



THE STATE OF THE JUDICIARY

AN ADDRESS BY
CHIEF JUSTICE JAY A. RABINOWITZ
BEFORE THE JOINT SESSION
OF THE ALASKA LEGISLATURE
MAY 7, 1981

STATE OF THE JUDICARY MESSAGE

Chief Justice Jay A. Rabinowitz

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Introduction

On behalf of the Alaska Court System I wish to express our appreciation for this opportunity to report to you as to the state of Alaska's Judicial System.¹

Initially, I think it appropriate to also express our gratitude to the Legislature for your positive responses to the needs of Alaska's Judicial System. With your recent enactments creating additional superior court judgeships in Anchorage and Nome, the creation of a new intermediate court for criminal appeals (the Court of Appeals), and the passage of judicial salary increases, you have taken significant steps to ensure that Alaska's judicial system will successfully meet litigation challenges which have been generated by our expanding population and the complexities of our economy and society.²

The overall morale and productivity of our judges is excellent. For the most part you have provided the necessary judicial manpower to successfully attack the

1. Senate Committee Resolution No. 42, Second Session, Seventh Legislature found 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 the Legislature.

2. Full details of the subjects touched upon in this address can be found in the Alaska Court System's 1980 Annual Report and in the Judicial Council's Tenth Report to the Supreme Court and Legislature. Copies of the reports have been furnished to every legislator.

problems of delay in processing criminal and civil cases, at both the trial and appellate levels of our court system. In short, we have most of the essential tools, given Alaska's present population levels and rate of litigation, to achieve a justice system that deals with its litigants, witnesses, jurors, and attorneys with consideration, intelligence, and the recognition of each individual's dignity. A criminal system in which the public, the prosecution and the defendant will be accorded speedy resolution of criminal trials and appeals can be a reality in Alaska. The same can be said in regard to the elimination of unreasonable delays in the resolution of civil litigation in the courts of Alaska.

In my last address to you, I alluded to three goals that the judiciary should strive to attain at this time. The first was the critical need to address the problem of expediting the processing of civil cases in the superior court in Anchorage. The second was the need to significantly reduce the time it was taking to process and finalize appeals to the Supreme Court of Alaska. The third goal was to undertake a study of methods to simplify trial court procedures, both civil and criminal, and concurrently to ensure that the costs of litigation in Alaska's tribunals are kept at reasonable levels. In my opinion we have made significant progress over the last year towards achieving two of the three stated goals.

SUPERIOR AND DISTRICT COURTS

In 1980 there were a total of 12,853 civil and criminal filings in the Superior Courts of Alaska. In this same period our 21 Superior Court Judges disposed of 11,974 cases (within an average disposition time of approximately 10 months). Of these 12,853 cases, 906 cases were criminal felony filings and an additional 334 involved misdemeanors. In regard to the felony cases, the relevant statistics disclose that the prosecution's overall conviction rate was 70% (with a slightly higher conviction rate as to those felony cases which were tried before juries). The average length of a criminal trial in the superior court was approximately 5 days, as opposed to 4.1 days for the average civil trial.

In regard to the controversial subject of sentencing, the Judicial Council's "Alaska Felony Sentences: 1976-1979" study shows that as to six major offense categories there has been, in general, a significant increase in the length of sentences imposed by the superior courts for the period 1976-1979 as compared with sentences imposed during the 1974-1976 period. Thus, in regard to murder/kidnapping offenses, sentences have increased 54% in length (to a mean of 356.1 months); sentences for other violent crimes have increased 82% in length (to a mean of 20 months); fraud offense sentences have increased 21% in length (to a mean of 19.9 months); sentences for moral offenses have increased 15% (to a mean of 44 months); while the length of sentences for drug offenses has decreased 18% (to a mean of 27.3

months).

The Judicial Council's latest study of felony sentencing discloses encouraging statistics which indicate the elimination of sentencing disparities based upon race, with the single exception of sentences imposed on Black defendants convicted of drug offenses. If given the necessary research funds, the Judicial Council will continue to annually monitor sentencing in all courts of the state.

In 1980, 129,810 filings were received in Alaska's District Courts and our 16 District Court Judges, assisted by Committing Magistrates, disposed of 128,506 cases (within an average disposition time of approximately 1.6 months). Of these District Court filings, 35,205 were non-traffic cases; 17,546 of this number were criminal misdemeanor cases. Not to be overlooked in the functioning of the District Court are the judicial services rendered by the Alaska Court System's 55 magistrates who, from locations as geographically diverse as Angoon, St. Paul Island, Point Hope, Kenai and Ft. Yukon, often provide the only tangible presence of the justice system to the citizens in these communities.

