

**THE STATE
OF THE JUDICIARY**

**AN ADDRESS BY
CHIEF JUSTICE JAY A. RABINOWITZ,
BEFORE THE JOINT SESSION
OF THE ALASKA LEGISLATURE
APRIL 15, 1975**

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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;

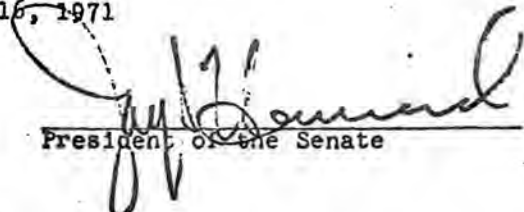
BE IT RESOLVED by the Alaska Legislature that the Chief Justice of the Alaska Supreme Court is cordially invited to address a joint session of the legislature at a time to be determined by the leadership of both houses; and be it

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.

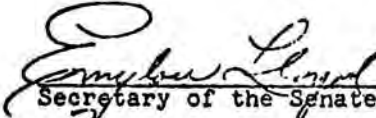
Authentication

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

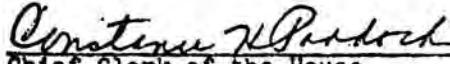
ATTEST:


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

April 15, 1975

Before a Joint Session of the Alaska State Legislature

INTRODUCTION

President of the Senate Croft, Mr. Speaker Bradner,
and members of the Ninth Legislature.

This marks the fourth occasion upon which a Chief Justice of the Alaska Court System has had the privilege to deliver a State of the Judiciary Message to a joint session of the Alaska Legislature. This meeting today was made possible through a concurrent resolution passed by this body in 1971. In accord with your mandate, it is my intent, in this State of Judiciary Message, to report to you concerning the problems, goals, and successes of Alaska's Judiciary.

SUPREME COURT OF ALASKA'S WORKLOAD

In 1974, 60 petitions for review from interlocutory orders, 22 original applications, and 208 appeals were filed. Of these 290 matters, 253 were terminated. Since I last addressed you, the Supreme Court of Alaska has handed down approximately 135 opinions involving a wide range of subjects.

Of particular interest to this body are the Supreme Court's decisions concerning governmental issues. During this past year the third reapportionment case reached the Supreme Court of Alaska. I have reference here to Groh v. Egan, which was preceded by Egan v. Hammond in 1972, and Wade v. Nolan in 1965. This past year a challenge to the constitutionality of Article II, Section 2 of the Alaska Constitution, which conditions eligibility for seeking legislative office upon general residency in the state for three years and of the district from which elected for one year, was decided. Also the constitutionality of Article V, Section 1 was questioned by an alien who is a permanent resident of Alaska and who was precluded from voting in our state elections. We issued opinions involving reapportionment of the Greater Anchorage Borough Assembly; the attempted dissolution of the South Kenai Peninsula Hospital Service Area; the Valdez annexation; the declaration of candidacy procedures of the City of North Pole; and an appeal by a member of the Judiciary from a censure recommendation of the Judicial Qualifications Commission.

Our court was also called upon to resolve the deeply

felt and hard fought issue of the constitutionality of the capital move initiative and whether the question could properly be placed before the electorate for decision.

During this same period, the first appeal from a conviction for pollution under Alaska's Environmental Conservation Act was argued and decided.

In a very recent decision (April 9th of this year), the Supreme Court of Alaska recommended that Alaska's Legislature fashion a new and more effective system to enforce the parental obligation of child support. Similarly, two of our most recent opinions should be of interest to this body. Both involved usury issues, one in the context of construction loans and the other in the commercial setting of a third-party lease of business equipment and fixtures.

Finally, I want to mention this court's Aguchak decision which holds considerable importance for residents of rural Alaska. In Aguchak, the Supreme Court of Alaska was called upon to delineate what Alaska's Constitution requires in the way of adequate notice in small claims proceedings as well as the proper venue (place of trial) for trial in these small claims matters.

