



THE STATE OF THE JUDICIARY

A MESSAGE BY
CHIEF JUSTICE WARREN W. MATTHEWS
TO THE SIXTEENTH ALASKA LEGISLATURE
March 2, 1989

STATE OF THE JUDICIARY ADDRESS

Introduction

President Kelly, Speaker Cotten, Senators, Representatives, Ladies and Gentlemen. The day after tomorrow is the 200th anniversary of the United States of America. Our Constitution became effective on March 4, 1789. On the eve of this remarkable occasion, I thought it appropriate as a representative of the third branch of government, to mention some aspects of the role of the judiciary that were envisioned by the founders of our country.

The founders recognized the judiciary to be the weakest of the three independent branches of government. Alexander Hamilton, writing in the 78th Federalist Paper, noted that the executive holds the sword of the community and the legislature "commands the purse" and "prescribes the rules by which the duties and the rights of every citizen are to be regulated." The judiciary, Hamilton noted, lacking these powers has "neither force nor will, but merely judgment."

The independence of the judiciary from the other branches of government was thought to be essential. "There is no liberty," Hamilton wrote, "if the power of judging be not separated from the legislative and executive powers." More specifically, one reason for judicial independence was thought to be inherent in the concept of a constitution, as a limit on the

power of government. Our founders recognized that it is the duty of the courts to declare acts of the legislature or executive to be void when they are in conflict with the constitution. Hamilton put it this way:

[T]he courts were designed to be an intermediate body between the people and the legislature in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges as, a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

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The founders anticipated that ruling against the legislative or executive departments would often not be popular. Hamilton refers to this aspect of a judge's job as "arduous" and requiring "an uncommon portion of fortitude." But because this type of judicial review was seen as indispensable to our constitutional system, the founders insisted on strict safeguards to ensure judicial independence.

To establish justice - to use the phrase from our preamble - is the concern of all three branches of government. And, while each branch has core areas where responsibility is not shared, there are important areas of mutual dependence. Since we

are in a real sense partners in the administration of justice, I am pleased to make this report to you on the state of the Alaska judiciary.

Case Load

In the first half of this decade we experienced a very rapid growth in case load in our trial courts. This peaked in 1985. Only slight declines were experienced in fiscal years 1986 and 1987. Last year, however, we did experience a significant decline. Total filings were 66,432 cases, down some 9% from 1987 and off approximately 12% from the record year of 1985. In the first fiscal year of this decade, 1981, total filings were 56,000. These increased by some 20,000 filings until 1985, and they have now fallen off about 9,000 below that peak. Thus, about 45% of the total case load growth experienced during this decade has now been lost.

Last year's decline has not been consistent in the trial courts. The district courts experienced the greatest decline - 10% statewide. The superior court decline was 4% statewide, with no change in Anchorage, and slight growth in Sitka, Juneau, Kodiak, and Valdez.

A preliminary look at fiscal year 1989 case filings indicates a continued decline in the district courts, though the rate of decline seems to have slowed, and slight growth - 1-2% -

in the superior courts statewide. Anchorage, our busiest superior court, is up 6% from last year.

In the appellate courts no clear trends were evident in 1988. Filings in the court of appeals fell off 5%, but filings in the supreme court increased by 3%. The supreme court had a very good year in terms of productivity. We decided more cases than in any prior year and cut substantially into our backlog of cases pending.

New Judges

In 1988 we welcomed two new superior court judges to the bench, Judge Dana Fabe in Anchorage and Judge Niesje Steinkruger in Fairbanks. Two new district court judges were also appointed, Judge Larry Zervos in Fairbanks and Judge Michael Wolverton in Anchorage. All these new judges are highly qualified, outstanding people and we wish them the best in their new careers.

