

THE STATE OF THE JUDICIARY



A Message by
CHIEF JUSTICE DANIEL A. MOORE, JR.
to the First Session of the Nineteenth Alaska Legislature
March 22, 1995

ANCHORAGE LAW LIBRARY

President Pearce, Speaker Phillips, Senators and Representatives, Ladies and Gentlemen:

I am pleased to appear before the 19th Alaska Legislature. I am here to speak not only on behalf of the judiciary, but also on behalf of those state agencies whose work is essential to the effective functioning of the judicial system. The laws created by the legislature, the services provided by state justice agencies, and the decisions of the Alaska courts represent a collective effort to provide justice, because we all share the common goal of providing the best service possible to the people of Alaska.

CASELOAD

The work of the court system continues to grow. One measure of growth is caseload, which is directly affected by changes in laws and law enforcement personnel, changes in economic conditions, and other events outside the control of the courts. Although caseload statistics fluctuate from year to year, overall superior court filings have increased 9% in the past three years. During the same time period, overall district court filings have increased 6%.

In this past fiscal year 1994-95, we experienced some very specific caseload increases, including a 13% increase in Alaska Supreme Court filings. Caseloads in certain courts increased dramatically; for example, the Bethel superior court experienced a 23% increase in general superior court filings, and the Kenai superior court experienced a 19% increase. There has

also been a very recent and quite dramatic reduction in the caseload in Barrow since the local option ban on alcohol went into effect on November first. We will be watching the Barrow caseload with great interest to see if this caseload decrease is permanent.

I cannot overemphasize that the court has no control over its incoming caseload. The court's role is to provide a forum for the adjudication of all disputes which are legitimately brought before it. There are many factors which influence our workload. For example, as a result of new federal crime legislation, at least two police departments in the state will increase the number of police officers. More police officers will mean more cases filed, which means more work for the Department of Law, the Public Defender Agency, Corrections, and the court.

In these days of reduced revenues, we are continually striving to develop innovative ways to maximize our efficiency. However, we must look to you to assist us in fulfilling our constitutional responsibilities in a manner which best serves the interest of the citizens of Alaska.

BUDGET

The court's budget request reflects a careful assessment of our needs. The increase we are seeking is very modest in terms of the state's overall budget, but it is realistic in light of both anticipated costs and the effects of past underfunding. For example, while we recognize that prudent underfunding of personal services is appropriate, we are asking for an increase in our personal services budget to bring our underfunding down to

approximately 5.5%, which is in line with that of state agencies. The personnel practices which we employ to cope with historical underfunding, practices which routinely include hiring freezes and delays, have had a substantial and negative cumulative impact on case processing and workloads, and we hope to moderate that impact with this request. We are seeking funding for an additional position in our statewide personnel office to deal with the major changes that are occurring as a result of the unionization of the court's clerical staff and the impact of the Americans with Disabilities Act. We are also seeking the funds necessary for the basic operation of the new Anchorage courthouse, which is scheduled for occupancy in less than a year. And finally we hope to create a new position for statewide computer training and coordination so we may gain the full benefit of the new statewide computer system. I hope you agree that our budget request is fair and reasonable.

Court Security System

In the past year, we implemented security systems in our court facilities in Anchorage in mid-August 1994 and Fairbanks in January 1995. Courts nationwide have experienced an increase in security problems and episodes of violence. In 1993 in Anchorage we processed 101 incidents which included disturbances, threats to judicial officers, threats to employees, threats to public users, physical assaults, thefts, and three bomb threats. In 1994 we again processed 102 similar type incidents. To address these concerns without creating unnecessary barriers to public access to the courts, we worked with state law enforcement personnel to

create a security system based on the model used by federal courts throughout the country. Since these systems were put into place our security personnel have prevented at least five people who were armed with handguns from entering the courthouses. Countless others have been stopped with knives, pepper sprays, mace, and other weapons. Equally significant, security personnel in both Anchorage and Fairbanks note that a number of people turn around and walk out when they enter the buildings and realize that security procedures are in place. As you know, three public users who were involved in domestic litigation were shot to death in the King County Superior courthouse on March 2, 1995. It is our understanding that when the King County Superior courthouse next opened after this tragic incident, security screening equipment had been installed at all entrances. We hope that the security measures we have taken and are hoping to expand to other court locations in Alaska will prevent such a tragedy from occurring in Alaska.

I wish to emphasize that the costs of security are truly public costs. It is not simply judges and court employees who benefit from the peace of mind this system provides; such measures are necessary to create a safe forum for all persons doing business with the court.

