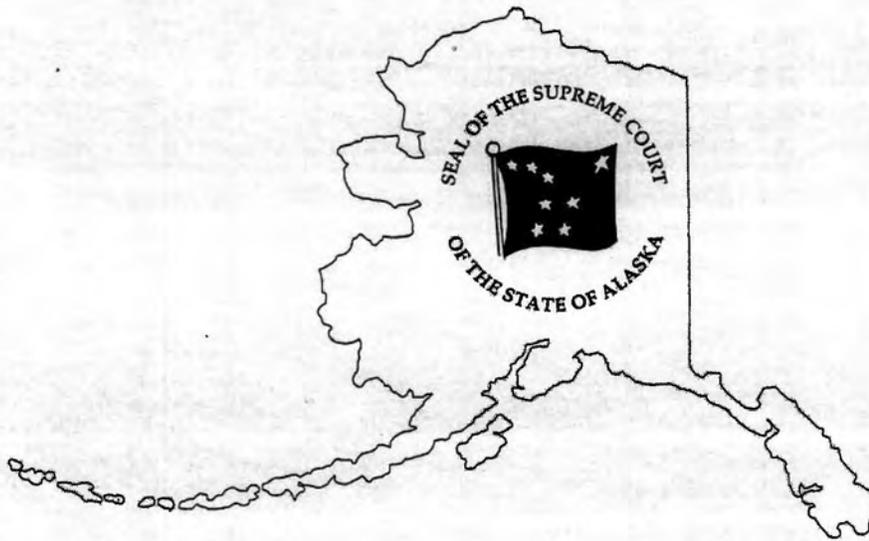


THE STATE OF THE JUDICIARY



A MESSAGE BY
CHIEF JUSTICE WARREN W. MATTHEWS
TO THE FIRST SESSION OF THE
TWENTY-FIRST ALASKA LEGISLATURE
MARCH 5, 1999

THE STATE OF THE JUDICIARY ADDRESS

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Chief Justice Warren W. Matthews

President Pearce, Speaker Porter, members of the 21st Alaska Legislature, I am happy to be here today to report on the State of the Judiciary.

This year is the 40th anniversary of Alaska statehood and of the Alaska Court System. The court system had a traumatic beginning. It is a now mostly forgotten story. It was intended that the federal territorial courts and the ninth circuit would serve the new state in a transitional role for three years. But a mistake was made in the statehood act and a key provision was deleted by reference. In June of 1959 the ninth circuit ruled that it had no jurisdiction over the former territorial courts. This ruling hit the new state like a bombshell. Alaska had no judges, no rules, no court infrastructure, and needed a court system immediately. It must have been a busy time. But, within five months judges were appointed, buildings leased, rules propounded -- the system was up and running.

In preparing this report I have thought about some of the changes that have occurred in the state court system since its founding. Some of them reflect the fact that Alaska's population has increased by a factor of about 2.75 in these 40 years (from about 230,000 to about 630,000).

In the first full year of case statistics, total filings numbered around 16,000. This compares with total filings last year of about 150,000, over a nine-fold increase. This indicates that our population has not merely grown, but that it has also grown more litigious.

Some of the changes reflect more profound trends in our society. In 1959 all eight of the superior court judges were men. Now we have five women on the superior court -- and a woman is one of the two candidates recommended by the judicial council to fill the superior court vacancy in Juneau.

Many of the changes reflect legislative decisions made in response to court system requests and needs. The supreme court was expanded from three to five members by the legislature in 1967 in response to the increasing caseloads. The court of appeals was created by the legislature in 1980 to handle criminal appeals, because the supreme court workload was unmanageable. Originally, only five cities contained superior courts -- Nome, Anchorage, Fairbanks, Juneau, and Ketchikan. Because of a considered policy decision of the legislature to increase access to the courts we now have superior courts in 13 cities. (In addition to the original five, these are Palmer, Kenai, Kodiak, Dillingham, Bethel, Kotzebue, Barrow, and Sitka.) District judges who often serve pro tem as superior court judges are located in two other cities (Homer and Valdez) so we have effective general jurisdiction coverage by resident judges in 15 cities. In addition, superior court judges regularly serve a number of other cities. And

we have magistrates who reside and have their chambers in 21 towns and villages not served by other resident judges. All told, the court system decides cases in 59 locations in an area of subcontinental proportions, from Ketchikan to Barrow to Unalaska.

