

STATE OF THE JUDICIARY

JOINT SESSION ADDRESS

BY

CHIEF JUSTICE JAY RABINOWITZ

MARCH 12, 1987

CHIEF JUSTICE RABINOWITZ: Mr. President, Mr. Speaker, Legislators, fellow Alaskans; good morning. This is the fifteenth occasion that in response to your concurrent resolution a Chief Justice of the Supreme Court of Alaska has had the privilege to spend a few minutes with you and to report to you and to the people of Alaska on the **State of Our Judiciary**. And we do appreciate this opportunity.

A bit of history first and external events, because they weigh heavy on my mind and it's certainly reflective of the debates that I read about that this body is engaged in. In 1066 the Duke of Normandy looked up in the sky and his troops and he saw this comet, it was Haley's Comet. And he thought it was a good omen. Across the channel the English king had just gone through a very arduous and quick march down from York where he fought off a diversionary tactic of the Duke of Normandy; that is he used the Scandinavians to attack. And the English troops looked at Haley's Comet and they were disheartened.

Well, I don't think really this is the year of Haley's Comet, but there's a more important external event which is coloring our thinking and bringing about some realistic hard thinking by this body, by our Administrative Director, by my colleagues, who I'll introduce at the end of this address, and by the Court System in general. And that is the amazingly sharp decline in the price of oil and the impact this has had on energy producing states, and on Alaska and on the rest of this country.

And it's fascinating, the debate between the so-called experts. It's almost reflective of the competing armies looking at Haley's Comet. I just read in the last three days, a distinguished economist from Harvard who is of the opinion that oil should drop \$2.00 or \$3.00 a barrel and it should shut down completely domestic oil production. And his name is Jorgenson of Harvard College. So that those engaged in domestic oil production could go to more productive undertakings, without a thought of the nation's security, the drastic dislocations this would have for the nation's economy and the impact it would have on our banking system in this country.

Well, it is against this background that I come to you as chief spokesman of the Alaska Supreme Court and the Alaska Court System, fully cognizant of the extraordinarily difficult situations you have to make in regard to the allocation of Alaska's shrinking revenues. And I come to you and I think that we have a special cause, and to plead a special case and to urge you when you're thinking about cuts, not to go too far that would deprive Alaskans of the judicial system they're entitled to under our constitution. But more of that later.

I think if you historically look over the budgets, and your respective budget committees can discuss this with the full houses, I think you'll come to the conclusion that we have been accurate and candid in the assessment of our needs. We are operating at present on a \$38,800,000.00 budget. Now, with that budget, an Alaska Court System comprised of 600 employees, and less than 60 judges, although we do have 60 magistrates included also, we have to meet an ever-rising caseload. And our caseload at present is 165,000 cases annually. Of these a full 22,000 go into our major trial court and that is the Superior Court. And the days of the fender-bender, the one and two day automobile trial, that is not the norm any longer in our civil litigation.

Even in our criminal litigation, as you see the Peel trial in southeastern and the various McKay trials, they are becoming more complex. Litigation is taking longer and it's becoming more complex. We are getting more mega cases, which are taking more of the judicial resources.

Well, are we keeping up with this rising caseload, with I think these honest budgets, budget requests that we've submitted to you? The news is good to you in the Legislature

and to fellow Alaskans. The disposition rates of both the district courts and the superior courts have improved dramatically in the last year. What does this mean to you? It means that using the available resources we are keeping up with the explosion in litigation in this state.

Now, in light of what we perceive as real dramatic declines in the revenues that are going to be available to the court system, are we passive or are we undertaking measures that in good faith are attempting to meet what's happening in this state? Well, administratively, since December we have put a ban on any new hire, we have curtailed travel, we have curtailed attendance at judicial conferences and judicial educational meetings.

We are constantly seeking ways to save the state money. And one of the methods that we have employed and have studied recently is the closed circuit TV arraignment of defendants.

This has been carried on in Fairbanks. The Judicial Council carried out a study and ascertained that in Fairbanks alone the city and state enforcement people and I think that one thing you must consider in your deliberations as to allocation of resources is to reaffirm both the Legislature's and the Court System's commitment to rural Alaska.

Looking back when I started, the changes are so dramatic in the Bethel area in terms of the facility, the resident superior court judge, and 19 lawyers in the community. And whatever you think of the legal profession, it has brought about a dramatic change in rural Alaska's access to the justice system. And I think it's imperative that we continue and nurture our efforts in rural Alaska to give all Alaskans access to our system of justice.

Now, on a positive level, I can report that the Supreme Court of Alaska, besides our willingness to serve as trial judges, has once again for the third straight year shortened the disposition time (and practicing attorneys and litigants will welcome this) it takes when a case is submitted to us, to the time we reach a final decision. Similarly, the Court of Appeals have also truncated its disposition time on matters submitted to it.

And I've already reported to you that despite this burgeoning caseload, both on the civil and criminal side and district and superior courts, the courts for the most part have made remarkable progress in the disposition rates. And this is in face of (and I think recently a public defender testified before you people) this is in face of a 60% increase in jury trials in Anchorage alone. The PD testified, I believe, before this body that in the last year they've experienced a 36% increase in their caseload.

So what I want to convey to you is that I think we have the flexibility, I think we have the good will and we have a record, past record of honest budgets, and that we have demonstrated and will continue to demonstrate receptivity to new and innovative means of approaching litigation. And this has been dramatically in Anchorage through I think mostly the impetus of our Presiding Judge Douglas Serdahely. We have instituted a fast-track system.