In view of the volume and complexity of litigation which now confronts our trial judges, I think you will agree that the number of cases disposed of annually and the relatively rapid average disposition times achieved reflect favorably upon the exceptional skills, industry, and commitment of Alaska's trial judges.

One of the most important developments in relation to the trial courts has been the recent calendaring reforms that have been instituted in the high volume Anchorage Superior Court. It was decided, after lengthy and probing studies by the Court System's Advisory Calendaring Committees and a committee of the Anchorage Bar Association, that procedural reforms were essential. As a result, it was recommended, with the approval of the Superior Court judges in the Third Judicial District, that civil and criminal divisions should be created within the Superior Court in Anchorage. The Civil Division will operate under an individual calendaring system with an early assignment component (which essentially means that each judge in the Civil Division will be responsible for the monitoring and movement to resolution of the cases assigned to him). Various other procedural reforms have been instituted in regard to motion practice and the control of the flow of civil litigation. These particular reforms were instituted in order to reduce existing delays in the prosecution of civil litigation, as well as to restore to the civil trial calendar a much needed measure of stability and integrity. With the addition of the two superior court judges you recently authorized for Anchorage, we are confident that the court system will be able to further reduce delays in civil litigation in Anchorage, as well as to continue to process criminal cases within the time constraints of Alaska's 120-day speedy trial rule.

I should also mention that your authorization of a

Superior Court judge for Kotzebue has already borne fruit. In this regard, I have recently been informed that Judge Paul Jones has been presiding over a heavy trial calendar for the last two months and that, as a result, the citizens of Kotzebue are receiving a varied and wide exposure to jury service and to the workings of Alaska's justice system.

COURT OF APPEALS

The Court of Appeals created by the Legislature last March formally commenced operations on September 18, 1980, its three judges, Robert G. Coats, James K. Singleton and Alexander O. Bryner, having been appointed by the Governor at the end of July. The initial focus of the court was upon the organizational matters inherent in the creation of an entirely new level of courts.

The process of dealing with organizational problems is one in which the Supreme Court, the Court of Appeals and the Administrative Office of the courts were all integrally involved. The organizational matters involved included logistical concerns such as providing adequate office space and procuring equipment for the new court. These matters extended to personnel problems such as recruiting and hiring new law clerks and training of secretarial staff in the use of advanced word processing equipment. They also included more difficult legal and judicial problems such as promulgation by the Supreme Court of an entirely new set of Appellate Rules, containing provisions for the new Court of Appeals, and the adoption by the Court of Appeals of internal operating procedures -- the internal rules by which the court's decisional processes are governed.

The substantial organizational problems inherent in establishment of the Court of Appeals were minimized by the transition period between the creation of the court by the Legislature and its commencement of operations, which allowed

the court's needs to be anticipated and provided for in advance. An additional factor significant in minimizing organizational problems was the retention of control over the flow of paperwork for the new court in the office of the Clerk of the Supreme Court, which was expanded and centralized to become the office of the Clerk of the Appellate Courts and now provides assistance to both the Supreme Court and the Court of Appeals. Thus, the disruption occasioned by establishment of a new level of courts and the period of transition actually required for the newly created Court of Appeals to be fully operational were minimal. For all intents and purposes, virtually all organizational problems have now been successfully dealt with, and the Court of Appeals is fully operational and beginning to function at the fast pace which will be demanded of it by its caseload.

Organizational problems aside, the Court of Appeals commenced operations with one primary concern: dealing with the significant backlog of pending criminal appeals. Within approximately one week of commencement of the court's operations, more than 180 pending criminal appeals were transferred to it from the Supreme Court under the terms of the legislation which created the court. The attention of the Court of Appeals was thus immediately addressed to decreasing the backlog of cases awaiting oral argument. The court held its initial session of arguments in October and, since that time, it has held arguments on a monthly basis in Anchorage. The court has additionally held four sessions of oral argument

in Fairbanks.

Concentration of the court's efforts on dealing with the backlog of cases awaiting oral argument has now resulted in elimination of the backlog. Upon completion of oral arguments scheduled for June, the argument calendar of the Court of Appeals will be current. From that point, it is anticipated that a period of about 60 days will be the average length of time between completion of briefing in a criminal case and oral argument. Taking into account the fact that from four to six weeks' notice of oral argument is required to allow for adequate preparation by counsel and the court, the 60-day period represents a minimal delay.

While the recent upswing in the filing of criminal appeals has been of too short a duration to serve as a basis for prediction of future caseload, the Court of Appeals, over the last three months, has taken organizational steps to assure its ability to handle an increased volume of cases. These same measures are calculated to reduce the time an appeal is held under advisement by the court prior to decision from the previous average of over one year to an average of less than 120 days, and it is anticipated that many cases will be resolved in substantially less than the average time period.

