

**THE STATE  
OF THE JUDICIARY**

**AN ADDRESS BY  
CHIEF JUSTICE JAY A. RABINOWITZ  
BEFORE THE JOINT SESSION  
OF THE ALASKA LEGISLATURE  
MARCH 21, 1974**

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# Alaska State Legislature

1971

Source:

SCR 42

## SENATE CONCURRENT RESOLUTION NO. 42

Relating to a "State of the Judiciary" message to the Legislature.

### BE IT RESOLVED

#### BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS, although the Judicial branch of government is an equal branch of our government, along with the Executive and Legislative branches, many legislators, as well as members of the public feel that a communications gap exists concerning the operation of the Judiciary; and

WHEREAS all legislators should have and would welcome the opportunity to be addressed by a representative of the Judicial branch of government; and

WHEREAS such a presentation concerning the state of the Judiciary would be beneficial to both the Judicial and Legislative branches of government, as well as give the Legislature an in-depth view of the successes, problems, and goals of the Judiciary; and

WHEREAS the Honorable Warren E. Burger, Chief Justice of the United States Supreme Court, has recommended that an excellent manner in which to strengthen the cooperation and understanding between the Legislative and Judicial branches of government would be to implement, on an annual basis, a "State of the Judiciary" address to the state legislatures by the chief justice of each state's highest court;


BE IT RESOLVED by the Alaska Legislature that the Chief Justice of the Alaska Supreme Court is cordially invited to address a joint session of the legislature at a time to be determined by the leadership of both houses; and be it

FURTHER RESOLVED that it is the intent of the Legislature to make the "State of the Judiciary" address an annual occurrence, the first "State of the Judiciary" presentation to be made to the Seventh Legislature, Second Session.

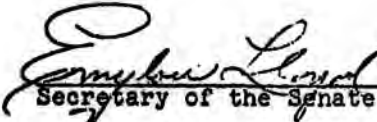
# Authentication

The following officers of the Legislature certify that the attached enrolled resolution, Senate Concurrent Resolution No. 42, was passed in conformity with the requirements of the constitution and laws of the State of Alaska and the Uniform Rules of the Legislature.


Passed by the Senate April 16, 1971

  
President of the Senate

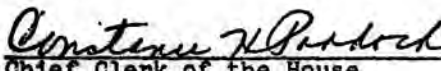
ATTEST:

  
Secretary of the Senate

Passed by the House May 7, 1971

  
Speaker of the House

ATTEST:

  
Chief Clerk of the House

**STATE OF THE JUDICIARY MESSAGE**

**Chief Justice Jay A. Rabinowitz**

**March 21, 1974**

**Before a Joint Session of the Alaska State Legislature**

**INTRODUCTION**

This is the third State of the Judiciary Address by a Chief Justice of the Alaska Court System. We appear before you at the invitation of Senate Concurrent Resolution No. 42, Second Session, Seventh Legislature, which found a gap in communications between the Judiciary and the Legislature and requested this annual address giving "an in-depth view of the successes, problems, and goals" of the Alaska Court System.

We deeply appreciate your invitation and share your belief that cooperation and understanding between the branches of government are strengthened by this opportunity. This is the first address which the entire Supreme Court of Alaska has attended. It is fitting that my colleagues are here because the Alaska Court System depends for its success upon the collective efforts of all its justices, judges, and all the men and women who comprise our supporting staff.

## COURT WORKLOAD

Trial Courts. Our records show that on all levels of Alaska's trial court system--the Superior, District, and Magistrate Courts--81,657 cases were filed and 73,216 cases were terminated in 1973. Of particular interest is the fact that our trial courts processed to conclusion 15,494 criminal cases. Out of this total, the Superior Court disposed of 1,134 felonies, the District Court processed 11,665 misdemeanors, and our magistrates disposed of another 2,665 misdemeanor cases. In addition, our trial courts terminated 11,550 civil cases, 1,120 probate matters, and 1,657 juvenile cases.

I would point out that of the total 81,000 cases filed last year 49,000, or sixty per cent, were traffic violations. We anticipate that adoption of a Uniform Traffic Bail Schedule, which I will discuss in a few moments, will significantly reduce the number of traffic cases and permit us to make more efficient use of our judicial resources. I should also mention that the presiding Superior and District Court judges throughout Alaska have reported that our trial courts are not plagued with serious backlogs which in other jurisdictions have delayed and, thus, denied justice to litigants and the public. Our Rule of Criminal Procedure which requires a criminal case to be tried within 120 days of the complaint or indictment has played a significant role in providing for speedy trial of the accused.