Computers and Information System

In the past year, the Court System completed major portions of the work needed to install a computerized information system. We have talked in earlier years about the great

efficiencies, the improved service, and the increases in public safety that this system makes possible. The court will have much greater ability to collect fines and monetary judgments; it will share information about juvenile and adult criminal records with the other justice system agencies; and it will respond promptly and accurately to the public need for information about civil and criminal cases. The court worked closely with the executive branch agencies and the legislature to design a system that uses the most up-to-date and effective technology to carry out the objectives set by the legislature in recent years. The computer system will integrate the court's accounting, its trial court case tracking systems, and an appellate case management system written by the Judicial Council. The new system will link the courts with other agencies and tie into the state's backbone communications network. We cannot overemphasize the benefits to the justice system and to citizens of the state from coordinating the justice agencies' information systems in the ways supported by the Criminal Justice Working Group. Certainly, the court sets completion of this information system in fiscal year 1995-96 as one of its top priorities.

BUSH JUSTICE

In the court system we make every effort to accommodate the needs of all Alaskans throughout the state. In more than forty locations we have magistrates, many of whom work with no support staff at all, who are on-call for their communities around the clock. Their courtrooms are not elaborate, their offices are

basic, and they work far from the sophisticated technology of the information highway: in fact, most of them are far from any highway at all. But they continue to work hard for their communities, providing a multitude of services. From criminal court, small claims court, and traffic court to marriage licenses, death certificates, and passports, our magistrates provide a direct link between the law and the people we all serve. It is important that we recognize the diverse work that these magistrates do.

Case Management

One of our longstanding administrative goals has been reducing the cost and delay of litigation. Since 1993, we have been engaged in a comprehensive overhaul of the Anchorage Court System's case management system, which processes over 50% of our caseload. This effort has involved nearly every court employee and has resulted in the revision of numerous forms and procedures, the computerization of file and exhibit tracking, and the administrative closure of thousands of inactive case files. The massive deadwood project which I initiated on November 3, 1993, has resulted in the court staff reviewing over 63,000 files from 1985-1992 and closing over 16,000. As soon as the final phases of our computer system are completed and implemented in fiscal year 1995-96, many more "deadwood" files will be processed under our fast track Civil Rule 16.1, or by an administrative order closing the file.

As part of this project, we have updated the trial court accounting procedures and significantly reduced the work backlog

in the accounting division. We also recently transferred civil and criminal overdue fine information from the court to the municipality of Anchorage and the Attorney General's office for collection. These changes will provide a more efficient and cost effective collection process.

Our goal has been, and continues to be, increased productivity, improved employee morale and enhancement of public satisfaction with court services.

Employee Cross-Training

In our efforts to increase productivity while reducing costs, we have developed more effective strategies for coping with surges in the court's clerical and administrative workload. By cross-training court personnel within and between departments, we have established "Court Assistance Teams" which allow the Court System to respond to short-term workload increases without the expense of hiring and training additional personnel. This strategy has already proven its worth by enabling the accounting division to issue permanent fund dividend execution checks four to five months earlier than last year. Court system employees deserve accolades for their willingness to learn new procedures and take on additional responsibilities without any increase in the cost of our services.

Those willing and able court employees, who work in dozens of courts in communities of all sizes throughout the state, are the court's major resource and are one of the state's major resources as well. Court employees provide a high quality of

service consistently throughout the state, from Fort Yukon (where the Magistrate is currently sharing his desk and his courtroom with two elementary grades since the school burned down) to Unalaska, and from Kiana to Ketchikan. One of the pieces of legislation which we urge you to act favorably on is SB 76, which will equalize the 6.2% pay gap between non-represented state employees and those who are members of bargaining units and bring pay scales in line as required by the State Personnel Act.

Customer Service

We continue to explore ways to inform and educate Alaska citizens about the workings of the court system. In 1994, the Public Information Task Force issued its final report identifying a number of ways the court system can educate the public, and ultimately, better serve the people of the state. These include: expanding the successful "Meet Your Judges" program and the statewide high school Mock Trial Competition; developing new law related educational programs in the schools; and creating new materials to assist pro se litigants, including the use of computer technology and videotapes. One very recent example is our Anchorage pilot program in which parents who are contemplating a dissolution of marriage where custody of children is involved must view the video entitled "Listen to the Children" so that they can better understand and deal with the needs of their children. This program is off to a strong and positive start.

Last year under our Judicial Ride Along Program, we invited you, and some of you accepted our invitation, to spend a

day in court with a trial judge to learn and observe the workload that a judge handles each day. Our mutual knowledge and understanding of the roles of the Legislative and Judicial branches of government will be enhanced immensely if you are able to participate. Later this year, you will again be invited to attend the Judicial Ride Along Program. I hope you can arrange your busy schedules, since your presence will certainly benefit the public that you serve. In the coming years, we hope these and other efforts will help all Alaskans understand their court system.

