

## **THE STATE OF THE JUDICIARY**

February 6, 2008

Chief Justice Dana Fabe

President Green, Speaker Harris, Senators and Representatives, and guests. On behalf of the dedicated judges and staff of the Alaska Court System, I am very grateful for the opportunity to speak to you today. This State of the Judiciary address continues the tradition, started in 1972, when Chief Justice George Boney was invited to appear before this body as a way to build strong communication and cooperation between the legislative and judicial branches. Gathering together annually to share successes, identify challenges, and highlight issues of mutual concern is a valuable and important tradition, and over the years, it has helped us to develop and maintain a justice system of which all Alaskans can be proud.

Before I begin my remarks, I would like to acknowledge several of my colleagues on the supreme court. First, I would like to recognize Justice Warren Matthews, who is not able to be with us today. Justice Matthews was appointed to the supreme court in 1977 and last year marked his 30<sup>th</sup> anniversary on the bench. He served the state twice as chief justice. Next, Justice Robert Eastaugh grew up here in Juneau and now lives in Anchorage. He was appointed to the supreme court in 1994, and chairs the court's Fairness and Access Committee. Justice Walter Carpeneti was appointed to the court in 1998 after a long and distinguished career as a superior court judge here in Juneau. He has been a leader in the arena of judicial education in our state.

Which brings me to an especially exciting introduction — that of the court's newest justice, appointed by Governor Palin last November to replace Justice Alex Bryner. It is my great honor and privilege to introduce my newest colleague, Justice Daniel Winfree. As many of you may know, Justice Winfree

was born and raised in Fairbanks. During his twenty-seven-year career, he has been very active in the legal community, serving for many years on the Board of Governors of the Alaska Bar Association, including a term as its President. He has also participated actively in pro bono activities, often representing clients who were unable to pay for an attorney. Justice Winfree is well known and well respected in both legal circles and the community at large, and we are delighted to welcome him to the supreme court.

Justice Winfree's appointment to the supreme court as the first new justice in almost ten years not only places a fine Alaskan attorney on our state's highest court, but also places a justice in Fairbanks for the first time since the late Justice Jay Rabinowitz last maintained his chambers there in the early 1990's. By serving from Fairbanks, Justice Winfree will reestablish the geographic diversity of the court, which in its history has included justices from Anchorage, Fairbanks, and Juneau. The appointment also represents only the third time a justice has been appointed from Fairbanks since Statehood, following the appointment of Justice Harry Arend in 1960 and the appointment of Justice Rabinowitz in 1965. It is especially fitting to note that this is the first time a Fairbanks appointment has gone to a hometown Fairbanksan.

Finally, I would like to introduce members of the court's administrative staff — dedicated public servants who are vital to the smooth functioning of our legal system. Administrative Director Stephanie Cole has worked for the court system for nearly thirty years. She is an inspiring and visionary leader who has received national recognition for excellence in court management. Deputy Director Chris Christensen has served as a court liaison to the legislature for eighteen sessions, and, as many of you know, is a tireless advocate for our justice system. Deputy Director Christine Johnson is a life-long Alaskan who currently oversees court operations and works closely with therapeutic court programs. And Administrative Attorney Doug Wooliver, who is also well known

to many of you, spends each legislative session here in Juneau working on issues of mutual concern. Alaskans are very fortunate to have people as talented and dedicated as Stephanie, Chris, Christine, and Doug guiding the day-to-day operations of our courts.

At this time, I would like to take a moment to reflect on another public servant Alaskans were fortunate to have — someone whose service to Alaskans spanned sixty years, and who sadly is no longer with us. Judge Thomas Stewart of Juneau died in December at the age of 88. His passing was a great professional and personal loss to many of us in the legal community, and I'm sure to many of you as well. He was our colleague and our mentor; our father and our friend — a statesman who treated everyone with respect and who valued every opinion. Judge Stewart's legacy of service to the people of Alaska is long and legendary.

Judge Stewart was one of the rare Alaskans to serve in all three branches of government: as an Assistant U.S. Attorney during territorial days, a legislator both before and after Statehood, and an administrative officer and superior court judge for the Alaska Court System. He understood well the different perspectives of the three branches and the compelling need for coordination and cooperation among them. What mattered most to him was that the people of Alaska be served, and be served well.

In memory of Judge Stewart and the example he set, I would like to focus my remarks on cooperative efforts among the three branches taking place today — efforts that are fostering positive change for the people of Alaska. Probably nowhere is coordination occurring with more effectiveness and promise than in the area of criminal justice. A number of interrelated initiatives over the past year have begun the examination of ways we can do things better.