In the 40 years since our early and rushed birth we have become, with your assistance, a fully modern and functional unified court system. We are a separate branch of government, and in the field of our core responsibility -- deciding cases -- we are and must be wholly independent of the legislative and executive branches. But in other areas, the establishment of justice is a shared responsibility. The legislature makes the laws, controls the purse strings, and can change the court rules. And more than that, all three branches genuinely share the goal that Alaska should be a place of liberty and justice for all citizens. We are then, with these shared duties and shared values, partners in the administration of justice. What I hope to do today is highlight developments and trends that you may find useful in discharging your responsibilities in this partnership.

Trial Court Caseload

Superior Court

In our superior courts taken as a whole 1998 was a year of stability. Case filings grew by less than 1%. This continues the trend of the last four years in which case filings have been essentially level. But these statistics mask some distinct trends.

Felony filings are up 7%. They have grown 29% during the past four years. Felony cases are more labor intensive than general civil cases because more of them go to trial, they generate more post-trial hearings, and more of them are appealed. Therefore court workload increases, even when overall filings do not grow.

The increase in felony filings might surprise you since crime rates are down. The correlation which is most significant to our caseload is not the crime rate, but rather the numbers of police officers who are making arrests. For example, it has been reported that the felony crime rate in Anchorage has dropped nearly 40% in the past four years, yet during that same period felony filings went up by 29%. From an overall administration of justice perspective the conjunction of these statistics seems to be very good news. Fewer crimes are being committed, and a higher percentage of those who commit them are being brought to justice.

Another component of the caseload which has been growing is children's cases, by which I mean both child in need of aid and juvenile crime cases. Filings in children's cases increased 14% last year and 31% over the last four years. Our largest courts, Anchorage and Fairbanks, have experienced a 19% increase and a 27% increase respectively in this caseload last year. This is also a high impact caseload for us, especially now that termination of parental rights cases must be handled rapidly, to allow early permanent placement.

District Court

At the district court level, we saw an overall increase of 15% in case filings last year. 6% of this growth is in the non-traffic category, and the rest was due to traffic and other violations. These figures represent something of an acceleration of the slow growth trends we have recorded over the past four years. Misdemeanors are up more than civil cases and the nature of the misdemeanor caseload is changing. Misdemeanors involving crimes of violence have increased by 26% over the past four years. (Within the felony caseload, violent crimes are also growing faster than other crimes.) This is a trend having important implications throughout the criminal justice system, and most distinctly on the Department of Corrections.

I have another caseload statistic to share with you that is disturbing, but no longer surprising. Domestic violence filings increased by 7% last year. Since 1995 we have seen an overall increase of 28% in domestic violence cases statewide. The incidence of domestic violence has a serious impact on a variety of criminal and family issues which concern you. It also has a profound impact on the work of the state courts. This is a caseload which demands quick and meaningful intervention. The handling of these cases presents special problems. Victims who seek the help of the court are often not represented by attorneys, they are frequently emotionally distraught, and often are at risk of further violence. These factors make domestic violence cases

a special challenge. Staff must be given added training, and security personnel must be on hand.

Time-to-disposition statistics in the trial courts range from excellent to in need of improvement. On the excellent end of the scale, the average felony case was decided in 140 days. On the other end of the scale, general civil cases took an average 437 days to resolve. This statistic is disturbing not because that time in itself is necessarily too long, but because it shows an increase of 91 days from the year before.