TOWARDS A COMPREHENSIVE VIEW OF THE JUSTICE SYSTEM

The first time I had the honor to appear before you in 1992, I sought to emphasize that the justice system can function only as a whole and integrated system. I wish to repeat some of those words to you today.

The judicial system is just what it purports to be -- a SYSTEM. The components of the system are housed in various places: in the judiciary itself; in various state agencies, such as law enforcement, prosecution and corrections; or within the private sector. When additional resources are applied to only one component of the system, or when one component of the system lacks adequate resources, logjams and bottlenecks are created which not only overburden the entire system, but may make it unworkable.

In these days of shrinking state resources, we must strive to coordinate our efforts to best serve the people of Alaska. To do so, we must recognize the various groups which

provide crucial services in both the civil and criminal justice systems, and fund those groups in a unified manner.

The Civil Justice System

In the context of civil justice, two related organizations provide crucial legal services for low-income Alaskans. The Alaska Pro Bono Program volunteer attorneys provide free legal services to low-income clients based on referrals from the Alaska Legal Services Corporation. In the past year, program volunteers donated over 7,500 hours of their time and helped over 1,025 people in need. The Alaska Bar continues to have one of the highest percentages of participating pro bono attorneys in the United States.

However, the success of the Pro Bono Program depends directly on the continued viability of Alaska Legal Services. Although the number of Alaskans living in poverty continues to rise, decreased funding has seriously compromised the ability of Alaska Legal Services to provide civil legal services to low income Alaskans. In making funding decisions, I urge you to keep in mind the ever-increasing legal needs of poor people across the state.

The Criminal Justice System

In the context of criminal justice, the Alaska Public Defender Agency and the Office of Public Advocacy provide representation for people who have a constitutional right to counsel, but cannot afford to hire a private attorney. The Office of Public Advocacy also provides abused and neglected children with guardian ad litem services.

Criminal cases are subject to constitutionally mandated time standards; therefore, the calendaring of these cases is relatively inflexible. These constraints make unified funding of the criminal justice system an absolute necessity. Laws creating new crimes will not make our streets safer unless we also provide sufficient resources for investigation and enforcement. Additional law enforcement personnel will not enable us to prosecute charged offenders unless the courts and the defense agencies can handle the increased caseload. Corrections must be able to provide both pre- and post-conviction resources in numerous forms: jail beds, treatment, high and low supervision programs, and prevention and rehabilitative services. Incomplete funding will result in wasted money and wasted effort.

For these reasons, I strongly urge you to consult the various participants in the criminal justice process before making funding decisions. If we are able to work together to reach a shared understanding and consensus about the budget needs of the system as a whole, we will be able to make the most effective use of scarce state resources.

Alaska Judicial Council

The Alaska Judicial Council worked closely this past year with the legislature and executive branch agencies to help agencies coordinate computer systems, to facilitate the meeting of the Criminal Justice Working Group, and to completely update the Department of Corrections' policies and procedures. At the court's request, the Council helped the Child Support Guidelines Committee

and the Day Fines Committee carry out legislative mandates. The Day Fines committee determined that in order for a day fine program to work effectively in Alaska - and by "work effectively" I mean to provide a meaningful decrease in the state's jail population and an increase in fine collections - day fines should be made available in a broader range of cases and the Department of Law must have increased tools and resources for fine collections. The court asks for a legislative review of the fine scale and the resulting fine amounts, as well. On its own, the Council obtained two federal grants, one to create a brochure guiding citizens in their choice of a mediator, and a second to study the effects of shifting attorney's fees in Alaska's courts. National observers are watching both projects with interest. The Council also drafted a guide to the criminal justice system for the public, victims, and others, and is working on a separate guide for victims.

The Council's constitutional and statutory responsibilities extend to the nomination of judge candidates, and evaluation of judges standing for retention. The citizens' commission evaluated twenty-six applicants for judgeships in 1994, twenty-five judges standing for retention election, and several state and federal judges. To assess the performance of the judges standing for retention election, the Council contacted over 7,500 jurors, police and probation officers and attorneys, held statewide public hearings and solicited public input from community groups and individuals throughout the state. Voters retained all of the judges, by margins of 60% yes votes or more. States throughout the

country recognize the Alaska Judicial Council's expertise in designing comprehensive and effective systems to select and evaluate judges.

New Discovery and Disclosure Rules

From Discovery to Disclosure, the Elimination of Unnecessary Cost and Delay

On November 5, 1992, I created a special Alaska Bar Association Committee chaired by the Presiding Judge of the Third Judicial District, Karl Johnstone, to study civil litigation abuse, costs, and delay. The committee was expressly charged with proposing rules which would reduce discovery abuse and make Alaska's civil judicial system more efficient, expeditious, less costly and more accessible to the public. This special committee completed its task on May 3, 1993.

