



THE STATE OF THE JUDICIARY

An Address By
Chief Justice Jay A. Rabinowitz
Before the Joint Session
of the Alaska Legislature
February 7, 1980

STATE OF THE JUDICIARY MESSAGE

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INTRODUCTION

A full decade has passed since Chief Justice George F. Boney delivered the very first State of the Judiciary message. At the outset of this address, I wish to express the thanks of my colleagues in the judiciary for this continuing opportunity which you have afforded us to speak of our legislative programs and to report generally concerning the State of Alaska's judicial system.

The decade which has just closed was one of challenge and fulfillment for the judicial branch of Alaska's government. Given your enabling legislation and comprehension of the problems confronting the judiciary, we have, for the most part, successfully met the enormous challenges which were generated by an ever expanding and more complex economy and society in Alaska.

It has been a decade which has witnessed tremendous growth in the volume of litigation in both the District and Superior courts, as well as in the Supreme Court of Alaska. It has also seen the expansion of judicial services on a significant scale into areas of rural Alaska which had been previously neglected. The Alaska Supreme Court has issued 1413 opinions during the 1970's, many of which were of landmark significance. Cases such as Hootch v. State (right to attend secondary schools); Hicklin v. Orbeck (residential preference for employment on state-leased oil and gas projects); Thomas v. Bailey (the Beirne

Initiative); Hammond v. Hickel (1978 gubernatorial election); Kaatz v. State (judicial adoption of comparative negligence); the reapportionment cases; the capitol move case; the Cook Inlet land transfer case; the Kachemak Bay and other environmental-natural resource cases, and numerous constitutional cases involving the right to privacy and the criminal process in general, are reflective of the difficult and highly debatable issues which have confronted Alaska's judiciary.

The current decade is commencing on a high note with the exciting development that Justice Robert Boochever has been nominated for the extraordinary honor of an appointment to the Ninth Circuit Court of Appeals. Alaska's Senators, as well as all others in our Federal Government concerned with the nomination, are to be congratulated on attaining a seat for Alaska on the Ninth Circuit and for this outstanding selection. Justice Boochever's appointment will mark the first occasion that an Alaskan has been given the opportunity to serve on this important Federal tribunal. The pragmatic and symbolic importance of Alaska having attained representation on this federal appeals court is of no small consequence. Justice Robert Boochever has fashioned a distinguished record during the eight years he has served as Chief Justice and as Associate Justice of the Supreme Court of Alaska. His consistent brilliance, conscientiousness, and inexhaustible productivity will be sorely missed.

Another unexpected but pleasant note which was sounded at the closing hours of this past decade was my selection as Citizen of the Decade by the Anchorage Daily News. I view this honor as a tribute to, and recognition of, the excellence of Alaska's judicial system. For the most satisfying aspect of having been accorded the privilege to serve both as a superior court judge and justice of Alaska's highest court has been the opportunity to work with fellow Alaskan judges possessed of unquestioned integrity, compassion for humanity, and an abundance of legal skills.

At the outset of the current decade, three goals have been formulated. First, and I will allude to this subsequently, the processing and calendaring of civil cases in the Superior Courts of Anchorage must be subjected to improved procedures to insure that the claims and rights of civil litigants are not diminished through calendaring delays. Secondly, the time it takes to process and finalize appeals to the Supreme Court of Alaska must be significantly shortened. Although the Supreme Court has increased case dispositions to an all time high, it is still faced with an ever increasing backlog and an ever lengthening average disposition time concerning matters which are brought before the court. Passage of the pending intermediate Court of Appeals Bill will go a long way to solve these problems. Nevertheless, I pledge to you that efforts will continue to improve the

internal procedures of the Supreme Court to increase its efficiency without diminution of the quality of its legal work. Thirdly, I am persuaded that measures must be undertaken to simplify trial court procedures, both civil and criminal, and concomitantly to insure that the costs of litigation in Alaska's tribunals are kept at reasonable levels. With these goals in mind, we are going to commence searching studies of these problems, studies which I anticipate will lead to concrete reforms within the goals of providing Alaska's citizens access to a court system that has the ability to resolve disputes with a minimum of delay, a system that contains few procedural complexities, and one that is affordable.

In short, I am confident that the decade of the 80's will see a judiciary that is responsive to the needs for calendaring and other procedural reforms, a judiciary that will, with continued integrity, fairness, and a high degree of judicial skills, expeditiously resolve those matters which are under law committed to it for resolution.

