

STATE OF THE JUDICIARY
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BY
CHIEF JUSTICE JAY RABINOWITZ
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CHIEF JUSTICE RABINOWITZ: Good morning. Mr. President, Mr. Speaker, Senators, Representatives, fellow Alaskans. I want to thank you for coming and I want to thank you for giving us this opportunity to briefly speak to you today. But, before I go into my brief address, I'd like to introduce my colleagues. And I'd like to break tradition and not go in our strict order of junior first. The first justice I'd like to introduce is Justice Edmond Burke, who is in his seventeenth year on the Supreme Court of Alaska. Justice Burke also served as a superior court judge, he was appointed in 1970. Justice Burke is from California and got his degree from Hastings Law School. Justice Burke.

And now, really breaking tradition, I want to introduce Justice Daniel Moore, who is in his ninth year of service on our court, after two years of service as a superior court justice. Justice Moore is from the State of Illinois, received his JD degree from the University of Denver. Justice Moore.

And I want to explain why I've broken tradition and gone out of order. Justice Moore and Justice Burke are two of the five finalists for the position of United States District Court Judge, the position that was vacated by Judge Kleinfeld's elevation to the Ninth Circuit Court of Appeals. I think it's a testament to their abilities that they polled so high on a bar poll. All of you know that we get controversial cases, attorneys are deeply committed to the controversies they bring to our courts, so are the litigants and we have to have half of them lose. And despite their long years of service in Alaska's judiciary, they polled extremely high on the bar poll and are now going to be interviewed by justice for the position vacated by Judge Kleinfeld.

I'd next like to introduce Justice Allen Compton, who is in his twelfth year of service on this court, after for years as a superior court judge, if I have it right. Justice Compton is from Missouri and received his degree from the University of Colorado.

Justice Warren Matthews is the next justice I'd like to introduce. Justice Matthews is in his fifteenth years on the Supreme Court of Alaska. He too was born like Justice Burke in California and received his JD degree from Harvard Law School. Justice Matthews.

Now, I'd like to reintroduce myself. We've got California, Illinois, Missouri, and I represent the East Coast, having been born in Philadelphia. I'm in my twenty-seventh year on the Supreme Court of Alaska, and I received my degree from Harvard Law School. A word about Harvard Law School; I saw some of you, you know, wince, there's a remarkable open letter in the most recent edition of the University of Pennsylvania Law School Journal written by a chief judge, he's retired, a former chief judge of the third circuit, Leon Higgenbotham to Clarence Thomas, an open letter. And he says, don't be too impressed with your Ivy League education or with Harvard judges. He said, I want you to remember history.

And almost a hundred years ago in Plessy versus Ferguson, the most pernicious decision ever written against black people by the Supreme Court of the United States. It was authored by a Yale and a Harvard graduate, law school, and the majority was composed of three other graduates of Harvard Law School. And who dissented? A great dissent. The dissent was by Harlan. Justice Harlan went to a law school in Kentucky called Transylvania Law School and he was a former slave owner. And it's really well worth reading today, after almost a hundred years, his great moving dissent in Plessy versus Ferguson.

All right. Well enough of Harvard. That little admonition to not take my degree or Justice Matthew's degree too seriously, we'll get down to the business at hand. And I will be brief. Last time I spoke with you, we were filled with euphoria, patriotism, the Gulf war had been successfully concluded, but the problems remained. And like our international

problems, our problems in Alaska are continuing quiet problems that the Alaska Court System must address. My purpose today is to tell you what did we do with the money you appropriated. And what do we want and what do we hope for out of this session of the legislature.

Well, you know, it's extraordinary that a branch of government that captures 1.4 of your operating budget would be given this amount of time. But look at the importance of this branch of government. In the past year since we last met, there were 122,000 filings in the Alaska Court System. Think of the impact, the number of Alaskans that are involved in the Alaska Court System and the operations of the court system from 122,000 filings. Of those 122,000 filings, 3,000 represent felonies. You know the impact on the victim, on the state, on the defendant and the care that's got to be given to these cases. We had 25,000 misdemeanors processed. We had 8,000 domestic relations cases. We had 4,000 children cases and 3,000 domestic violence cases.

Now, you know what these things mean in terms of liberty, property interests, child custody, support, visitation, the dramatic impact it has. Well, I'm proud to say that of the 122,000 cases that were filed, the Alaska Court System handled these cases with great care and with great principle. And that of the 122,000, only a thousand were appealed to both our courts, that is the Supreme Court and the Court of Appeals.