Through the issuance of a series of orders, the Court of Appeals has adopted procedures calculated to streamline the criminal appeals process, assuring that criminal cases will receive the expeditious handling at the appellate

level which they currently receive at the trial level.

Initially, the Court of Appeals has announced a substantial reduction in the length of extensions of time for the filing of briefs which will be permitted to litigants in criminal cases. Until recently, it was not uncommon for parties in criminal appeals, prosecution and defense alike, to obtain delays of from three to four months over and above the normal period of time allowed for filing of briefs. Beginning with appeals filed on March 1 of this year, the maximum period of allowable extensions for filing of appellate briefs will be greatly reduced in merit appeals from Superior Court judgments (felony cases) and, absent exceptional circumstances, no extensions whatsoever will be allowed for filing of briefs in sentence appeals or appeals from District Court decisions (misdemeanor cases).

Furthermore, the Court of Appeals has adopted guidelines for publication of opinions which will result in publication by the Court of Appeals of formal written opinions in only those cases where new or significant issues of law are involved. The court has also provided for a new procedure of announcing summary decisions within one to two weeks of the date of oral argument in criminal appeals which present no novel or difficult issues of law and as to which the court is unanimous in its judgment. As of the present time, more than half of the opinions written by the Court of Appeals have been designated as unpublished opinions. Since an unpublished opinion can be much shorter and less formal

in its discussion of the issues, while still providing the parties an adequate explanation of the court's reasoning, the issuance of unpublished opinions by the Court of Appeals results in conservation of a substantial amount of the court's time.

In addition to the time-saving procedures discussed above, the Court of Appeals is currently contemplating adoption of an expedited system for handling appeals from misdemeanor convictions in the District Court. In such cases (in which sentences typically range from a relatively small fine to several days in jail and suspension of a driver's license), given the previous system under which appellants had the right to appeal both to the Superior Court and, thereafter, to the Supreme Court, delays of up to three years from the time of conviction to the time of decision on appeal were not at all uncommon. It is expected that the plan for expedited treatment of appeals from District Court will reduce the overall period between conviction and decision on appeal in misdemeanor cases to about four months in the average case.

In summary, the Court of Appeals created by the Legislature slightly more than one year ago is now fully functional, and is channelling its efforts towards significant decreases in the overall time necessary between conviction in a criminal case and the ultimate decision on appeal. Despite an ever-increasing rate of filing for criminal appeals, it is anticipated that, within the next year,

marked progress will be made towards achieving the goals of
the court.

SUPREME COURT OF ALASKA

During 1980 there were 641 matters filed in the Appellate Courts of Alaska. Of these, 255 were civil in character, 139 were either criminal or juvenile, and 67 represented sentence appeals. In 1980 the Supreme Court published 249 opinions, more than in any previous year of its existence. An additional 26 unpublished memorandum opinions were also issued by the court. Despite this increase in productivity, at the end of the year the Supreme Court still had pending 456 cases. In order to assist the Supreme Court in processing its appellate workload, Senior Justice John Dimond again rendered valuable services. Also, pursuant to Article IV, Section 16, of Alaska's Constitution, judges of the Court of Appeals and the Superior Court were on some 80 occasions appointed to sit pro tem with the court. Furthermore, the Supreme Court continued its highly active role in administrative matters, promulgating numerous rules pertaining to practice and procedure for all levels of the court system.

One of the more significant institutional decisions made by the Supreme Court during the past year was its conclusion (in accord with the recommendations of the Supreme Court's Policy Advisory Committee) that the court should not be placed under one roof. In other words, the geographical balance established since statehood is to remain. Thus, there will continue to be resident justices in Juneau, Anchorage and Fairbanks. Another significant development was the appointment of the distinguished jurist Allen T. Compton to

the Supreme Court to fill the vacancy created by Justice Boochever's appointment to the Ninth Circuit of the federal appellate court system.

Yet another very important recent development was your enactment of legislation creating an intermediate Court of Appeals. The operation of this new court has already favorably impacted the Supreme Court's workload and its ability to expeditiously process its cases. By September of this year, the Supreme Court should be in the best position it has been in since I've had the privilege of serving on the court. What this means is that for the most part cases orally argued next September can be immediately addressed by the Supreme Court, since at that time it is anticipated that the court will not have a significant backlog of cases awaiting decision.