JUDICIAL SALARIES

Five years have elapsed since any salary increases have been granted to the judiciary. During this period, all of you have been made painfully cognizant of the effects of the dramatic inflationary spiral which has gripped Alaska. I can assure you that there is nothing in a judge's character, or office, that provides immunity from the ravages of inflation.

Arthur Snowden, our able Administrative Director, and his staff have provided each of you individually with detailed argumentation in behalf of our quest for salary relief. We believe the record fully supports positive action from this session of the Legislature. Nothing has been more damaging to the morale of the judiciary than the failure on our part to obtain salary relief from this body of government. Frankly, I wish you could have been in attendance at our most recent judicial conference and have listened to the voiced frustrations of many of our sitting justices and judges.

I admit justices and judges are not necessarily popular public figures. This is inherent in the nature of the position which requires neutral and principled resolution of hard-fought controversies and issues which at times do not lend themselves to facile resolution. Nevertheless, if our system of government is to flourish, it is necessary to retain, as well as to attract, the most qualified lawyers in the state to serve as judges in Alaska's judicial system.

COURT OF APPEALS

The intermediate appellate court bill (Court of Appeals), which is presently under active consideration by this Legislature, is vital to viable solution to the problems of Alaska's burgeoning appellate caseload. Once again I think it appropriate to re-emphasize that creation of this three-judge intermediate criminal appeals court will have the effect of expediting the resolution of criminal appeals, and will result in marked savings of judicial resources and time at both the Superior Court and Supreme Court levels. Additionally, establishment of this new appellate tribunal will enable the Supreme Court to process with greater dispatch civil litigation which at present still comprises the major portion of its appellate caseload.

Passage of the Court of Appeals legislation will enable the Supreme Court of Alaska to give the matters that reach it the careful analysis and reflection that litigants have a right to demand of Alaska's highest tribunal. Absent passage of this remedial legislation, I would entertain well-founded doubts concerning the Supreme Court's ability, even with improved internal decision-making procedures, to successfully cope with the volume of matters it handles annually. Unjustifiable delays at any level of Alaska's courts are intolerable. Thus, I remain persuaded that

legislative authorization for the Court of Appeals will greatly reduce existing appellate delays and insure to every litigant that the appeals which come before the Supreme Court will be given careful and scholarly appellate scrutiny.

CRISIS IN ANCHORAGE CIVIL CASELOAD

The backlog and delay in Superior Court civil cases in Anchorage has reached an unacceptable level. Court delay has reached the point where it currently takes approximately 18 months from submission of a "memo to set" to the first scheduled trial date. Even when this scheduled trial date is reached, civil trials are often pushed back an additional several months due to congestion on the trial calendar. Therefore it is now taking a minimum of 18 months from the time a case is filed until a trial is held. Many cases require two years or more for completion. The median time to trial for civil cases has increased from 417 days in 1976 to 598 days in 1979. Backlog in civil cases has grown from 2,799 at the end of 1975 to 5,227 the end of 1979, or an increase of 86 percent in those four years.

What has caused this rapid deterioration of the civil calendar? In the first instance, the total filing in the Superior Court in the Third Judicial District has increased approximately 30 percent since 1975 with no additional judges added during that time. Secondly, since the Attorney General's imposition of a state wide ban on both charge and sentence bargaining in 1975, and the Supreme Court's promulgation of a speedy trial rule for criminal cases, the number of felony trials has increased by over 80 percent. These factors in turn have reduced the available judge time for the processing

of civil cases. Also, the length of felony trials has increased 37 percent in the past three years. There likewise appears to be an increase in length of civil trials.

Several months ago in response to this crisis in the civil calendar in Anchorage a calendaring committee was established comprised of representatives of the Supreme Court, Trial Courts, and Administrative Office to investigate the causes of and recommend solutions to the problems being experienced with the processing of civil litigation in the Anchorage superior courts. As a result of this committee's work, the following steps have been taken in an effort to reduce the delay in processing cases and hopefully to bring the system back into a position to process its civil cases within approximately a one year time frame:

1. Beginning January 15 of this year, and continuing for four months, the Anchorage Superior Court will be augmented by an infusion of judges from other cities within the state and retired judges in an effort to attack the existing backlog of civil cases. I can report that these judges have already disposed of many pending civil cases.
2. The committee recommended the implementation of a revised case assignment system, which will provide for an assignment of each case to an individual judge for all future proceedings, including the trial. This early or individual assignment

system will permit judges to attain a greater familiarity with their cases and increase the elements of judicial accountability and responsibility for efficient disposition of pending cases. These factors should contribute to a more rapid processing of civil cases.