TRIAL COURTS' WORKLOADS

The calendar year 1974 witnessed an increase of 10% over 1973 in regard to the total number of cases filed in Alaska's trial courts. Our statistics show that 90,108 cases were filed in Superior Court, District Court, and before our magistrates. Of the 90,108 cases which were filed, 83,145 were processed to disposition. This latter figure represents an increase of 11% in the Alaska Court System's disposition rate when compared with 1973.

Turning first to criminal cases in our trial courts, it appears that 17,500 criminal matters were concluded by the Superior and District Courts, and by Alaska's magistrates. In the past year, 1,209 separate felony prosecutions were instituted in Superior Court and of these, all but 150 were disposed of in the same calendar year. In this regard, I think it significant that 95% of our felony dispositions were reached by means other than a trial on the merits. All of which has ramifications when one examines the subject of plea bargaining. Somewhat surprisingly, statewide there were 72 fewer felony filings in 1974 when compared with the previous year. Analysis of the character of our criminal caseload reveals that charges relating to drug sales, burglaries, and assaults with a dangerous weapon account for 45% of all felony filings in Alaska.

6,347 civil cases were commenced in Superior Court in 1974 which represents a decrease of 8% over the preceding

year's filings. Uncontested divorces and child support matters accounted for 62% of the total civil cases filed. 1,413 children (juvenile) proceedings were filed and again we discern a decrease in overall filings of 17%. On the other hand, probate filings rose by 10%.

79,909 cases of all types were filed in District Court last year, of which 74,853 were disposed of during the calendar year. Traffic filings, indicating a 10% increase, rose to 53,942. Traffic cases constituted 62% of the total case filings in District Court. The District Court was also called upon to deal with a 19% increase in misdemeanor offenses, which totaled 16,765 filings.

JUDICIAL COUNCIL

During the past year, the Judicial Council has been particularly active in filling judgeships, developing new programs, and providing studies with recommendations to the Alaska Court System and the Legislature. Five judgeship vacancies required interviews and nominating action by the Council, including the Supreme Court position filled by the appointment of Justice Burke, the Fairbanks Superior Court judgeship filled by Judge Blair, an Anchorage District Court position filled by Alex Bryner, and at present the Governor has placed before him nominations for District Court judgeships in Juneau and Wrangell-Petersburg. At the Council's next meeting, which is scheduled for mid-May, it will consider applicants for the Superior Court judgeship vacated by Justice Burke, as well as applicants for the position of Public Defender for the State of Alaska.

In August 1974, the Judicial Council concluded that the retention election process for judges could not function as it was intended unless the voters of the state were provided some preliminary information about the judges. The Council developed a program for evaluating the 19 judges subject to retention election in 1974 by reviewing vacation, sick leave, and continuing education records, by conducting polls of attorneys, agency personnel, and members of the public who knew the judges, and by interviewing some of the judges themselves. The result was that the Judicial Council recommended the retention of 17 judges and recommended the

rejection of 2 judges.

However, the Council decided that its general constitutional mandate to conduct studies for improvement of the administration of justice left unclear the extent to which it was empowered to conduct such a program of informing the public. Hence, the published results of the evaluations were limited to statements of endorsement or opposition--avoiding detailed discussions of the qualities and weaknesses of judges. Now the Judicial Council has asked the Legislature for the specific authorization to continue to develop a program for informing the electorate on the qualities and performance of judges.

During the past year, the Judicial Council has also devoted much time and study to the problems of judicial districting. A preliminary report published in July 1974 was followed by public hearings and testimony from judges and administrators. The final report published in January 1975 recommended 7 judicial districts. These Judicial Council reports have provided valuable background information and have proven to be the catalyst for extensive thought and discussion by the Supreme Court, the trial judges, court administrators, and legislators on the central issues of retention election constituencies and the administration of judicial services in rural areas.