The Supreme Court's goal, simply stated, is to reduce appellate delay without erosion of the rights of the litigants or sacrifice in the quality of its decisions. I give you our pledge that we will continue to examine our internal procedures with the goal of increasing efficiency and will constantly monitor our efforts to expeditiously resolve those matters which come before the court.

OPERATING AND CAPITAL

BUDGET REQUESTS

The Alaska Court System's Operating Budget request for the forthcoming fiscal year is \$31,992,800, an increase of 6% over the cost of the current resources at next year's costs levels. We think this is a fiscally conservative budget and one that is fully justified.

Our requested operating budget takes into account inflation and other increases in the costs of resources and materials necessary to provide the citizens of Alaska with a comparable level of judicial services in the coming fiscal year. The Alaska Court system's outstanding Administrative Director, Arthur H. Snowden, and his senior staff have provided your respective finance committees with complete details of the scope of the court system's necessary projects, day-to-day operations, and fixed costs, which comprise the foundational components of our operating budget request.

Turning to the Alaska Court System's capital budget request, I wish to emphasize that our most important request relates to the funds we seek for site acquisition and planning for an addition to the existing court complex in Anchorage. We are persuaded that the time is propitious for acquisition of the land in question, and that there is a genuine need for this additional space. By the time this addition is completed in 1986, it is anticipated that needs will have reached the critical stage. In the event you act

favorably upon this request, it is contemplated that this additional space will allow for the accommodation of the Judicial Council's staff, the staff of the Administrative Office of the Alaska Court System, and members of the Attorney General's office and the Public Defender Agency, all of whom are presently located outside the court complex. In addition, this new space is intended to accommodate judges and support personnel, as well as to provide needed courtrooms. If the Anchorage state courts are to continue to be housed in one complex, and adequate space is to be made available to each court and court related function, we think it essential that funds be allocated this session for this capital improvement.

JUDICIAL COUNCIL

Alaska's Constitution provides that the Judicial Council must nominate to the governor two or more persons for any judicial vacancy. The last year has seen 10 new judges appointed by Governor Hammond from the various nominations forwarded to him by the Council. Justice Allen T. Compton was appointed to the Supreme Court; Judges Alexander Bryner, Robert Coats and James Singleton were appointed to the newly created Court of Appeals; Judges Daniel Moore, Douglas Serdahely and Brian Shortell were appointed to fill the two new superior court judgeships recently authorized by you and the vacancy created by the tragic death of Judge Peter J. Kalamarides; Judge Charles Tunley was appointed to the Superior Court at Nome upon the retirement of Judge William Sanders; Judges Herschel Crutchfield and Jane Kauvar were appointed to the District Court in Fairbanks upon the retirements of Judge Mary Alice Miller and Judge Monroe Clayton. Recently the Judicial Council completed its evaluation of applicants for the Superior Court vacancy in Juneau and forwarded its nominations to Governor Hammond.

Alaska's Constitution further provides that the Judicial Council shall conduct studies for the improvement of the administration of justice, and make periodic reports and recommendations to the Supreme Court and to the Legislature. In fulfilling this Constitutional mandate, the Council has made numerous recommendations relating to Alaska's judiciary

and the justice system in general which have played a significant and concrete role in bringing about constructive changes to the justice system. Some of the more important of these recommendations were those which called for a constitutional amendment rotating the office of Chief Justice, the establishment of the Judicial Qualifications Commission, the establishment of a Public Defender Agency, appellate review of sentences, and a system of presumptive sentencing for second felony offenders. In the category of major studies and reports, the Council has completed landmark studies relating to plea bargaining and the effects of its abolition and to disparities in sentencing at both the felony and misdemeanor levels, as well as the recently completed study of Alaska felony sentences imposed during the years 1976-79.

Research is vital to the continuing improvement of the administration of justice. Alaska's Legislature clearly recognized this fact in 1976 when it provided funding to the Council to study sentences before it developed the sentencing provisions of the new criminal code. Recognition was again indicated in 1979 when you provided the necessary funds to carry out a follow up study on racial disparities in sentencing. Then, in 1980, you provided for annual monitoring of sentences by funding the Council to study both felony and misdemeanor sentencing in all courts of the State of Alaska.

A further recognition of the need for continued provision of information concerning sentencing patterns was written into the revised criminal code, when it was stated

that "the attainment of reasonable uniformity in sentences" (AS 11.55.005) was one of the primary purposes of adopting the present sentencing legislation. I agree with this goal and wish to assure you that all of us in the judiciary will strive to accomplish these aims. "Reasonable uniformity," however, cannot be obtained by the judiciary without knowledge of the sentences imposed for other similarly situated defendants who have committed similar offenses.