Budget

Our operating budget request for fiscal year 1990 is \$40,599,900. This reflects an approximate \$600,000 increase over this year's budget. We have had essentially level operating budgets for the last four years. The requested increase for this year reflects a need to hire five new trial court employees for Bethel, Palmer, Fairbanks, and Nome and to upgrade three

part-time positions to full time in Galena, Nenana, and Healy. Maintenance funds for the court's computer system are also sought. On the administrative side, four new clerical positions are requested. At the Governor's request, we have also included \$39,500 to pay for a judicial training session on handling child abuse cases.

As you review our budget request, I ask that you recognize that the court's ability to limit spending is constrained by the mandatory nature of its duties. We do very little that we might choose legally not to do. The court is under a constitutional mandate to provide a forum to resolve disputes which are properly brought before it. All disputes should be resolved promptly. For the most part that is happening now. While we will try to minimize costs and improve our efficiency, please recognize that there is a point at which a reduced budget must mean increased delay and a lower level of service to Alaska's public.

Palmer and Anchorage Courthouses

In December of 1988, I had the pleasure of speaking at the dedication of a new court building in Palmer. It is a magnificent building with state of the art courtrooms, separate, secure hallways for prisoners, and comfortable public areas. I am pleased to report that this project, which was financed with

municipal bonds on a lease purchase arrangement, was completed on time and for less money than had been budgeted.

Last year, because of changed economic circumstances, we asked that you ratify construction of the Anchorage courthouse expansion which had been authorized by you in 1981. The expansion as designed encompassed 350,000 square feet. It contained space for anticipated court growth which would be used by other justice related agencies until needed by the court. You declined to take final action on the expansion project as so conceived. It was apparent that many of you had reservations about the wisdom of undertaking such a large project while the state's economy was depressed. Most legislators who expressed such reservations indicated that a scaled down project would be preferable. Consequently we are asking for a capital appropriation of \$3,000,000 to redesign the proposed Anchorage court addition to contain some 200,000 square feet. This will not satisfy the future expansion needs of the Anchorage court. But it will provide the court with sufficient space to meet its most pressing needs now.

The current court complex in Anchorage consists of two buildings. The Anchorage district court facility was constructed in 1962. Its foundation and shear walls constitute distinct seismic hazards. The other building in the Anchorage complex, the Boney Building, is of good construction. Most of the courtrooms and most of the judges' chambers are comfortable and

suitable. However, clerical and library space, the jury assembly area and other public areas are seriously inadequate. One of the deepest concerns about the current use of the Boney Building relates to security. The design of the building does not allow for separation of prisoners from members of the public and court staff. This presents risks of escapes, assaults, and possible hostage taking incidents. For these reasons we ask that you approve our capital budget request to redesign this project.

Proposed New Judgeship In Kenai

Our current budget request does not include money for a new judgeship in Kenai. However, a problem there is becoming apparent. Kenai is one of our busiest small court locations. It has been served by a superior court judge and a magistrate. Additionally, retired superior court judge James Hanson has been kind enough to help out on about a one-half time basis. Judge Hanson has advised us very recently that he may not be available for continued service after the end of this fiscal year. We have recently upgraded the Kenai magistrate position to that of acting district court judge. This was done before learning of Judge Hanson's decision and will not do much to fill the void his departure will leave. We can, as a stop-gap measure, use superior court judges from other areas on a scheduled basis to handle the excess workload. At some point, however, it is probable that an

additional full time judge at some level of court will have to be posted at Kenai.

Judicial Salaries

I will turn now to a discussion of judicial salaries. Some have questioned whether this is the right year to raise this subject. I realize that you are engaged in a debate as to the appropriate size of our state government. But this debate has been going on, in various forms, since the drastic decline in revenues experienced three years ago. You know better than I whether the question as to the right size of our state government will be resolved this year or the next or perhaps even later. Without in the least minimizing the seriousness or the difficulty of this major question, I would suggest that other important issues cannot be put on hold indefinitely.

The people of Alaska expect to be served by an intelligent, energetic, and dedicated judiciary. At current salary levels there is a danger that we will see a decline in the quality of people attracted to a judicial career. Within the past year, two of our best and most vigorous superior court judges have resigned from the bench to return to the private sector for economic reasons.