Supreme Court. This was a record year for the number of opinions issued by the Supreme Court--123 opinions were published, an increase of twenty five per cent from previous years. At our current pace, 150 appeals will be decided in 1974.

Not only are we carrying a larger caseload, but in both civil and criminal appeals, we have measurably reduced the interval between accepting the appeal and publishing our decision. We have never before been this current.

Not all of the Supreme Court's workload concerns criminal matters. Approximately sixty per cent of the cases coming before us are civil appeals presenting a wide spectrum of legal issues. To illustrate, we issued opinions in 1973 on condemnation, water rights, and workmen's compensation; on the Public Utilities Commission, the Alaska Transportation Commission, and child custody; on construction contracts, insurance contracts, bar admission and discipline, voting, reapportionment, and state taxation questions. For those who have the interest, a reading of just a few of our opinions will give insight into the complexity of appellate problems and the effort which goes into each decision.

The Supreme Court also bears an obligation to promulgate rules of practice and procedure for civil, criminal, juvenile, and probate cases in all courts. My colleagues participate in making the numerous and difficult policy decisions required to administer the Alaska Court System.

#### RULES OF THE BAR AND COURT

In the past year, we have continued our efforts to update and revise court rules of procedure.

Bar Rules. We recently revised rules governing admission of attorneys to the practice of law in Alaska. New, streamlined, and, we anticipate, more



effective procedures for the discipline of attorneys were also adopted. For the first time, we have a rule protecting clients of an attorney who becomes incapacitated and unable to carry out his professional duties because of illness, habitual drunkenness, and like causes. We now have an innovative fee arbitration rule which affords a dissatisfied client the opportunity to enter arbitration over a disputed fee. These bar-related rules have been promulgated by the Supreme Court at the suggestion of the Alaska Bar Association and are the product of many hours of mutual cooperation and consultation between the court and practicing attorneys.

For the courts we have adopted the Code of Judicial Conduct recommended by the American Bar Association. We are among the first states to adopt this stringent code. An important provision requires full disclosure of all extra-judicial compensation received by judges and justices. In addition, we have issued a rule on judicial leave and vacation policy.

Civil Rules. We are well into a major redrafting and revision of our Rules of Civil Procedure. This is the first systematic re-evaluation of the Civil Rules since statehood. We hope to profit from our decade of experience as well as the experience of federal courts and other states which use similar rules. This project should be completed by early fall.

Probate Rules. We have also issued Probate Rules to complement the new Probate Code enacted by the Legislature.

Children's Rules and Small Claims. There are two other areas in which studies have been undertaken. First, a new Advisory Committee on Children's

Rules has been appointed. This panel is chaired by Superior Court Judge Gerald Van Hoomissen, and it is anticipated the committee will hold public meetings throughout the state. Second, the Advisory Committee on Small Claims has circulated its draft proposals to the bar and the public. The response has been so substantial that I have recommended public hearings be held by the Small Claims Committee before its final recommendations are forwarded to the Supreme Court.

Republication of the Rules. Through the efforts of Justice Robert C. Erwin, all bar and court rules are being republished in an improved format by Book Publishing Company.

Advisory Committee on Magistrates. By this time, you should have received a report from the Supreme Court's Advisory Committee on Magistrates. I think it sufficient to report here that the Court System has already implemented some of this Committee's proposals and has other of their recommendations under study.

Advisory Committee on Criminal Rules. We have appointed a second Advisory Committee on Criminal Rules to annually review Alaska's Rules of Criminal Procedure. The labors of the first Advisory Committee on Criminal Rules bore fruit in January 1973 when we issued the first amendments since statehood to the Rules of Criminal Procedure. The impact of these amendments and the continued vitality of other Criminal Rules will be the concern of the present Committee. They are a distinguished, balanced, and experienced group, to be headed by former Attorney General George N. Hayes. This Committee has

been directed by the Supreme Court to address, in particular, rules relating to criminal discovery, grand jury proceedings, plea bargaining, and the content of pre-sentence reports with a view to recommending any needed changes.