Recently, the Judicial Council released two detailed reports on the bail process in Anchorage and the sentencing process in Alaska. These reports were the result of nearly

a year of work by statistical analysts and attorneys attempting to compile information about the bail and sentencing processes in a manner that would accurately represent events and would be meaningful to judges and legislators in identifying problem areas and designing improvements. The staff of the Judicial Council will continue to analyze the data obtained in these studies for more detailed information and for formulating specific recommendations.

The first of a series of reports in the Judicial Council's evaluation of criminal justice standards and goals was published as a report on the grand jury in Alaska which contained proposed recommendations to the Judicial Council. That report has been disseminated widely to lawyers and other criminal justice practitioners for comments, prior to the Judicial Council's deciding on specific recommendations. Under the same program of evaluating criminal justice standards and goals, the Judicial Council is investigating the plea bargaining process, the criminal litigation process, and conducting a seminal study of the disposition of criminal offenses both formally and informally in the bush.

The present fiscal year is only the second year that the Judicial Council has received from the Legislature a modest budget for hiring a staff, and yet it is already apparent that the relatively small investment has produced, through the dedicated efforts of the members of the Council and its gifted Executive Director, R. Eldridge Hicks, valuable information about the justice process and some immediate

improvements in the justice system. The Judicial Council has truly begun to fulfill its constitutional mandate which in part requires it to make studies and recommendations to the Legislature and the Supreme Court of Alaska for improvements in the administration of justice.

Finally, mention should be made of the personnel changes which have occurred during the past year. Eugene Wiles, attorney member from Anchorage, has recently resigned and the Bar Association is in the process of selecting a successor. Thomas Miklautsch, non-attorney member from Fairbanks, also resigned, and Robert Moss, Sr., a commercial fisherman from Homer, was appointed by Governor Hammond.

ADMINISTRATION

The last 12 months have been both eventful and fruitful ones for the administrative side of the Alaska Court System. Under the professional direction of Arthur H. Snowden, II, Administrative Director of the Alaska Court System, I believe we have achieved that degree of administrative excellence which was set as a priority goal in the 1973 State of Judiciary Address.

An appropriate starting point is the 1974 Annual Report of the Office of Administrative Director. Each of you will receive a copy of this very comprehensive report, which contains much detailed statistical information regarding many of the subjects which I can only treat summarily here.

Of considerable administrative significance was the abolition of the previous system of dual presiding Superior and District Court judges -- a system which led to duplication and confusion of the lines of authority. Another change instituted at the trial court level was appointment of Area Court Administrators for the First, Third, and Fourth Judicial Districts. The primary duties of our Area Court Administrators are to relieve the presiding judges of administrative burdens, to assist in budget preparation, supervision of clerical personnel, and procurement of necessary equipment, and to monitor the need for judicial services in both Alaska's urban areas and its bush areas.

In the field of administrative technology, the Alaska Court System implemented the following major

technological systems and applications:

Automated Traffic Processing System (ATPS). This system will provide for computer control of traffic citations processed through the courts and an automatic update of the driver's history record. A Judicial Information System providing a complete computerized case reporting system that assembles data relevant to workload, case backlog, case processing times, disposition trends, and recidivism. A Jury Management System improvement which permits our trial courts in Anchorage and Fairbanks automatically to issue checks for jury service and to accumulate jury costs by type of case. A Uniform Bail Schedule which provides a statewide schedule of amounts of bail that can be forfeited and mailed to the courts for a large number of minor traffic violations.

The Supreme Court has promulgated comprehensive Personnel Rules under which a statewide recruitment and selection process has been adopted. Further, a position classification plan for all court system employees has been put into effect. All positions were evaluated and then allocated to different salary ranges to assure equal pay for equal work on a statewide basis. Additionally, an Affirmative Action Plan has been adopted to ensure equal employment opportunities within the Alaska Court System.