First, Lt. Governor Sean Parnell and I recently convened the first meetings of the Criminal Justice Working Group, an inter-agency effort staffed by the Alaska Judicial Council, which seeks to address the Alaska Constitution's goals for criminal justice. These goals are: public protection; community condemnation of the offender; protection of the rights of victims; restitution from the offender; and reformation of the offender. At our first meeting, when the leaders of the state departments, agencies, and institutions that constitute our justice system came together to set priorities for the group's work, the issues of greatest concern included preventing crime, reducing recidivism, and creating new efficiencies in the system. In the coming year, we will explore these topics in greater depth and generate concrete recommendations that can inform future decision-making by the legislature, the executive branch, and the courts.

Second, as you know, Senator Hollis French, Chair of the Senate Judiciary Committee, sponsored a major Crime Summit last month that included experts and leaders in the criminal justice field, including representatives of the court system. Many who testified stressed the need for better communication at all levels on matters of both policy and technology. Many also advocated for "evidence-based" programs — those showing verifiable positive outcomes — and for additional studies to enable both the legislature and responsible agencies to have better information available for decision-making.

In addition to identifying methods for improving the criminal justice system, summit participants also shared specific substantive concerns. One key problem that the court system brought to the table is the recent significant increase in felony case filings, which rose over 12% statewide between fiscal years 2005 and 2007, and over 33% in Anchorage during the same two-year time frame. This trend appears to be continuing. The Crime Summit provided an invaluable forum for exploring critical public safety issues and drew needed public attention to the challenges we face. Even more importantly in my view, it

sets a fine example for the type of multi-branch cooperation and collaboration that we can engage in as we move forward to address these issues in a timely and effective way.

Third, the Multi-Agency Justice Integration Consortium — or MAJIC — has been making great strides towards improving the way criminal justice agencies and the courts share vital information. This group of over twenty agency representatives has proven to be a model of cooperation and competence, and is steadily achieving results in the form of clearer standards, more specific procedures, and coordinated technologies for information exchange. Public Safety Commissioner Walt Monegan and Colonel Audie Holloway, Director of the Alaska State Troopers, have provided invaluable support to the MAJIC effort, and we are indebted to them for their vision and encouragement.

Finally, recent cooperative efforts in the criminal justice community are addressing one of our most persistent and frustrating problems: the high rate of recidivism. Last year, the Alaska Judicial Council published the report *Criminal Recidivism in Alaska*, which painted a fairly bleak picture. The report found that two-thirds of all felony offenders studied returned to the custody of the Department of Corrections at least once within three years of their release. Over half of all offenders studied were re-arrested for a new offense at least once within this time frame.

These are sobering statistics, and those of us charged with meeting our constitution's call to rehabilitate criminals cannot take them lightly. Yet they come as no surprise to many of us in the judiciary. As judges, we see the same people returning to our courtrooms, and we sentence them to jail — time and again — with the hope that they will turn away from lives of crime. Too often, these measures fail to work. Our counterparts in law enforcement and corrections see the same pattern, and we all share the frustration that for too

many Alaskans who violate our laws, the door to jail is a revolving one. Too many Alaskans continue the habits that got them into trouble in the first place, and too many Alaskans find themselves in trouble again. We are left to ask ourselves what is it that we're missing.

As the work of the Criminal Justice Working Group, the Crime Summit, the MAJIC group, and the Alaska Judicial Council illustrate, many of us in the criminal justice community have come to realize that our traditional ways of doing things may not be as effective as they should be, and we have opened the door to pursuing needed change in the system. In the process, many of us have also come to realize that few changes we make as a system can be effective in the long run if we don't also facilitate the extremely difficult personal change offenders themselves must undergo if they are to put their criminal behavior behind them. I would now like to touch on two collaborative programs that embody the goal of fostering change, both systemic and personal.

The first is therapeutic courts. In its companion report on *Recidivism in Alaska's Felony Therapeutic Courts*, the Alaska Judicial Council found that graduates of therapeutic courts were significantly less likely to re-offend than other offenders studied. Therapeutic courts require participants to engage in treatment, employment, and educational activities, and they offer a wide range of coordinated support services. Participants are required to confront the substance abuse problems that are at the heart of their criminal behavior, and to reintegrate into their communities as law-abiding, healthy citizens. Therapeutic courts have demonstrated that many criminal defendants will work hard to correct the problems that have brought them into trouble with the law, and will move on to successful lives if given structured expectations, coordinated support, and consistent positive reassurance that they can prevail over their addictions.

One graduate of the Juneau Therapeutic Court credits the program with helping him get his life back after spending five years “wasting away in prison” because of his drinking. “Today, my life has never been better,” he says, “and I have a clear head to plan my goals, hopes and dreams.” Another graduate was in his 70’s when he made the change to a life of sobriety. He credits the Juneau Therapeutic Court and the community of support he gained there for an achievement he once thought impossible. On behalf of the Juneau Therapeutic Court, we invite each of you to the court’s annual Ceremonial Graduation and Reception, which will take place on Wednesday, February 13, at 3:30 p.m. in the Dimond Courthouse. We hope you can join the court to recognize the graduates as they share their stories and celebrate this important milestone in their lives.