Public service carries with it unique rewards. Most attorneys do not become judges for monetary reasons. But, when the gap between what one could expect to earn in private practice

and judicial pay becomes too wide, as it is now, an unhealthy situation develops. One manifestation of this is that, for the most part, successful, experienced lawyers in private practice cannot afford to become judges. This has the effect of limiting the qualified judicial applicant pool to lawyers who are working for government agencies. It is not an accident that eight out of the last ten vacant superior court judgeships were filled by the appointment of lawyers from the public, rather than the private, sector. This statistic becomes particularly striking when one considers that about 75% of all lawyers are in the private sector.

The State Officers' Compensation Commission recently concluded a two-year study concerning the appropriate level of judicial compensation. After extensive public hearings and reviewing volumes of material, the Commission recommended moderate, but significant, pay increases for judges. For each level of court the recommended increases put judicial salaries about where they were in 1975, considering the decline in purchasing power of the dollar. In fact, the recommendations do not quite catch up with 1975 salaries because 1988 inflation has not been factored in.

I urge you to examine the Commission's report carefully for it is an impressive piece of work. I endorse the Commission's recommendations and I hope that you will do so as well. A pay raise for Alaska's judges is overdue and, in my judgment,

necessary to ensure that the people of Alaska continue to receive a high level of judicial services.

Rules Changes

One area of responsibility that the court system and the legislature share pertains to the rules of practice and procedure and administration. The supreme court has the authority to make rules, but the rules may be changed by the legislature by a two-thirds vote of the members of each house. The supreme court has six advisory standing committees to consider and recommend rules change proposals. Some 88 changes were made in the rules of court last year. Most of them were technical, but some were substantial.

One important change concerned those grand jury reports which make recommendations but do not result in an indictment. The new rule allows a person whose reputation will be damaged by such a report to obtain judicial review of the damaging material before it is made public. Review is limited to whether the report is supported by substantial evidence.

Another rule change of interest allows trial judges to permit testimony over the telephone in civil trials. This should accomplish a considerable saving to litigants because of the expense of travel in our immense state.

Ongoing rules projects include a comprehensive new set of adoption rules which are now in the final stages of approval.

Last year I spoke to you about the child support guidelines rule. I noted that passage of either a rule or a statute containing child support guidelines was necessary for the state to continue to receive federal funds relating to child support enforcement. Our child support rule was passed as an interpretive rule and can be changed or superseded by the legislature by passing a law by a normal majority. A two-thirds vote is not needed. Our standing committee on child support guidelines is now reviewing the rule. Representatives of interested organizations and the public have been attending the committee meetings and public hearings will be scheduled when a preliminary draft of proposed changes is complete.

Another important rule change under consideration concerns the extent to which affidavits, and other documents submitted in support of search warrants, are confidential. This issue has raised considerable interest in the press, which generally wants the documents to be fully available, and with the attorney general's office, which argues for a high degree of confidentiality.

Administrative Projects

We are constantly looking at institutional improvements so that we can more efficiently and effectively decide the cases which are brought before us. One area where we focused our attention this last year was jury management.

The jury is the bedrock of our system of justice, but it is expensive and imposes a burden on citizens who are called upon to serve as jurors. During this past year a court committee, aided by a consultant on jury management from the National Center for State Courts, reviewed Alaska's jury system and recommended a number of changes to streamline procedures and control jury costs. These recommendations included changes in selection procedures to save jurors' time; reduction of the size of jury panels to minimize costs and the burden on prospective jurors; and a change which would require potential jurors in Anchorage and Fairbanks to serve no more often than every other year, rather than every year. These proposals have been reviewed by the supreme court and they are being implemented.