Appellate Courts

In the supreme court the number of appeals filed increased by about 12%. In the court of appeals the increase was 3%. Neither of these statistics is necessarily an indication of any particular trend. I think they may be merely examples of the sort of fluctuation one would expect to see in a period of basic stability.

Appellate time-to-disposition statistics have improved. In the supreme court the average time between submission of cases for decision and publication of decisions has been reduced by 31 days -- 321 days as compared to 352 days in the year before last. We have made a special effort to expedite cases involving child custody. I reported last year that these cases were being decided in just over three months. We have improved on that this year and the average disposition time is just over two months.

The court of appeals has improved its average disposition rate to 222 days, down from about 240 days in the year before.

Committees

Delay Reduction Committees

I have recently appointed two committees to address the problem of judicial delay.

The first is the Trial Court Time Standards Committee, which will be co-chaired by Justice Alex Bryner and Superior Court Judge Elaine Andrews, Presiding Judge for the Third District. The committee members include judges from all over the state, representatives from the Alaska Bar Association, and court administrators.

We want to establish time standards for various types of cases. Most cases should proceed from filing to closing within the established time. This new committee will review standards set elsewhere and recommend a set of time standards appropriate for Alaska. Time standards will allow us to compare our time-to-disposition statistics against fixed goals. When courts are not meeting those goals we hope to be able to take corrective action.

The second committee will address the problem of appellate delay. As I mentioned to you last year, I am concerned about the length of time it takes for cases to be resolved at the appellate level. We have already taken measures to insure that time-sensitive children's cases receive expedited treatment. As I indicated, these measures have been successful. But not all these methods are transferrable to other types of cases. We decide many children's cases using unpublished orders.

Unpublished orders are not appropriate for cases involving issues of public interest or those that establish legal precedent. The Appellate Delay Committee, chaired by our new clerk of court, Marilyn May, and staffed by Judge Mannheimer of the court of appeals and Justices Eastaugh and Bryner, will examine those of our procedures and practices which have delay-causing implications, and will recommend changes which we hope will shorten disposition times for all types of cases on appeal.

Standing Committees

As new trends emerge and conditions change, courts must often change too. Over the years the court system has been able to call on people from within and outside of the court structure to help develop new approaches for new problems. The court system has ten standing committees which work throughout the year to study and recommend changes in their respective areas of interest.

The standing committees are in the process of completing two large projects. The CINA/Delinquency Rules Committee has issued the final draft of proposed rules to implement the new child protection statutes which went into effect last September. And the Family Rules Committee is just finishing rules which govern the duties of custody investigators and guardians ad litem. These rules should clarify the roles of these important positions and eliminate some of the expensive litigation which has occurred because of uncertainty as to those roles.

Special Committees

In addition to the standing rules committees, the court system has created a network of special committees to address particular needs or issues. I will mention the work of some of those committees.

In 1996, Chief Justice Allen Compton appointed an Indigency Guidelines Committee to develop standards and guidelines for judges to use in determining a person's eligibility for appointment of counsel at public expense. In large part, this committee was formed in response to a legislative concern, expressed through a legislative audit report, that appointment practices were too subjective and lacked defined criteria. The committee comprehensively reviewed this subject, issued a report and recommended specific rule changes. In response to the committee's recommendations the supreme court adopted a new indigency guidelines rule. This rule, which becomes effective on May 15th, (1) specifies the lines of inquiry which judges must pursue before appointing counsel, (2) defines what income and assets must be considered in deciding whether a defendant has the ability to hire private counsel (whether to count spousal and unmarried partner income was a thorny issue here), and (3) provides standards for determining the cost of private counsel. The rule provides a well-defined structure for the appointment process, and we believe it addresses the concerns raised by the legislature.