#### ADMINISTRATION

Administrative Director. In administrative matters, the most significant development has been the hiring of Arthur H. Snowden, II as Administrative Director of Courts. Mr. Snowden was selected from an outstanding group of candidates, and his performance as Administrative Director has not disappointed our high expectations.

Under his leadership and supervision, we have made progress during this year in two important areas of administration. We have drafted a comprehensive set of Personnel Rules which will set out in detail regulations for selection, appointment and separation of personnel; their hours of work, their compensation grades, their leave allotments, and the like. Those Rules will be promulgated effective July 1, 1974, and they will govern every employee of the Alaska Court System. Second, we have nearly completed an efficiency analysis of every position in the Court System. With this study in hand, we will be able to evaluate whether each position is needed, whether its pay rate is adequate or excessive, and whether we can shift or expand responsibilities to make operation of our courts more efficient.

Trial Court Administrator. Another step away from duplicated and overlapping responsibilities has been accomplished through the joint efforts of Presiding

Judge C. J. Occhipinti, Judge Eben H. Lewis of Anchorage, and our Administrative Director. By their efforts, a highly-recommended Trial Court Administrator was recently hired for the Superior and District Courts in Anchorage. We expect this new Trial Court Administrator to devise a calendaring system for civil, criminal, and children's matters which will ensure full employment of judicial manpower and a minimum waste of jurors' and witnesses' time.

Traffic Bail Project. In this past year we have responded to the Legislature's mandate in Chapter 30 of the 1973 Session Laws of Alaska which authorized the disposition of certain motor vehicle and traffic offenses by a bail paid without a court appearance. A Traffic Task Force, coordinated by our administrative office, has completed an essential prerequisite to this new procedure, a Uniform Traffic Bail Schedule. This will be promulgated by the Supreme Court effective July 1, 1974, and when used with a Uniform Traffic Citation, should remove the bulk of traffic violations from the courts. Citizens will no longer have to personally appear before the court to respond to traffic citations; bail forfeitures can be determined from the uniform schedule and paid by mail. The Court System and the taxpayers should reap an additional benefit from no longer having to provide staff and space for individual court appearances. Not every traffic offense will be removed from the courts, but we anticipate a very substantial reduction in the 49,000 traffic offenses which the courts processed last year. By responding to your mandate, we hope to free some of our existing judicial resources for other matters where the assistance of a judge and the courts remain indispensable.

To observers from outside the courts, administration is not a prominent feature. But it is essential. We have moved in the past year toward a highly expert administration and more streamlined procedures because efficiency in organization and expertise in operation have the greatest potential for long-run benefits to the Alaska Court System.

#### JUDICIAL COUNCIL

The work of the Judicial Council will be another foundation for improving the Court System. I wish to thank you on their behalf for appropriating sufficient funds to employ a full-time Executive Director. The Judicial Council is now able to fulfill its obligations under Alaska's Constitution to study and recommend to the Legislature and the Supreme Court improvements in the administration of justice.

In its first months, the office of the Executive Director has completed a number of studies. You have been furnished copies of the Council's analysis of the Public Defender Agency and its evaluation of the Court System's fee structures. A study of the present judicial districting scheme has also been prepared and should be distributed to you soon. These projects will be most helpful to the Legislature and the Supreme Court because, in each case, they are accompanied by concrete proposals. The Public Defender project has already resulted in bills which adopt the Council's design for improving administration of the Agency. The Council's proposals for court fee schedules are now being discussed with the Alaska Bar Association and considered by the Supreme Court.

Aside from undertaking these important studies, the Executive Director, R. Eldridge Hicks, has established a constructive working relationship with the Governor's Commission on the Administration of Criminal Justice and its staff arm, the Criminal Justice Planning Agency. One product has been several Law Enforcement Assistance Administration discretionary grants totalling \$62,000. With these funds, the Council will conduct three studies. The sentencing process will be examined in depth. Bail and alternative release programs will be analyzed. These will provide the statistics and insights essential to improving bail and sentencing practices. The LEAA funds will also support a broad survey of criminal justice standards and goals, including plea bargaining.

Another project to be commenced this year is a study of prison facilities and programs with a view to evaluating the costs and benefits of continuing to send Alaskan convicts to outside prisons. The Council wants to know whether these same services can be provided in Alaska with greater control over prison policy at costs equal to or lower than our present expenditures.