3. A second calendaring committee comprised of trial judges and lawyers in Anchorage has been established to work out the details necessary to implement these calendaring reforms. I should note that we have received splendid cooperation from the bar in our efforts to improve calendaring in Anchorage.
4. A request for two additional Superior Court judges and supporting personnel for the Anchorage Superior Court has been submitted to this legislature for your approval. While the other steps mentioned above will aid in reducing the current short-term calendaring problems in Anchorage, and will increase the long-term efficiency of the superior court, additional judicial resources are still necessary if the superior court is to avoid future backlogs and prevent deterioration in the delivery of judicial services as has happened in the past three to four years.

ANCHORAGE COURT FACILITY

The most pressing capital improvement needs of the Alaska Court System are in Anchorage. The Anchorage courthouse was completed in 1973. If the legislature approves our current capital budget request for funding for an Anchorage courthouse expansion project, this additional space would not be available until at least 1984 due to the time required for design and construction of the building.

The preliminary plans for the expansion of the Anchorage court complex call for construction in two phases on the parking lot adjacent to the existing court facilities. The first phase will provide adequate space for courts and related offices through the year 1990 and the second phase would carry the court into the year 2000. In addition to the new construction portion of the plan, additional funding is required to remodel the current court facilities for better and more efficient use.

Additional space is already needed in Anchorage and by 1984 this need will become critical. Already the Public Defender Agency and other agencies have been required to relocate in privately leased space due to a lack of space in the Anchorage court complex. The Court of Appeals, if approved this session, will initially be housed in leased office space but should be

incorporated into space within the Anchorage court complex. All functions of the Anchorage trial courts are growing, including the Clerk's Office, Administration, District Court, and Superior Court. If the Anchorage State courts are to continue to be housed in one complex, and if adequate space is to be available for each court and court-related function, it is important that this legislature appropriate the funds to begin construction of this needed addition to the existing Anchorage court complex.

Our Capital Budget requests for the forthcoming fiscal year further includes a construction and remodeling project in the Kenai court building; modification of the ventilation system in the Sitka court facility; and planning funds for a study of potential court system space requirements in Fairbanks.

OPERATING BUDGET

The Alaska Court System's Operating Budget Request for the forthcoming fiscal year is \$23,494,100, an increase of 11 percent over the authorization for the last fiscal year.

The budget increase of approximately \$2,000,000 includes inflation and other increases in resources necessary to provide a comparable level of judicial services in the coming fiscal year. It also includes a number of projects and components which would certainly benefit Alaska's Court System and the citizens of the State if they were approved. Highlights of these areas are:

- The development of Civil and Criminal Pattern Jury Instructions
- A staff reporter for the Sentencing Guidelines Committee to implement the new criminal code
- A ten percent increase in staff for the Trial Courts across the State. There was no increase in support staff for our courts in the current fiscal year.
- Expansion of the statewide library system including access to the use of a computerized legal research system for a one year trial period in Anchorage.
- Increased utilization of modern technology in the processing of information, files, and court recordings.

If our courts are to continue to provide a high quality of judicial services to the citizens of Alaska, I ask your careful considerations of these budget requests.

CASE STATISTICS

I will not endeavor in this address to cover in detail all the variety of statistics which have been generated over the past year in both the trial and appellate courts of Alaska. For in the near future each of you will be furnished with a copy of the Alaska Court System's Annual Report which will contain a multitude of relevant statistical data relating to all facets of the court system's operations. I think it sufficient for this occasion to relate the following information:

TRIAL COURT FILINGS

Overall case filings during 1979 remained at approximately the same level as of 1978. However, there were significant changes within individual court locations. The Superior Courts at Kenai, Kodiak, and Sitka saw increases in civil filings while the Anchorage District Court experienced over a 30 percent increase in traffic filings. Small claims filings increased 21 percent statewide with even more significant increases occurring in Anchorage, Bethel, Juneau, and Nome. While part of these increases are explained by the expansion of small claims jurisdiction from \$1,000 to \$2,000, filings of District Court cases exceeding \$2,000 also showed a sizeable increase, particularly in Palmer where 1979 filings were four times that of 1978.

SUPREME COURT OF ALASKA STATISTICS

During 1979, the Alaska Supreme Court decided significantly more cases than in any previous year. Nevertheless, the Supreme Court faced a larger backlog at the end of 1979 than it had at the outset of the year. While case filings no longer reflect the rapid growth of the Trans Alaska Pipeline construction years, filings in the Supreme Court are still increasing steadily.