With the legislature’s vital support and assistance, the court system is now operating nine therapeutic courts in six major communities statewide: Anchorage, Bethel, Fairbanks, Juneau, Ketchikan, and Palmer. In the few short years since their inception, these courts have helped hundreds of Alaskans return to healthy and law-abiding lives, with immeasurable positive impact on their families and communities.

Key to the success of therapeutic courts is the timely availability of appropriate treatment for court participants. We know that offenders impaired by substance addiction rarely achieve sobriety alone, without treatment, supervision, and support. We also know that those suffering from mental disorders rarely achieve stability without professional help. Providing adequate treatment programs for therapeutic court participants has required — and will continue to require — strong commitment and support from the legislature. On behalf of not only the court system but the many men and women whose lives have changed for the better through participation in therapeutic courts and related treatment programs, we extend our gratitude to all of you.

Our experience with therapeutic courts has suggested that a similar supportive approach might successfully address another problem related to recidivism: failed re-entry into society by those leaving our prisons. Each year, thousands of Alaskans are released from our jails and juvenile detention facilities to confront the challenge of becoming productive members of their communities. These Alaskans face not only the transition from incarceration to freedom, but the difficult personal change that is necessary to avoid the mistakes of the past. How well they navigate these changes will determine whether they remain in society as law-abiding citizens or instead return to our jails.

The Judicial Council's recidivism study found that offenders were more likely to re-offend or be remanded to custody during the first year after release, and especially during the first six months. This suggests strongly that services targeted to help offenders navigate the difficult transition from life in prison to life in the community can be beneficial and cost-effective. According to the recidivism study, re-entry programs could help offenders "adjust to the expectations of employers, treatment providers, and others with whom they must interact." Re-entry programs could also assist with finding "safe, sober housing" — a critical component of stability in the community.

Over the last two years, I've had the privilege of chairing the planning committee for a new re-entry program at Hiland Mountain Correctional Center in Eagle River. *Success Inside & Out* is an annual life skills conference put on by professionals in the community that has helped nearly 200 women inmates prepare for their release. Last year's conference featured over twenty workshops on a variety of topics, with titles ranging from "Surviving Probation" and "Tips for Writing a Resume" to "Healthy Relationships; Healthy Self" and "The Job Interview." The participants in *Success Inside and Out* have helped me better understand just how difficult re-entry can be. One woman who



served time for embezzlement and is now released describes her situation when she left prison as follows:

When I was released, I had no ID, no clothing, no funds, and no means of transportation. . . . [P]roviding for my basic needs was a struggle for which I was completely unprepared. The overwhelming emotional stress made me want to return to jail, where I didn't have these challenges.

Another young woman, still serving time for robbery, admits to her fears about being released:

I've been incarcerated since I was 17. Before I was incarcerated, I was dependent on my mother for my well-being and stability. Now, the only individual I can depend upon is me. Many of the responsibilities for living an independent life will be new to me. I feel like an infant, learning to take my first steps. I don't know the first thing about getting my own place and supporting myself with a 9-to-5 job, starting a bank account, getting a driver's license, getting car insurance. Every day I take full advantage of the educational and job training opportunities that are offered at Hiland, but I'm still nervous and worried about my release. Will employers take my institutional accomplishments over my record? Will I be noticed for who I am today and not who I was? Will I be strong enough to do this all on my own?

In addition to the daunting circumstances that all offenders confront upon re-entry, offenders who suffer from substance addiction must face the additional challenge of maintaining sobriety. For many, steering clear of the temptation to use drugs or alcohol can mean abandoning the entire life they left behind when

they were arrested. When asked to describe the greatest challenge she faced upon release, one former methamphetamine addict described it poignantly: “I had to stay away from my friends and family, because they were all still using.” When the very act of re-uniting with your family and support system means exposing yourself to a serious risk of relapse, it’s not hard to understand why so many offenders with histories of substance abuse return to the habits that led them to criminal behavior.

As all of these stories illustrate, re-entry can be a frightening and daunting process. Yet by offering appropriate support services, through steps as simple as providing mentors or assistance with employment and housing, we can help offenders in re-entry gain greater confidence in their ability to succeed. I’m proud to announce that the *Success Inside and Out* program will be implemented at Lemon Creek Correctional Center here in Juneau later this month, as a joint initiative of the Alaska Court System, the Department of Corrections, and the community of Juneau, under the joint leadership of First District Presiding Judge Patricia Collins and Lemon Creek Superintendent Scott Wellard. For the first time, the program will be extended to both men and women under the generous sponsorship of such local businesses and organizations as Gastineau Human Services, Juneau Arts and Humanities Council, Juneau Cooperative Church Council, and Tlingit-Haida Central Council.

