion of court facilities in Bethel and have requested funding for the leasing of additional space. Similarly, the rapid growth in population and volume of litigation on the Kenai and in the Matanuska Valley has rendered our existing court facilities in both Kenai and Palmer inadequate. In regard to Fairbanks, Chief Justice Boochever in his 1976 State of the Judiciary message said in part:

Badly needed remodeling of the Fairbanks Court building is underway. While in view of the state's present light financial needs the facility can be used for several more years; it is obvious that a new court building will be needed before long to service that fast growing community.

Having had the privilege of working in the Fairbanks facility since it was constructed, I can represent to you that the time has in fact come when a start should be made for a new facility that would service the community of Fairbanks for the next half century.

In regard to the location and construction of additional courtroom facilities in Anchorage I can advise that the Supreme Court has had this difficult decision under advisement. It is anticipated that a decision as to the location of this new facility will be reached in the near future.

LEGISLATION

The Alaska Court System's legislative program for this session consists of the following proposals.

Legislation to increase the jurisdiction of the District Court. This proposal will give the District Court more significant civil litigation and in time should relieve the superior court of a substantial number of civil cases. This same legislation has a provision for the granting to the District Court of jurisdiction over domestic violence cases. The intent here is that this will be concurrent jurisdiction with the superior court so that the processing of the domestic violence cases will be shared between the two courts in order to give these important cases more expeditious consideration.

In response to the Chief Auditor of the Legislature's recommendation, legislation has been submitted providing for the authorization of an internal auditor for the Alaska Court System. Another item of legislation sought is authorization to the Supreme Court to establish venue provisions by court rule. We consider this legislation necessary given the present confusing and complex provisions relating to venue. Lastly, we have submitted legislation to raise the small claims jurisdictional amount to \$5,000. This proposal as well as the change in the District Court's civil jurisdiction to \$25,000 are made in response to suggestions advanced by several Civil Litigation Simplification Task Force recommendations.

ADMINISTRATION

Arthur H. Snowden, the Alaska Court System's outstanding Administrative Director, and his staff are currently working on two projects of particular significance. First, a computerized case management system for our high volume Anchorage Court is in the process of being developed. Second, in the past year the court system initiated steps towards the goal of implementing a useful and reliable information system which will be supported by automated data and word processing equipment in selected courts. When this project is completed all of the superior court caseloads statewide will be automated, and approximately 95% of the district court caseloads statewide will also be automated.

In regard to the Alaska Supreme Court's constitutional duty to promulgate rules governing the practice and procedures in our courts, I think it appropriate to advise you of several recent developments. Recently, the Alaska Supreme Court adopted new Disciplinary Rules. These rules should expedite bar disciplinary matters and result in the reduction of the pending backlog of bar disciplinary cases. Additionally, the Supreme court has under advisement the recommendation of various task forces which were appointed by Chief Justice Burke for the purposes of simplifying court litigation and reducing both the time and costs of litigation procedures in place today. Several of these

recommendations are already before you, namely, our request to increase the District Court's civil jurisdiction as well as our pending request to raise the jurisdictional amount regarding small claims litigation.

ALASKA JUDICIAL COUNCIL

The Chief Justice of the Supreme Court of Alaska serves as Chairperson of the Alaska Judicial Council. Under Alaska's Constitution the Judicial Council is charged with the screening of applicants for judicial positions and the nomination of two or more applicants to the Governor for each judicial vacancy. The council is also charged with the task of evaluating judges who stand for retention election under our merit selection retention system. Lastly the Council is also charged with the task of conducting studies to improve the administration of justice.

The Council consists of three attorney members and three non-attorney members who serve six-year staggered terms. The attorney members are Barbara Schuhmann of Fairbanks, James Gilmore of Anchorage, and James Bradley of Juneau. The non-attorney members are Mary Jane Fate of Fairbanks, Renee Murray of Anchorage, and Bob Moss of Homer. The Council's meeting with the Joint Judiciary Committees next month will mark the tenth year of dedicated service by Bob Moss. The State of Alaska has indeed been fortunate to have had the benefit of the services of this most remarkable citizen.

1984 was a particularly active year for the council. In regard to judicial selections, 11 judicial vacancies were filled. In regard to retention elections nearly half of all of Alaska's state judges were evaluated

by the Council. In a vote of confidence in the judiciary from both the Judicial Council and the citizens of Alaska, all judges who filed for retention in the last general election were recommended for retention, and all were retained by the electorate.

Finally, in the area of research projects, the Council completed significant studies of misdemeanor and DWI sentencing practices. The DWI study contained findings of particular interest to the legislature relating to completion of alcohol treatment programs and its impact on rates of recidivism, findings which led, in part, to the Governor's Task Force's recommendation that state resources be focused upon alcohol treatment programs.

The Council is currently engaged in research to improve both the quality and cost of justice system services. In Fairbanks, a study is underway to evaluate an experimental closed circuit television arraignment system, which if approved after the study could result in considerable savings of state resources. A misdemeanor sentencing guidelines project relating to sentencing policies to jail capacities should provide useful information in formulating solutions to the overcrowded conditions in Alaska's jails. The Council also has under consideration the development of a judicial performance evaluation. The primary purpose of such a program could be the improvement of judicial

performance. The program would not be used for either the selection or retention of judges.

Research projects currently under development which reflect statewide priorities include:

Monitoring of Judicial Sentencing Practices. With the focus on the area of sexual abuse of children cases;

Jury Utilization. This study will test improved methods for calling jurors and experiment with the use of simplified juror instructions;

Minority Sentencing Analysis. This study project has as its aim the determination of sentencing disparity among minority groups, previously found to have been eliminated, as a current problem;

Lastly a study of Presumptive Sentencing has as its purpose the measurement of this sentencing scheme's impact on Alaska's criminal justice system.

CONCLUSION

Alaskans have the right to expect a judiciary that is principled in its decision-making functions. These expectations are of constitutional dimensions and in turn mandate a judiciary composed of appellate and trial judges who are neutral in respect to the substantive merits of the causes which come before them and who will eschew external pressures in rendering their decisions.

The judicial branch of our democratic state government is, in my opinion, indeed composed of jurists of the type and character called for by Alaska's Constitution. With the Legislature's understanding, cooperation, and demonstrated support for Alaska's Judiciary we pledge to continue to strive toward achieving a just society in which all persons are equal and entitled to equal rights, opportunities, and protection under the law.