One of the common complaints you hear about our system is that it's too complex, too slow, and too costly. The fast-track system is designed to take 60% or more of the pending civil cases that we get annually in the Anchorage area and give these cases simplified, expedited treatment so that the litigants will get their cases adjudicated more rapidly and with less expense. This is one of the very, very innovative things that the Supreme Court approved of and it's actually in place and being tried in Anchorage, which again, and I told you this last year, is our heavy caseload area.

One other thing that I'd like to touch upon before going back to a little history, and that is the workings of the Alaska Judicial Council. I'm sure that Fran Branson is here. One

of the more controversial things that you asked the council to study was the grand jury and the grand jury's investigative and reporting powers. Now, the council did give you copies of a preliminary report. We received word informally, but I understand a written communication is forthcoming, that the Senate does not want recommendations.

Well, speaking for myself I can advise you (1) that the council will make discrete recommendations as to improvement in the grand jury's procedures and, (2) I as Chief Justice am going to submit these recommendations to my colleagues for their consideration. And eventually if they approve to the advisory committees, both civil and criminal, our advisory rules committees for their consideration and adoption. Because I am persuaded after studying the council's report that there are indeed areas of pathology, there are areas that must be improved in both the grand jury's charging function and the grand jury's investigative and reporting function.

Now, I know it's disappointed some of you that the council did not sit as an appellate tribunal and pass judgment on the actions of the executives in the handling of the grand jury proceedings that involved the governor. That was not the function of the council and if there was a misunderstanding I apologize for it. I was responsible for insisting that the council not take on the role of an appellate tribunal and pass any judgments. These are neutral recommendations that are going to be made by the judicial council.

Another study that the judicial council has made is that of presumptive sentencing. And when I was out in Bethel I made a statement, we had a marvelous public meeting and you really get a sense of what rural Alaska feels for the court system and all its winds, its warts, its flaws. The one thing that came through is that they want a court system, they appreciate the efforts that you people have enabled us to make in rural Alaska. But presumptive sentencing came up, and the council's study will be out on presumptive sentencing. And remarkably, to me at least, the council's conclusion of the study is that presumptive sentences have not led to longer sentences. And that presumptive sentencing has not increased the number or the percentage of criminal cases that go to trial. The filings have increased, but the percentage is exactly the same.

And as for length of sentence, except for reclassification factor, most sentences are about the same length under presumptive sentencing as prior to the institution of this regime of presumptive sentencing. I personally am astounded that that's the result, but I think you'll have to study it for your deliberations, we'll have to study it. But I think it's interesting that the council did this.

The council also studied this closed-circuit TV arraignment and came up with its conclusion that \$50,000.00 can be saved just in one location alone. Not Court System savings, but savings to agencies, local police agency and the state agency. The council is also monitoring, and the Peel trial, the McKay related trials dramatically illustrate this, the change that we've made in our immediate plan. No longer can a defendant have a veto and block media coverage of his or her trial, criminal trial, unless for some, you know, small area of crimes, like sex crimes, et cetera, where there's young victims or the victim objects. But, this is an interesting development. We're going to continue to study it and the council will monitor it for an additional year and then report back. You'll have the council's report and you'll have our report.

So, in general, if I could sum up, I don't know where the line is, where you're going to have to allocate the resources. You have terribly difficult issues. And I'm delighted to be where I am. I would not want to be in the boat of having to allocate shrinking revenues. Subsistence is a monumental issue, the whole issue of tort reform. Although you might not

have much to do with it, tribal sovereignty is another one. These are great themes that are presently occupying our time and our thoughts in Alaska.

But, I want you when you do make your final budget considerations to remember that although we only have a \$38,000,000.00 budget and we only have 600 employees and we have very few judges, and we only occupy 1.7% of the operating budget, that we are a third branch of government and that when all the dust settles, what do we want out of this whole exercise in government? You want a judicial system that people have access to, a judicial system that's fair, a judicial system that disposes of its cases with dispatch.

You cannot, or I plead with you do not, cut us below an operating level where we can give this type of service that is constitutionally demanded to the citizens of Alaska. I want to thank you for the support that you've given us in the past and assure you, and I've probably forgotten some of the innovative things that we're doing, that we indeed will continue to strive to give Alaska a judicial system that meets not only the real needs, the constitutional needs, the pragmatic needs of the citizens of Alaska.

And before I conclude, I would like to introduce my colleagues who really without complaint are accepting extraordinary burdens. Besides sitting as trial judges, they've been showered with administrative decisions. We're going through this massive re-study of our civil rules, criminal rules, jury instructions on both the civil and criminal side, and children's rules. And why are we doing this? To make it simple, more comprehensible and less expensive to the litigants in this state.

And they are up to their eyeballs in this undertaking. I'll go in seniority first: The Honorable Edmond Burke is the last gentleman there; Justice Warren Matthews; Justice Allen Compton; and we're delighted he didn't make the federal bench, Justice Daniel Moore. In conclusion I want to thank you for inviting us. I know that this has a certain structure, but I think it's important that we show our face, we tell you our hopes, our aspirations, what we're doing. A more detailed report is in our annual report, the State of the Judiciary Annual Report. And that we continue this dialogue, this spirit of cooperation and this joint undertaking, this marvelous experiment in democracy. And in a year from this coming September, we're going to celebrate the 200th Anniversary, the bicentennial of the Philadelphia signing of our Constitution.

And this marvelous experiment in federalism must go forward. I think we have a distinguished society in Alaska in terms of its fairness to its citizens. Let's keep it so. And with your hope and your understanding, I think you'll let us operate, I hope you'll let us operate as a judiciary should in this jurisdiction. Thank you.