We are excited about the growth of *Success Inside and Out* and very grateful to those who have made it possible. Especially noteworthy have been Commissioner Joe Schmidt of the Department of Corrections and Hiland Mountain Superintendent Dean Marshall, who have provided strong vision and leadership in the effort to promote successful re-entry and have shown a tremendous commitment to helping close the revolving door of our jails. Offenders can’t change their pasts, but they can work in the present to change

their futures. In the context of reducing recidivism, it's the future that matters most.

I've focused my remarks today on criminal justice issues because there are many hopeful signs that we can work together effectively to improve public safety and build healthier communities for all to enjoy. More so than ever before, none of us achieves the best outcomes unilaterally. In today's world, criminal justice cannot simply be handed down from the bench or meted out through our jails. The system as a whole, communities as a whole, and, increasingly, individual offenders themselves, must embrace the aims of justice and bring them to fruition through hard work and commitment to change.

Before I conclude my remarks, I want to share with you an update about another collaborative program that has yielded valuable recommendations for improving our justice system. OPEN COURT is a public outreach effort that brings members of the justice community and the public together for an afternoon of candid discussion on court issues of local concern. Last year I traveled with members of the court's administrative staff to five Alaskan communities to host OPEN COURT forums.

In Juneau, we addressed therapeutic courts and community corrections issues and reached consensus to pursue a Juneau mental health court, the plans for which are now underway. In Ketchikan, we discussed therapeutic courts and juvenile substance abuse, and reached consensus on the need for an inter-agency educational team to reach out to at-risk youth about the dangers of drug and alcohol abuse. In Sitka, we focused on the rise in self-representation, and agreed that attorneys need education about "unbundled legal services" — the provision of discrete legal tasks to self-represented litigants without the responsibility of full representation. As a result of the Sitka session, the Alaska

Bar Association sponsored a major educational workshop on unbundled legal services last fall.

In Anchorage, the OPEN COURT session focused on reducing delay in Child in Need of Aid cases, and a second session in the coming year will address streamlining the criminal calendar and reducing delay in resolving felony matters. In Kodiak, we explored the use of alternative dispute resolution in divorce, custody, and child welfare cases as a way to yield more satisfactory and successful outcomes for families. To date, all OPEN COURT sessions have fostered valuable exchanges and led to tangible results. In the coming year, I will travel to Barrow, Dillingham, Fairbanks, Kotzebue, and Nome for more forums, and I'm confident they will continue to be insightful and productive.

The criminal justice forums and activities such as OPEN COURT remind us of the need to remain receptive to reexamining the way we do things and exploring new possibilities for change. Change is almost always difficult, something we approach with trepidation. Yet change, as we all know, is the only constant. I'm very pleased and proud to be part of a justice system that is committed to fostering positive change — not only in the methods we implement to enforce our laws, but in the behaviors of those who break our laws. The legislature has been a vital partner along the path of positive change, and we are very grateful to all of you.

In closing, I would like to take one last moment to reflect on the passing of Judge Tom Stewart. We thought he would live forever, but now we are left to celebrate his remarkable legacy. As a long-time advocate for our constitution's Judiciary Article, Judge Stewart was a tireless voice for our system of judicial selection based on merit. He spoke and wrote on the subject well into his 80's, and at the age of 86 received a prestigious national award from the American

Judicature Society for his lifetime contributions to protecting fair and impartial courts. To me, we honor Judge Stewart's memory best by recognizing the importance of what he helped create. Fortunately, we don't have to look far for testaments to his foresight.

When former U.S. Supreme Court Justice Sandra Day O'Connor was asked last year what she would do to improve the U.S. justice system, she said, "If I could wave a magic wand . . . I would wave it to secure some kind of merit selection of judges across the country."

When Governor Palin appointed Justice Winfree to the supreme court in November, after selecting him from four highly qualified applicants who had survived a rigorous review process conducted by the Alaska Judicial Council, she said:

Choosing one of these candidates was very difficult because all four are highly qualified, and each has such an obvious dedication to this great State. I came away from this selection process with a tremendous admiration for these nominees.

The words of Justice O'Connor and Governor Palin reaffirm that Alaskans are fortunate to have a judicial selection process based on merit, and that the process is working, and working well. Only the most qualified candidates emerge from the rigorous selection process, and only the state's finest attorneys are eligible to receive appointments to judgeships. No one would be prouder of this circumstance, or more deserving of praise for its existence, than Judge Tom Stewart.

Thank you for all you do to keep the spirit of our constitution, and the vision of its founders, alive and well. And thank you very much for the opportunity to speak with you today.