Another area of concern is the length of time that it takes a case, once filed, to reach a final disposition. We adopted formal case processing goals in 1982, and we have continued to review and revise our internal procedures in an attempt to reach those goals. One project which has been instituted over the last few years is the "fasttrack" system now used in Anchorage. Under the "fasttrack" system, less complex superior court civil cases are identified at the time of case filing. These cases are then channeled into a separate judicial department, and are assigned abbreviated time frames for discovery and motion practice. Trials are scheduled for the first available date within 120 days following the trial setting conference. A

majority of cases assigned fasttrack status are now processed to completion in about thirteen months.

Last year, you included in our budget a statement of legislative intent that we examine and evaluate the potential benefits of mediation. You also asked us to educate judges, attorneys, and the public about this subject. In response to your request, we have developed a public information pamphlet explaining the mediation process in lay terms. This is currently available statewide from court offices. Additionally, I have recently appointed a Mediation Task Force to prepare a report to the supreme court concerning mediation in Alaska. I hope that this will lead to rule changes or legislation which either encourage or require mediation of certain types of disputes.

Rural Justice

The court system remains strongly committed to providing equal justice for all Alaskans. The magistrate system is the structure through which many services are provided to rural Alaska. Statewide, forty-five magistrates are employed and the vast majority of these magistrates serve in Alaska's smaller communities. Most of them are not law-trained, and many serve on a part-time basis. To provide support for our magistrates, eight district and superior court judges and four law-trained magistrates have volunteered their time to act as magistrate training judges. These judges, assisted by court administrative staff,

train new magistrates and are on call to give advice to magistrates as problems arise.

It is often difficult to find adequate space in small communities in which to hold court. In the past year we have acquired new court space in Craig, which will be ready for occupancy soon. We have upgraded space in Nome, Yakutat, Valdez, and Sand Point. In Bethel, we have leased additional space to provide for the needs of that court. Also, we have completed capital projects to increase court security in Kotzebue, Kenai, Ketchikan, Homer, Seward, and Juneau with funds which you approved last session.

In this year's capital budget request we are asking for money to remodel the newly leased space in Bethel. Funds are also being requested to provide needed upgrading of facilities in Glennallen, Kodiak, and Kenai.

Judicial Council and Judicial Conduct Commission

I will address briefly some of the work of the Judicial Council and the Judicial Conduct Commission. Both bodies are constitutional entities which are separate from the court system. The work of each is critically important.

The Judicial Council's primary task is to evaluate sitting and prospective judges. Over the last year, the Council evaluated seventeen judges standing for retention election as well as applicants who sought four vacant judgeships. In the

coming year the Council will be considering the development of citizen advisory committees to aid in the evaluation of judges.

The Judicial Council is also charged with conducting research to improve Alaska's justice system. Assisted by a federal grant, the Council has recently begun a study of some of the effects of the attorney general's ban on plea bargaining. The Council is also continuing with a major research project to evaluate justice needs in rural Alaska.

The Commission on Judicial Conduct has the responsibility of hearing and acting upon complaints about Alaska's judges. A well-functioning commission is essential to ensure public confidence in the judiciary. The Commission has recently hired a new executive director, extended its office hours, and adopted new standards to try to guarantee a thorough and timely response to all complaints. However, the Commission is severely handicapped by inadequate funding, which makes full-time office hours impossible. I urge you to assist the Commission by providing enough money for a full-time staff.

Closing

This report has been quite detailed, perhaps too detailed. I have tried to give you a sense of what has happened in the judicial system in the last year, what has been done, what is being done, and what needs to be done.

I do not want to let this mass of details obscure a central point. Alaska's judicial system is functioning very well. Cases are being promptly tried before judges who are fair, dedicated, courageous, and highly competent. Our 508 non-judicial employees are doing an excellent job and their morale is good.

The Alaska legislature has always supported the objective of providing the state with an outstanding judiciary. With your continued help, Alaska's third branch of government which, to use Hamilton's phrase has "neither force nor will, but merely judgment," will continue to exercise its judgment as effectively and wisely as humanly possible.

Thank you for inviting me to address you and I wish you success in the difficult deliberations which you face.