The committee and the court have also recommended a statutory change. Under Criminal Rule 39, civil judgments are entered against those who are served by appointed counsel in order to recover a portion of their defense costs. This has been a successful initiative. Last year the state recovered \$730,000 and the Municipality of Anchorage recovered \$240,000. But under the current statute recovery may be made only from those who are convicted. We have submitted proposed legislation which would eliminate this limitation. Our reason is that those who can afford to hire private counsel must pay attorney fees regardless of whether they are convicted or acquitted or whether their cases are dismissed by agreement. The duty to pay for appointed counsel should likewise not depend on the ultimate result. But this, of course, is a matter for you to decide.

A new Statewide Task Force on Access to Civil Justice, chaired by Justice Dana Fabe, is studying another area of concern. More and more people are handling their own cases in court, without attorneys. As I reported to you last year, these cases are extraordinarily time consuming for our courts. Litigation is complex and often bewildering for unrepresented parties. The limited availability of legal aid swells the ranks of pro se litigants. The decline in funding for legal services for the poor is a serious concern and the supreme court supports and recommends increased funding. But, anticipating that any change is likely to be gradual, the Task Force on Access to Civil Justice is looking at ways to simplify certain types of litigation. For example,

forms useable in divorce and stepparent adoption cases can be devised and made easy to understand. And they can be made available over the court system web site. The Task Force is also studying ways to expand the volunteer pro bono program. Finally, the Task Force will promote and publicize community resources which are useful in resolving disputes without litigation.

On another front, the Fairness and Access Implementation Committee, co-chaired by Justice Robert Eastaugh and Fairbanks Superior Court Judge Meg Greene, is working to insure that all racial and ethnic groups have equal access to the courts and receive equal treatment in them. The original Committee on Fairness and Access examined racial and ethnic bias issues, and made numerous recommendations to the supreme court in late 1997. The Implementation Committee is now putting into effect the Advisory Committee's recommendations. Implementation will include (1) making jury service easier and juries more representative; (2) using community resources, including tribal organizations, on a consensual basis to resolve disputes and improve sentencing and sentence compliance; (3) improving interpreter services to permit accurate fact finding; (4) making the court system a better minority employer; (5) increasing public confidence by improving understanding of the judicial process; and (6) studying whether disproportionate conviction or imprisonment rates are caused by decisions in the criminal justice process which improperly take race into consideration.

Last year the supreme court also adopted a comprehensive new code of judicial conduct. This code is the product of hundreds of hours of work by a special committee and by the court itself. The code is published with a thoughtful and helpful commentary that was written by the committee.

I have mentioned only some of the work of the court's committees. Other committees are working to promote gender equality, to review the child support guidelines, and to promote mediation projects. All our committees are comprised of volunteers. In the case of the lawyers and lay people who serve on them, this is unpaid work. All are devoting their time and energy to improving the justice system. We owe them our gratitude.

District Court Rule 8 Update

Before leaving the subject of the work of our committees, I want to give you an update on how a new rule is working. I am referring to District Court Rule 8 which uses money judgments instead of bench warrants as the enforcement tool of choice where people do not respond to traffic citations. This went into effect in October of 1998. In the five months since then in Anchorage (I apologize for not having statewide statistics) the court has entered some 6000 judgments. Individually, the amounts are small, but the total is significant, over \$1,250,000. Just as important is the fact that these judgments represent bench warrants that do not have to be issued or served. We calculated the cost of each executed warrant at \$180. But the main purpose of the new

rule was not to raise revenue or save costs, but to put in place an effective sanction which will encourage those who receive citations to respond to them in a timely way. More time will be needed before we can make a judgment on whether this purpose is being achieved.

Mediation and Alternative Dispute Resolution

In 1997 you passed legislation which encouraged the broader use of mediation. The court system is in total accord with this and I can report progress.