One of the more controversial subjects the Supreme Court will submit to the Council for study is whether our District Courts should be abolished in favor of a one-level, general jurisdiction trial court. District Courts hear misdemeanor offenses, including the bulk of traffic violations, civil cases involving \$10,000 or less, and small claims. Proponents of a one-level court system believe that more experienced Superior Court judges should try these matters and that a single-level trial court could be administered more efficiently. I bring this to your attention

because the Anchorage Bar Association recently passed a resolution asking that the Judicial Council not initiate steps to fill a vacant District Court seat in Anchorage and requesting another Superior Court judgeship instead.

In sum, the Judicial Council on a very small budget is emerging as a valuable research and planning body giving assistance to the Legislature, the Governor's Commission, and the Alaska Court System.

### BUSH JUSTICE

Bethel Service Area. One of the most interesting accomplishments of the past year has been the creation of a judicial service area for Bethel. Before this service area was created, responsibility for judicial matters in the Kuskokwim-Lower Yukon region was divided among the Second, Third, and Fourth Judicial Districts. Major trials were held in Fairbanks or Anchorage, far from the citizens most concerned with the proceedings. Trials held in Bethel required two days of travel by Judge Sanders of Nome just to reach the community. Because grand juries were convened in Anchorage or Fairbanks, witnesses from villages in the region traveled long distances from their homes. Police protection was reduced because troopers in Bethel spent long periods of time waiting to testify before the grand juries in Fairbanks or Anchorage.

Now the Kuskokwim-Lower Yukon region will be regularly visited by Superior Court Judge Eben Lewis of Anchorage. Trials and grand juries will be held in Bethel. Grand jurors will be chosen from the area, and witnesses

will have to travel only to Bethel. We have assigned an additional administrative clerk to Bethel, and Judge Lewis has been given an operating budget and complete control over civil, criminal, and children's matters as well as the calling of grand juries. Creating this service area has been our attempt, within the confines of our budget, to deliver judicial services to a rural area of Alaska.

Barrow Service Area. Results from the Bethel service area experiment have been so favorable that we are considering establishing a second service area for Barrow. In April, members of the Court System and interested executive agencies will meet at Barrow to discuss whether the concept can be successfully applied to this region.

My own view is that the need for service areas following lines of population, transportation, and commerce but cutting across judicial district boundaries reflects the lessening importance of judicial districts in the day-to-day functioning of our courts.

Modular Village Facilities. In last year's address, I announced plans for construction of modular judicial facilities in four villages. Today, through funds from the Indian desk of the Law Enforcement Assistance Administration, and at no cost to the state, these structures have been delivered, installed, and are now owned by the communities of Emmonak, St. Mary's, Kiana, and Selawik. One has to see these facilities on location to appreciate the tremendous improvement they are over what earlier served as jails, police offices, and courts in these villages. The Court System pays \$75 per month as rent for magistrate offices in



each of these buildings. In addition, the 840 square foot modules provide jail facilities, offices for village constables, and a meeting area for village councils.

This year the Court System is coordinating additional grant applications to the LEAA Indian Desk totaling \$350,000 for another nine modules. We anticipate installation of these at Point Hope, Noorvik, Gambell, Savoonga, Hooper Bay, Mekoryuk, Aniak, Galena, and Angoon.

I would emphasize that these are discretionary grants which do not diminish the LEAA funds available to other components of the Criminal Justice System.

#### CAPITAL IMPROVEMENTS

In the area of capital improvements during 1973, the Court System occupied the George F. Boney Courthouse in Anchorage. The building is a magnificent structure, designed for future expansion and already a showcase for many fine examples of Alaskan art. The move has allowed us to consolidate clerical staffs of the Anchorage Superior and District Courts. The old court building is now being remodeled to house the District Court, the Public Defender, and other executive agencies.

The Court System now shares with other state bodies the new State Office Building in Ketchikan. Construction continues on the Court and Office Building in Juneau, and future construction has been authorized for Sitka, Valdez, and Kenai.