The effects of the new criminal code are, at present, unknown. Without information about the crimes committed, the sentences imposed, and the types of offenders being convicted, the Legislature will be unable to evaluate whether the legislation is working as intended. It may be that the code is disproportionately affecting some groups of offenders, that certain types of cases are difficult to prosecute because of language in the code, or that the courts are not interpreting a particular sentencing provision as the Legislature had intended. Thus, I think it essential that you, as well as the judiciary, have information of the sort to be provided through the Judicial Council's studies of felonies and misdemeanors.

In 1975 you enacted legislation which required the Judicial Council to conduct an evaluation of each judge or justice before his or her retention election and to provide the public with information concerning the judge, and gave the Council discretion to make a recommendation regarding his or her retention or rejection. The Judicial

Council has attempted to satisfy this statutory command through several pioneering and admittedly controversial efforts in this area. Evaluations have been conducted through surveys of peace officers, Alaska Bar Association members, and jurors, and personal interviews with attorneys and others familiar with the particular judge's performance. The Council is presently studying other methods of evaluation, as well as reevaluating its current procedures.

In closing this section, I think it appropriate to recognize 12 years of outstanding service that Kenneth L. Brady, an Anchorage businessman and former member of Alaska's Legislature, rendered to the Judicial Council. As you know, none of the three non-attorney members or the three attorney members who comprise the Council receive any compensation for the considerable time and effort they devote to the Council's important and demanding activities. By virtue of the strength of his convictions, and his insight, common sense, sense of humor, and principled decisions, Ken Brady greatly contributed to the Council's carrying out of its constitutional tasks.

ADVISORY COMMITTEES TO THE
ALASKA COURT SYSTEM

Under Alaska's Constitution, the Supreme Court of Alaska is authorized to promulgate rules governing practice and procedure in all courts, as well as administrative rules. In order to meet these constitutional obligations, the Supreme Court has found it essential to have the counsel and assistance of judges (from all levels of the court system), lawyers, court support personnel, and private citizens. Thus, it has been the Supreme Court's long-standing practice to appoint, and thereafter work closely with, numerous advisory committees in conjunction with its rule making and administrative functions. For the most part, these committees are composed of volunteers who receive no compensation for the long hours they devote to the varied committee's tasks. A fair listing of these productive committees is as follows: Standing Advisory Committee on Civil Rules of Procedure; Standing Advisory Committee on Criminal Rules of Procedure; Special Advisory Committee on Children's Rules of Procedure; Special Advisory Committee on Pattern Civil Jury Instructions; Special Advisory Committee on Pattern Criminal Jury Instructions; Special Committee on Sentencing Guidelines (for first offenders and drug offenders); Standing Advisory Policy Committee; the Presiding Judges' Advisory Committee; Special Advisory Committee to Review the Judicial Qualifications Committee; and the Standing Advisory Committee on Judicial Forms.

Conclusion

In drafting this report I had occasion to review a number of state of the judiciary messages which were recently delivered by Chief Justices of our sister states. One subject matter was prominent throughout these messages, namely, crime and the public's perception that the courts are responsible for the erosion of the public's safety.

Admittedly the primary function of our government is the protection of the security of the individual and his or her property. Chief Justice Burger in his annual report to the American Bar Association, delivered in Houston the first part of February, observed that what the American people want is that crime and criminals be brought under control so that they can be safe in the streets and their homes. No one in Alaska's judiciary dissents from these deeply felt desires. Indeed the Framers of Alaska's Constitution provided, as part of our fundamental law, that "Penal Administration shall be based on the principle of reformation and upon the need for protecting the public."

Chief Justice Burger in this same address made the significant point that the "war" on crime will not be won simply by harsher sentences, nor by harsher mandatory minimum sentences, nor by abandoning the Bill of Rights. Similarly, I am convinced that the roots of crime lie in social

logical, psychological, and economic causes, including the breakdown of restraints formerly imposed by the family, the community, and organized religion. Thus, I think it a somewhat superficial analysis of the complex problem of crime to assign primary blame to the judicial branch of government.

What Alaska's courts can provide within our system of constitutional guarantees is to accord to society and the accused both a speedy trial and an expeditious appellate resolution of the case. The causes of crime and its elimination are complex and call for reasoned responses from all branches of government, from our religious and educational institutions, and from our families, particularly in the directions and values which Alaskan parents transmit to their children. I can assure you that all of us in the Alaska judiciary, our spouses and children, are part of the fabric of Alaska's society and that we also desire and are deeply committed to the attainment of a free and secure way of life in Alaska. Despite the fact that solutions are not readily apparent, we in Alaska's judiciary will continue our efforts to improve the criminal justice system.