- In the third district a child custody and visitation mediation program is underway. The court has contracted with four experienced mediators for this program. It is aimed at families who cannot afford private mediators. This program is funded through a federal grant.
- Also in the third district a mediation program for child in need of aid cases is just getting started. Mediation will be offered both before and after adjudication. This program is also funded through a federal grant.
- In Juneau, Presiding Judge Larry Weeks has instituted a program that requires mediation in all domestic relations cases unless there are special reasons why mediation should not take place. He reports good results.
- In Fairbanks, Presiding Judge Ralph Beistline has begun a program of referring children's matters to mediation. He reports positive early results.

- The court system now maintains a directory of mediators on its home page. The directory lists the fields in which each mediator specializes. Judges, attorneys and parties use this when they are seeking mediators active in their respective communities.
- The supreme court has recently amended the code of professional responsibility governing lawyers. The code as amended states that lawyers should counsel their clients regarding the availability and desirability of mediation in appropriate cases.
- On the supreme court agenda, final approval of a rule for mediation of civil cases on appeal is pending.

Mediation is just one component of what we call alternative dispute resolution, ("Alternative" here means alternative to litigation.) Other components are arbitration and the diversion of cases to other entities. Private arbitration has been with us for many years. We encourage it and regularly enforce arbitration awards as judgments. What I want to address here is diversion, specifically juvenile diversion programs.

One such program is the Anchorage Youth Court. You probably know how it works. Children accused of minor crimes are given the option by state juvenile intake officers of having their cases handled by the youth court. They are prosecuted, defended and adjudged by other children who have received training for their assigned roles. Upon conviction, sanctions are imposed. They include such things as

community work service, restitution, usually an essay of apology, and counseling. If the sentence is not completed, the case may be referred to the court system. The message conveyed to these young defendants seems altogether healthy: There are consequences for violating the law, and they will become more serious if more violations follow. Rates of recidivism are low for those who have been sanctioned by the youth court.

The Anchorage Youth Court is very well established. It is something of a national model. It handled about 500 cases last year. Anchorage will be hosting the national youth court conference this spring. The court system does not take credit for the youth court idea or its founding. But we support it in various ways with our employees and our facilities. Most of the other major cities in Alaska also have youth court programs. We intend to give them all the support we can.

Last summer I visited a number of our magistrate courts in small villages. In each of my visits I met with community and tribal leaders. Based on those meetings, my perception is that juvenile crime is a serious problem in the villages. In some places juvenile crimes are not charged or redressed until they approach very serious levels. And there seems to be little in the way of effective intermediate sanctions. Incarceration is a remedy which is too harsh for most cases, yet often it seems to be either a question of that or nothing.

In light of the unredressed juvenile crime problem, it is encouraging to hear of various locally initiated programs. Presiding Judge Michael Jeffrey of the second district reports on one leading example. Barrow has an Elder's court rather than a youth court, but it works on the diversion principle. It is run by the Native Village of Barrow and it meets on a regularly scheduled basis in the state court building. Twenty volunteer Elders staff the court and monitor compliance with whatever sentences have been imposed. The concept of having a local organization which can intervene with youthful offenders before their conduct gets out of hand is very popular in the community. There is a similar program in Togiak.

It is the view of the court system that juvenile diversion programs are highly useful. We encourage their widespread establishment, and commend all those who have initiated those programs that presently exist.

Budget

I will briefly address the court system budget request for next year. As you know, our budget is a relatively small piece of the overall state operating budget, only about 1.3% of the total. But we understand that it is your duty to review all elements of the state budget, large and small, and to save money wherever it makes sense to do so.

One noteworthy aspect of our budget request will be invisible to you. In light of the decline in operating revenues, we have decided not to submit some requests this

year, in spite of real needs. The best example is the Bethel court. The judges and administrators of the fourth district have asked us to request authorization for a second superior court judge for Bethel. The caseload in Bethel is heavily weighted with labor-intensive criminal and children's cases and has experienced rapid growth. The Bethel court has been supported by borrowing judges from Anchorage and Fairbanks on a regular schedule. Still it is falling behind in its caseload. Because establishing a new superior court judgeship is expensive, we have decided not to request a new Bethel judgeship this year. But there is a strong possibility that we will have to do so in the near future. We are attempting to shore up services in the Bethel area with temporary positions funded through federal grant programs, but this cannot be considered a permanent solution.