During the coming year our Administrative Office plans to implement at least four major projects.

Design and implementation of the court's module of the Alaska Justice Information System (AJIS) will be carried

out. This will enable the Alaska Court System to track cases and defendants as they progress through the entire criminal justice system. I am informed that this will be the first statewide criminal justice system in the country.

Development of Uniform Forms which will facilitate practice of the law throughout the state.

Uniform Filing Standards will be developed to determine file content, length of file retention, and medium of storage.

Appellate Delay. Analysis will be made of the causes of appellate delay and any needed changes will be instituted.

Our Administrative Office has also instituted a public information program to assure that Alaskans are fully informed regarding the nature and activities of the Judicial branch of Alaska's government.

ALASKA COURT SYSTEM'S SPONSORED LEGISLATION

The Alaska Court System is interested in favorable treatment being accorded to three measures concerning certain governmental activities which we believe are not properly within the province of the Judiciary. These nonjudicial duties relate to the subjects of Absentee Ballots, Vital Statistics, and Medical Examiner.

The Absentee Ballot Bill provides the framework for election supervisors in Anchorage, Fairbanks, and Juneau, and, with the approval of the Administrative Director, for magistrates to issue absentee ballots in those locations where there are no other appropriate executive branch employees to perform the function.

Concerning the collection and preservation of vital statistics, the gist of our proposal is to divest the Alaska Court System of this essentially executive function.

Investigation into the cause and manner of suspicious deaths is now the responsibility of coroners within the judicial branch of government. The medical examiner legislation would create within the Department of Health and Social Services the office of medical examiner. The chief medical examiner would be a pathologist, with experience in the field of forensic pathology, and would have duties that go beyond those now performed by the coroners.

The Alaska Constitution establishes a single unified state court system. Since statehood, a number of municipalities

throughout the state have maintained personnel whose primary tasks involve processing municipal cases through the courts. In some instances these municipal employees work side by side with state court personnel, although they may have different salaries, different holidays, and different working hours. We believe that this situation is in violation of the constitutional provisions establishing a unified court system. Accordingly, we are arranging for the transfer of all municipal employees performing court tasks to the state court system.

In large part, the municipalities have continued to employ their own court personnel because of the statutory requirement that political subdivisions pay the entire cost of the judicial services provided by the state in prosecutions for violations of their ordinances. Since the state court system is the only possible forum for these prosecutions, and because no other litigant is charged all actual expenses for litigating its claims, we think it unfair to charge municipalities as now required under the statute. The proposed amendment to AS 22.15.270 would repeal this requirement.

The Supreme Court has also submitted a bill to realign the boundaries of the four judicial districts to conform to existing communications and transportation routes. I intend to return to the subject of judicial districting at a later point in this address.

RURAL JUSTICE

1974 was reflective of the Alaska Court System's continuing efforts to improve the quality of judicial services in rural Alaska. The frequency of travel to the bush by District and Superior Court judges has increased; a court interpreter program has been instituted; village conciliation boards are being formed and their performance will be studied; a law school program for rural judges has been approved and we are now in the process of applying for L.E.A.A. funding; and our magistrate training program has been revised and intensified.

In regard to the Magistrate Training Program, we have appointed four training judges -- all of whom are district judges who will be responsible for providing necessary legal assistance and training for the non-attorney magistrates in their areas. Magistrates will be trained prior to assuming office; regional training sessions are to be held. Video and audio cassette training tapes will be designed to meet the needs of many of Alaska's magistrates. I think it of importance to note that for the first time in the state's history all magistrates in Alaska have the capability of recording their proceedings. Our Magistrate Training Coordinator has undertaken a wide-ranging study into the availability of judicial services in rural Alaska.

A pilot program has commenced for the training of court interpreters at the Eskimo Language Workshop at the Kuskokwim Community College in Bethel. Three Yupik-speaking

Eskimos have been selected for the start of this program. Each speaks one of the major Central Yupik dialects. But at the end of a year's training each will be skilled in all three major Central Yupik dialects as well as English. They will also be trained in the legal processes and requirements of the courts.