The Court System's capital budget requests for the next fiscal year include two capital improvement projects which are very important. These will build court

facilities at Bethel and Barrow. I have already described to you our Kuskokwim-Lower Yukon service area. There will now be grand juries at Bethel, regular service by a Superior Court judge, more trials, and a local filing system. All of these new and needed services will be crowded into space which is already extremely inadequate. Let me read to you the observations of Judge Mary Alice Miller and Justice James Fitzgerald, two members of the Governor's Commission on the Administration of Criminal Justice who participated in recent Commission hearings at Bethel:

The greatest need in any area of the criminal justice system is for greatly enlarged facilities in Bethel. The courtroom is about 16' by 24', barely able to provide seating space for six jurors during a trial. There are no witness, attorney, or jury rooms, no clerk's office nor chambers for the judge. The working space for the administrative staff is the courtroom; there are desks, typewriters and telephones in it. All other work of the court must stop while arraignments and trials are conducted.

In this courtroom there is no possibility of creating an atmosphere of quiet dignity, indispensable to a court. There is instead incredible crowding and confusion from the lack of essential space.

Facilities at Barrow, which we are considering as the center of another service area, are equally inadequate.

In our capital budget request, we have asked for \$1,000,000 for buildings in each of these communities. This budget will provide essential court space and facilities for the District Attorney, the Public Defender, Division of Corrections personnel, and the State Troopers. I urge you to give very serious consideration and approval to these capital budget requests.

## BUDGET

You will recall that at this time last year the Legislature gave a great deal of attention to the Court System's budget documents. One of our administrative office's achievements since that time has been the presentation to this session of the Legislature of operating, capital improvement, and pipeline impact budgets which reflect very careful preparation and responsible fiscal policies.

Our operating budget is essentially a maintenance budget. The only significant increases are attributable to our occupation of new buildings in Ketchikan and Anchorage. We must now amortize \$810,100 worth of Alaska State Housing Authority bonds annually.

Our capital budget requests have been limited to essential expenditures. We must equip the new Juneau, Kenai, and Valdez court buildings and carry out necessary modifications to the Fairbanks courthouse. We have asked for modest new facilities at Glennallen and Delta Junction and for the critically necessary structures at Bethel and Barrow.

We have for the first time contracted for an independent audit of the Court System's finances. This will be undertaken by the executive branch through the Department of Administration. Upon examination, you will discover that our proposed budget and our fiscal management reflect the Court System's responsiveness to constructive criticism and our desire to cooperate fully with the Legislature.

## JUDICIAL SALARIES

This year we have presented to the Legislature a position paper on judicial compensation. Recommendations for salary levels in the Alaska Court System are included which propose that:

|                                       |               |
|---------------------------------------|---------------|
| Justices of the Supreme Court receive | \$45,000;     |
| Judges of the Superior Court be paid  | \$40,000; and |
| Judges of the District Court receive  | \$33,500.     |

Unlike other state employees, no salary increases have been granted members of the Superior or Supreme Court since 1970. As a result, our Superior Court judges have fallen from 13th to 30th in the nation in pay rates adjusted for purchasing power. Supreme Court justices have slipped from 25th to 42nd. I think it is obvious what effects inflation has had on judicial salaries in the past four years.

We now ask an experienced attorney to make a great sacrifice when he comes to the bench, because present judicial salaries give him substantially less income than he will earn in private practice. Judges are expected to remain on the bench, so they surrender as well the growth of their income as their private practice matures. If we want as our judges men of ability who have acquired the skill and wisdom to dispense justice surely and efficiently, we must pay them more.

We believe we have fully justified our proposals, and we urge you to re-examine our detailed Judicial Compensation Position Paper and to enact its recommended salary levels.

## CRIMINAL LAW

In preparing this address, I had occasion to read again the first State of the Judiciary address delivered in 1972 by Chief Justice George F. Boney. Interestingly, a full one-third of Justice Boney's address was devoted to the subject "War on Crime". He said in part:

There is no question that . . . crime is on the increase in Alaska. . . . It is very easy to arrive at over-simplified solutions to complex problems. It is also very easy to pick scapegoats. Crime is not created by the courts or the legal profession; the causes of crime are extremely complex. Many cry for repressive sentences . . . as a solution to the crime problem in this country. Needless to say, this is too narrow a solution. . . .

Chief Justice Boney then outlined a series of proposals. He called for the upgrading of law enforcement personnel. He asked that "the habitual criminal statutes . . . be invoked by district attorneys insofar as the incurable recidivist is concerned"; that sentencing practices be improved; and that consideration be given in light of "public concern that persons on bail often commit other crimes while awaiting trial" to developing a uniform bail policy.