Now, at the Supreme Court level we have five justices. We disposed of approximately 500 cases. The Court of Appeals with three justices disposed of another 500 cases. And we met the 121,000 cases with 30 superior court judges, 17 district court judges and 43 magistrates. Are you getting your money's worth? We think we're giving you your money's worth and we think you have given us a first class court system, and I'll return to that.

Now, what are we asking for this session? Well, I think the centerpiece, if I have to isolate any piece of legislation, it is our request in House Bill I think it's 443, Art can correct me, it relates to the upgrading of a district court judge in the fourth judicial district to a superior court judge. We're not asking for a new position, we're asking for an upgrade. And why are we doing this? We didn't do this overnight. We watched the situation for an entire year and we are persuaded, and the court is unanimous on this, after a year's study that it is deserving a favorable consideration by you. That you take one district court position, there are four district court judges allotted to Fairbanks, and increase that to a superior court judgeship. That will give us an additional judgeship.

Over the past two years we've had to bring in superior court judges who are on a pro tem basis and elevate district court judges temporarily to meet the burdens of the Fairbanks judges. Now, if I ever could personally endorse anything in complete good faith, my chambers are in Fairbanks. I have a feel for how hard they're working. And I can just tell you that you'd be amazed at the hours the superior court judges are putting in. We have four very skillful, very dedicated judges who are striving to keep abreast with the demands of the job. And they are doing their work. I think this is a worthwhile piece of legislation and I urge that you give it favorable consideration.

As to our general operating budget, I would characterize it as a maintenance budget. As to the capital budget, again, I know that you're strapped, you're going to have very difficult allocation problems, but the Anchorage court house, the old district court house building doesn't get any safer because we're in a financial crisis. We have two engineering reports that put us clearly on notice that building is safe if we have a major seismic event. And need I say no more.

Those of you who are from the Interior, you know that the Fairbanks court house certainly isn't a flagship court house. It's in need of extensive repairs. We put in I think a good faith request for that. Those of you from Kodiak know that we need repairs to that building too. And I urge all of you when you have the opportunity, visit our court houses, see how the judges are working, see the great numbers of people that come in contact with the court system annually, from jurors, witnesses, victims, attorneys, police, observers. When you start out with 122,000 filings, you've got to realize that we are servicing on an annual basis and come in contact with a significant number of Alaskans throughout the state.

All right. Now, in a nutshell, I'd say the most important piece of legislation is the upgrade of our district court judge in Fairbanks. Now, I want to report to you there are two traditional problems in the court system. And those are the cost of litigation and the time it takes for courts to dispose of their cases. Well, we're not oblivious to these constant needs of the court system. And I want to report to you that as to time of disposition I have appointed a special committee that's come up with proposed time standards. This committee was composed of presiding judges. Now, we're going to go to a statewide committee composed of lawyers, administrative personnel and a few select judges who will make final representations and presentations to the court system as to how we should conduct our business in terms of discrete time disposition periods for different types of litigation.

I anticipate that by this summer at the annual judicial conference we will be able to have a formal presentation to the Supreme Court as to timed dispositions. In addition to this, we're going to devote a full day and a half at our annual judicial conference to case management techniques. On the cost side, Justice Moore has been the chair for a long time of one of our 11 standing advisory committees on rules and he's in charge of the Civil Rules Committee. The Civil Rules Committee in part is looking to reduce the cost of discovery, the cost of litigation. And a most interesting project that they're undertaking now is the re-examination of Alaska's concept of awarding attorneys fees to the prevailing party, partial attorneys fees.

I know we've had this for over 90 years, both territory and the state, but the question is, is it chilling or denying access to people who have non-frivolous claims. And they're liable to end up at the end of the litigation with an enormous attorneys fee awarded against them if they happen to lose. So these are two of the main things on cost and time. We've got an active committee working to establish goals that our trial judges are going to be required to meet and we're trying to reduce costs to committees like Justice Moore's committee, the Civil Rules Committee.

Two other committees I'd like to mention. One is a special committee that is mandated by federal law, which I've just appointed, and that is to re-examine the child support guidelines in Civil Rule 90.3. When we first enacted this legislation in 1987, we put a note in and we said that we promulgated this support rule as an interpretive rule under our interpretive powers, not our rulemaking powers. And we sent a clear message to you that it doesn't take two-thirds to change it. And, really, I urge you, although we're going ahead with a re-examination of the guidelines of support, we want to try and make them as fair as possible to the mothers, fathers, children and the state. And we want to make it simple, coherent and we've got to see that they're fair. And the federal government has certain criteria.