You have our budget request before you and I won't go through it, item by item. Instead I will mention only that the court system has requested \$1,417,000 to improve courthouse security. This is the third year we have submitted this request to you. It is not really an item which should be in our budget. By statute, the Commissioner of Public Safety has the responsibility to maintain order in court proceedings. The commissioner takes this responsibility very seriously. But the Department of Public Safety does not have sufficient staff to provide the services which are required to make our courthouses safe. The Governor's Office of Management and Budget has asked the court system to include this item in its budget, although the funding would be

immediately transferred to the Department of Public Safety. The department would use the funds to hire 22 new court security officers.

Violence in courthouses has become a nationwide problem. We are not immune from it. We have had assaults and one hostage taking. These have not resulted in serious injuries or deaths. But we may not be so fortunate in the future. We need additional security. I urge you to fund this request for the safety of all who come to our courthouses. Many, like jurors and witnesses, are there involuntarily, but all deserve protection.

Court Construction Projects

Construction on the new Fairbanks court building will begin this spring. It will have five stories, house 14 courtrooms, and have facilities specially designed for children's cases. It should be completed in the spring of 2000. The building is located along the Chena River. It has an attractive design, and it should make a highly positive contribution to the environment of downtown Fairbanks.

An addition to the Palmer courthouse is also slated to begin this spring. This will provide two additional courtrooms, a grand jury hearing room and other improvements. It is also scheduled for completion in 2000 and should provide much needed relief to presently overcrowded conditions.

Changes on the Supreme Court

My colleague Justice Allen Compton retired from the supreme court this year after 18 years of service. This is not the place to attempt a reprise of Justice Compton's distinguished career. But it is one measure of his dedication that he continues to serve the court system on an as-needed basis as a pro tem justice and trial judge.

Governor Knowles has appointed Walter L. Carpeneti to fill the vacancy left by Justice Compton's retirement. Justice Carpeneti is in the gallery and I will ask him to stand at this time. Justice Carpeneti served as a superior court judge in Juneau for 16 years, and he did so very well. He received the highest rating on the bar poll that any candidate for a supreme court position has ever received. This is a remarkable achievement, especially when one considers that in those 16 years a great many attorneys have walked out of his courtroom on the losing side.

Justice Carpeneti plans to continue to live and maintain his chambers in Juneau. I think this is a positive development. The supreme court is strengthened by geographical diversity. It broadens the perspective of the court and contributes to public confidence.

Justice Carpeneti is only the 18th justice to serve on the supreme court during our 40 years of statehood. The court has been very stable and this too has been a positive factor. Lengthy judicial terms contribute to judicial independence and to stability of precedent. During one ten-year period, from 1983 to 1993, we had no

changes in supreme court justices. But that could not last, and in the past five years we have had a complete changeover in the court, save one. At this point, and intending no comment on my own future, I look forward to another long period of substantial stability. With four new, relatively young, and highly capable justices, there are good grounds to believe that the core of the current court will be the Alaska Supreme Court in the new century, and for a good part of the next 40 years of statehood.

Conclusion

In the 40 years since the Alaska Court System's abrupt beginning, a mature organization has developed. Well over a million cases have been decided in locations which are spread all across our state. Fair trials, and decisions on the merits in accordance with law are the objective in every case. The overall goal is the establishment of justice. This goal is easy to express. But serious efforts toward its achievement are necessarily diverse, complex and never ending. These efforts are on going. I truly believe they have become a tradition of the Alaska Court System.

Thank you for your help and support over the years. And thank you for inviting me to appear before you. I wish you well in your deliberations.