On completion of their training, these interpreters will be able to assist any Yupik-speaking person who may come into a court as a witness, litigant, defendant, or juror. They will also be able to assist other agencies, such as police departments, the Department of Law, or the Public Defender Agency.

When the Court System began development of this program, it was found that it is a unique undertaking. As far as is known, no other state or court system has developed a formal court interpreter program.

Consequently, a very important part of the program now underway in Bethel is the development of the curricula and techniques for the training of additional court interpreters. From the basis being laid in Bethel, the Court System has begun the training of additional court interpreters in the other languages spoken in this state.

Bethel was chosen for the site of this pilot program because it is the location of the Eskimo Language Workshop with its experienced staff, active District and Superior courts, and an experienced native District Court Judge in Mrs. Nora Guinn, who is assisting in this effort.

The Court System also recognizes the need to provide informational material explaining the court system, the role of the courts, and the judicial process. To help explain the role of the courts and the administration of justice, the administrative staff of the Court System is preparing informational material, in both printed and videotape form, that will be translated into the various native languages for use throughout the state.

Criminal justice modular facilities are to be installed this year at Gambell, Savoonga, Mekoryuk, and Angoon. The installation of these modular units will bring the total to 13 in various bush locations.

BY WAY OF CONCLUSION

All Alaskans have the right to expect and demand a judiciary that is neutral--that is a judicial system composed of justices and judges who will not be swayed by the political persuasion of the litigants, or by the transient pressures of any particular power block. A neutral judicial system calls for justices and judges who will, with sensitivity, scholarship, detachment, and diligence resolve disputes as justly as possible. For Alaska's Constitution is dedicated to the principle that all persons who come before Alaska's Constitution are entitled to equal rights, opportunities, and protection under the law. And it is our sworn duty to insure the fulfillment of this constitutional guarantee.

This duty has many ramifications. If I had been persuaded that it would increase judicial services to, and improve the quality of justice in the bush, I would have supported the Judicial Council's recommendations calling for the creation of seven judicial districts. My personal objection is that the smaller you make the election retention units (by creation of additional judicial districts), the greater the possibility that this essential ingredient of judicial neutrality will be significantly eroded and compromised. Additionally, I have reservations as to the soundness of fragmenting administrative lines of authority. In my view what is needed by our rural areas is better judicial services. In this regard I have previously mentioned in some detail the varied approaches the

Alaska Court System is undertaking to achieve this goal. Admittedly the subject is debatable and to this end the Alaska Court System has agreed to work in conjunction with several House committees in seeking meaningful alternatives to the existing judicial retention election procedures.

My earnest hope is that modern transportation and communications developments and legal reforms have in fact diminished the possibility of the reoccurrence of the type of miscarriage of justice in the bush that was so vividly described by Representative James Huntington in his book "On the Edge of Nowhere". Today a trial cannot be expected to pass appellate scrutiny unless it is conducted with the aid of an interpreter where needed. No longer do families have to suffer vast geographical and time separations if one of its members has to appear as a witness, litigant, or juror for in Alaska criminal trials must be held speedily and are required, for the most part, by statute to take place in the election district where the crime occurred. Under the Supreme Court of Alaska's decision in Alvarado v. State, the trial jury must be composed of a representative cross section of the people living in the area where the crime was committed.

It should be apparent that justice is not the exclusive province of the judiciary and that neither justices nor judges can eradicate existing biases or prejudices in those who come before Alaska's courts as litigants, witnesses, or jurors. Nevertheless the same constitutional provision which

guarantees all Alaskans equal rights under the law places upon all Alaskans corresponding individual obligations to insure that these rights are respected. If all of us live and work together in justice then Alaska's people and our society as a whole will surely approach the natural magnificence of this land.