I have taken the time to review Chief Justice Boney's remarks of two years ago because they remain timely and because some criticisms of the Court System give the impression that the judiciary has been at best indifferent to the interests of society in criminal matters. I want to assure you that such criticism does not reflect past or present judicial philosophy nor judicial practices.

Turn, for instance, to the subject of sentencing. In the first appeal by the prosecution after the Legislature granted the Supreme Court

jurisdiction to review criminal sentences, the defendant had been convicted of rape and robbery but sentenced to only one year. In disapproving the sentence, we told the bar and the trial bench that Alaska's Constitution requires penal administration based on principles of reformation and the need to protect the public. We held that these constitutional principles encompass:

isolation of the offender to prevent criminal conduct during the period of confinement, deterrence of the offender himself after his release from confinement . . . , as well as deterrence of other members of the community who might possess tendencies toward criminal conduct similar to that of the offender, and community condemnation of the offender, in other words, reaffirmation of our laws for the purpose of maintaining respect for law.

I would venture to say that no member of the Alaska judiciary would deny that some criticism of sentencing practices has merit. It was forcefully argued at a recent meeting that our sentencing courts have failed to identify, isolate, and give different treatment to the recidivist--the repeated offender. Personally, I believe this is a valid criticism. The cause is not that our sentencing judges are insensitive or indifferent, but that they have been left uninformed. In the Third Judicial District in Anchorage, we had not provided, systematically, the background and records they need in each case to identify and isolate the hardened criminal.

In response to recent legislative action assuring necessary funding, we recently amended the Rules of Criminal Procedure to require in every felony case that pre-sentence investigations be conducted and reports made to the Superior Court before a sentence is imposed. This knowledge should permit our trial judges to identify the recidivist and create different sentencing patterns for the hardened criminal.

On the other hand, our courts cannot be relegated to mechanically imposing upon all who come before them the harshest of punishments. The youthful, the first-time offender must be considered differently than the hardened criminal. The goals of rehabilitation and reformation cannot be overlooked in determining a sentence which is just to the convicted defendant and just to society.

#### PROJECTS AND GOALS

I perceive the following as necessary projects and continuing goals of the Alaska judiciary.

We must obtain reliable, detailed statistics so that such subjects as sentencing and court workloads can be analyzed with accuracy. Although the work contains numerous inaccuracies and statistical defects, a beginning has been attempted in the form of the Court System's LEAA funded "Statistical Research Project".

We must develop improved calendaring techniques which will lead to the most efficient use of the resources we now have.

We must continue our endeavors to reduce appellate delay and at the same time achieve high quality in our opinions.

We must insure that adequate judicial facilities are provided, where the need has been demonstrated, in all areas of Alaska.

We must continue efforts to attract properly qualified personnel for service in the judicial system.

We must continue on a statewide basis to consolidate the administrative functions of our trial courts and provide judicial services to the public with minimum inconvenience and maximum efficiency.

We recommend that the Legislature consider enacting a completely revised criminal code.

Finally, we recommend that periodic regional conferences be held which include all components of the criminal justice system, representatives of the Legislature, the bar, and the public. At these conferences, frank and constructive discussions should be encouraged in order that all points of view be brought to bear on improving the workings of our criminal justice system. We further recommend that either the Governor's Commission on the Administration of Criminal Justice or the Judicial Council, or both, arrange and coordinate these conferences.

#### CONCLUSION

In conclusion, I wish to express the sincere thanks of the entire Alaska Court System for the opportunity to report to you on these matters. As I view it, the quest for justice is never ending, one that calls for long hard hours of work, equally hard and skillful thought, and an overriding commitment to making our system of constitutional government work. You must understand that under Alaska's Constitution the Judiciary is called upon to insure that all Alaskans are accorded equal rights, opportunities, and protection under the law. We who have the privilege of serving in Alaska's Judiciary are fully cognizant of the uniqueness of life in Alaska and of the opportunity granted us to achieve a quality of excellence in our



government and life styles which unfortunately is already unattainable in many of our sister states. It is my belief that the achievements of the Judicial Branch of Alaska in the relatively short fifteen years since we attained statehood have been outstanding and should be a source of pride for all Alaskans.