I would not be disappointed if you re-examined this whole question with your better techniques at hearings, gathering data. And you step into the field and you address support

guidelines, rather than the court. One other committee that – well, that's enough on support guidelines.

Then I'd like to talk about the judicial council, briefly. Eighteen (18) judges are up for retention election. The evaluation polls have been sent to 2,500 lawyers, to almost an equal number of jurors and to 1,500 probation and parole officers. And a unique feature of this year's judicial evaluation poll is that the two federal judges, Chief Judge Holland and Judge Singleton, have voluntarily agreed to submit themselves to the judicial council's methodology to get a read on how they're doing. And I think this is the first time in the history of merit retention programs that federal judicial officers have willingly come into the methodology of a state, which evaluates its judges.

Also, the judicial council has conducted and urges you to pass legislation, which would continue their mediation process in child visitation disputes. With one caveat, the judicial council concluded that your legislation, which requires no history of domestic violence, was too restrictive. Here again I urge you to give the council's proposal serious consideration. One last study of interest that the council is conducting is the study of alternative dispute resolutions in rural Alaska. And this is federally funded. And the council's decided to look into the operations of the dispute resolution mechanism that's in place in Barrow, the tribal court in Sitka and the tribal court in Minto.

And on this note I'd like to talk briefly about sovereignty, maybe subsistence and caution you that I don't speak for the court. In fact, although I write some notes, my style is not to read an address. I know you all want to engage in a dialogue, question and answer on subsistence, on sovereignty. I want to keep this general, but I want to impart a feeling to you. And that is we can't, as subsistence is setup, it's a system of federalism, we don't have the final answer to the very complex issue of sovereignty. We just don't.

It's really under the United States Constitution; it's in the federal congress' hand to do it. And I urge you all if you haven't read it to read a speech that the attorney general in Barrow. I think this was at the Conference of Mayors up there in which he said, you know, he didn't see any future in this litigation. After years, a decade of litigation, it's more confused than ever, it's more divisive than ever and that the solution, if there is going to be a solution, is not through litigations in the court.

And, you know, the concept of Indian country, recognition of a tribe, what constitutes a tribe and it's a whole different area of jurisprudence that is very difficult and the solution lies with I think our congressional delegation and with Congress to this problem. But I like the tone of the Attorney General's address. And I want to echo that and go back to that graduate from a small law school who had the good sense to dissent in Plessy versus Ferguson, Justice Harlan. And he said, you know, there's no dominant race in this country and that the solution where all our fates are intertwined and we must arrive at a solution that is devoid of racism and race hatred.

And when you read the statistics today from the AFN and the New Joint Committee and, you know, just the compelling statistics of the poverty in Native Americans throughout the country. There are 2,000,000 Native Americans, 24 percent live below the poverty line. In Alaska we have 80,000 natives and of that group the suicide rate is incredible, the high school dropout rate is incredible, the drug and alcohol abuse is way disproportionate to the numbers in our society. The figures in any facet of social activity cry out for an imaginative and immediate address. And I think this should be done as one people. And until we're told differently, Alaska, we are one people, we should do without hatred towards each other and without a concept that there is a dominant race or a dominant people in Alaska.

Now, I gave my first address here some 20 years ago. I started in the judiciary as a superior court judge in 1960. In 1960 we had no judicial retirement program. We had a salary of \$17,000.00. We had no presence in rural Alaska.

Now I want to thank you as an institution for up to this time giving us a first class judiciary. You have made it attractive for competent lawyers to enter the judiciary by the salary level, by the retirement program that you've given us. You've given us adequate support personnel. You've given us buildings. When we said we needed a presence in Bethel, Kotzebue, Barrow, you were there, you funded our presence there. When we needed a new appellate court, intermediate court, you funded it. It's been a magnificent response.

And, as Chief Justice, my plea to you is don't put us in the position of Rhode Island, which had to shut down its courts on four occasions in the last year. Don't put us in the position of the State of Vermont, which called a moratorium on all civil litigation for six months. Give us the tools to continue to give these thousands and thousands of Alaskans who have contact with the Alaska Court System on an annual basis, give us the tools to continue to service them in a timely, principled first class manner.

And I'd like to say I threatened this once, but this is the last occasion that I am going to have to address you. I've decided that I will not complete my third year as Chief Justice. I think it's time. I'm not leaving the court, but I'm going to step down as Chief Justice. I really appreciate your attention through the years and the support you've given the Alaska Court system. It has been a distinct privilege to have access to you, the honor to address you and the deep honor to hold the office of Chief Justice. And this is a real farewell. Thank you for the last time.