The proposed rules have three main components. First is the requirement that all parties disclose, soon after the case is at issue, information then available that traditionally would have been discovered only by using conventional methods and generally at great cost. Parties would be required to reasonably disclose additional information as it becomes available. Second are restrictions on the number and length of depositions that may be taken. Third is the provision for a comprehensive scheduling conference. Additional components of the proposed rules limit the number of experts who may be utilized, the adoption of new sanctions and the requirement that, in some cases, they be mandatory.

The final version of the proposed state rules were transmitted to the Alaska Supreme Court on February 14, 1994. On June 13, 1994, the supreme court issued Order No. 1172 amending the rule of civil procedure governing pretrial procedure and discovery, and imposing mandatory early disclosure of core information in all civil cases except domestic relations and adoption cases. These changes will go into effect July 15, 1995 and will reduce substantially unreasonably caused delay and unnecessary expense.

The federal district court is planning to issue a local federal discovery and disclosure rule which will mirror the Alaska rule. Such a coordinated state and federal discovery system will result in significant cost savings for litigants in Alaska.

Expanded Fast-Track Rule

As another means of reducing litigation delay, we are planning to expand the application of Civil Rule 16.1, the "fast-track" rule, in the Anchorage superior court. We are also in the process of implementing this rule in the district court. A uniform fast-track rule will create a mechanism for court management of all cases. Although parties will have an opportunity to show good cause why a particular case should be exempted from strict Rule 16.1 deadlines, such exempted cases will still be placed on a tracking schedule to ensure that the case moves forward. We believe that these measures will permit speedier and more economical resolution of pending cases.

Appellate Rules

In the past two years both the supreme court and the court of appeals have shortened the time to dispose of appeals.

These decreases in time to complete appeals are due largely to changes in case management put in place over two years ago. In the past year the appellate courts have taken the following steps to further shorten appeal times and reduce costs: 1) Appeals are now filed directly with the appellate courts permitting case management from the outset of appeals. 2) Parties, not the trial courts, are now largely responsible for the preparation of records for appeal. Not only does this change shift costs from the court system to the litigants, but it is expected to shorten appeal times by two months in the supreme court. 3) Copies of transcripts on computer diskette must now be supplied to the courts to enable court personnel to more efficiently complete record checks. 4) Electronic case law and statutory tools have been made more available to judges and law clerks and thus enable more efficient legal research. 5) Supreme court and court of appeals opinions are now on an electronic bulletin board, making the courts' opinions more widely available to the public on the date of issuance and decreasing opinion distribution costs to the court system.

The courts are working on making the following changes to further shorten the time to complete appeals and to decrease costs: 1) The appellate courts are now developing a new computer case management system which, by providing more tools and information about the status of cases to case managers and judges,

should enable the courts to move appeals more quickly to completion. The success of this project will depend on the courts being able to obtain appropriate computer equipment. 2) The supreme court plans to put its rules orders on the electronic bulletin board to make them more quickly available to the public and decrease distribution costs.

PROBLEM SOLVING FOR THE FUTURE

We must face many challenges in the coming years. We must deal with the shrinking state budget. We must improve public safety, health and education. We must devise ways to combat the problem of alcoholism and related social problems. However, we can not face these challenges only in our individual capacities. We must also work together to devise innovative solutions.

The ongoing efforts of the Criminal Justice Work Group represent an excellent example of what can be achieved by such collective "brainstorming." Composed of members drawn from all three branches of government, as well as the various criminal justice agencies, this group has worked together to explore cost containment options in the criminal justice system.

The Anti-Crime Task Force established by Mayor Mystrom in September 1994 represents another example of this type of intergovernmental problem-solving. Composed of representatives from nearly every agency involved with the criminal justice system in Anchorage, this work group has formulated a set of proposals designed to combat youth related crime, drug and alcohol related crime, and family violence problems.

Finally we recently formed another work group to study the problems facing the juvenile justice and child protection systems. Alaska continues to struggle with high rates of child abuse, drug and alcohol use among youth, and a continued growth in both the number and severity of juvenile cases. The situation statewide has now reached near-crisis proportions, with severe overcrowding in McLaughlin Youth Center and insufficient resources to allow effective early intervention in delinquency cases. To address these problems, we need to establish a mechanism for interagency planning and policy development on both a statewide and local community basis. Only by coordinating our efforts, will we be able to undertake the comprehensive revisions to the Children's Code and long-term budgetary planning required to meet the needs of Alaska's youth.

In closing, I would like to repeat again my thoughts that I expressed to you in March 1994. As policy makers, we must constantly strive to discuss our ideas, share our concerns, and work toward managing a fair and economical system of service delivery. As judges, legislators, and managers, we must remember that balance, fairness, and equal opportunity are critical components of any justice system. We share with one another the burden, the responsibility, and the honor of collective decision making for the people of the State of Alaska.