BUSH JUSTICE

The Magistrate Advisory Committee

The second Magistrate Advisory Committee was created in early 1976 to evaluate the magistrate system in rural Alaska. The Committee studied a variety of subjects, including magistrate salaries, criteria for locating magistrate posts and the long-range role and function of the magistrate system within the Alaska Court System. The Committee sent its final recommendations to the Supreme Court in February 1979. These recommendations included proposals for circuit judges; magistrate selection, retention and removal; magistrate training and various other subjects. The Alaska Supreme Court has not yet considered the Committee's report. Supreme Court consideration was postponed because a case then before the Supreme Court concerned some issues also addressed in the Committee's report. An opinion in the case in question was issued in December 1979. The adoption or rejection of portions of the report could have a profound effect upon the future delivery of judicial services to rural Alaska.

Pilot Program - Circuit Riding Judge

The Alaska Court System intends to request funding from the 1980 legislature for the creation of a "circuit riding" judgeship to serve a portion of rural Alaska. The creation of this judgeship will be a pilot project. The program will later

be evaluated to determine if such a system provides an improved level of justice at a reasonable cost, and whether other such judgeships should be proposed for other areas of Alaska. The geographical area which would be served by this first circuit riding judge has not yet been designated, although the most likely location will be the creation of a circuit in the Bethel area. The judge filling this position would be the central figure of a circuit riding "team", consisting of representatives of such offices as the district attorney, public defender and Alaska state troopers.

JUDICIAL COUNCIL

The Alaska Judicial Council's recent series of sentencing reports highlighted a very troubling suggestion of apparent racial disparity in regard to sentences imposed against minority defendants for certain types of offenses. Since release of the first Judicial Council's sentencing study in 1978, the Alaska Court System has taken significant steps towards meeting and correcting the problem. Our most recent annual judicial conference was devoted almost entirely to subjects designed to heighten the racial and cultural sensitivities of all members of Alaska's judiciary. Further, the Supreme Court of Alaska requested the Judicial Council to expand the statistical base of its felony sentencing study by including the last three years of sentences; by undertaking a study of misdemeanor sentences; as well as broadening the study to encompass courts other than those located in Anchorage, Fairbanks, and Juneau.¹ Additionally, the Supreme Court requested the Judicial Council to monitor, on an annual basis, the sentencing patterns of all district and superior courts throughout the state.

1. The Judicial Council's original study was limited to felony sentencing in the three superior court locations for the years 1974 to 1976.

Just recently I was informed that the Judicial Council's latest studies show that Native Americans are not being discriminated against in sentencing in Alaska's courts. However, preliminary analysis of the data indicates that Blacks do apparently receive more severe sentences in a single crime category, namely, drug offenses, than their Caucasian counterparts. Next month the Judicial Council will present a full report to you on these matters. Nevertheless, I find these current preliminary findings tremendously encouraging in their indication that Alaska's constitutional mandate of equal justice for all is being fulfilled.

The problem of racial inequality in sentencing is really one aspect of the broader question of unjustified disparity in general. Simply stated, unjustified sentencing disparity occurs whenever various individuals receive significantly different treatment by the criminal justice system without some acceptable justification for the difference. Disparities in treatment were largely inevitable under the sentencing laws in effect before January of this year. The former criminal statutes gave the judiciary broad discretion, but very little positive guidance in how that discretion should be applied in the particular case. Without such positive guidance, it was predictable that different judges, each acting out a sincere desire for justice, would nevertheless

impose different sentences in similar cases.

The new criminal code and sentencing laws now in effect express a clear legislative purpose "to achieve reasonable uniformity in sentencing" and "to eliminate unjustified disparity." I applaud these goals and wish to assure you that all of us in the judiciary will strive to accomplish these aims. But in order to insure that the criminal justice system remains on a correct course, we must build into the system of justice some means of giving each judge, each attorney, and each defendant the necessary information to allow a comparison of sentences in similar cases. The judges and attorneys must know what sentences have been imposed in past cases throughout the state, and they must have the relevant facts and background data on the defendants in those past cases. How else can our sentencing courts know whether a particular sentence promotes the goal of reasonable uniformity unless it has this information immediately available?

Until the Judicial Council's sentencing studies were released, we had no systematic record of past sentencing practices. With the new data base developed through the Judicial Council's research, Alaska judges may now be given the basic tools to allow them to carry out the legislative purpose of eliminating disparity. What is needed is a current and ongoing information system

on sentencing -- one that is made available on a weekly or monthly basis.

I have been informed that the Advisory Committee on Minority Sentencing Practices, which this Legislature established last year to fashion specific recommendations for correcting the problem of disparity in sentencing, is about to recommend that you support the Judicial Council's further statistical research. Specifically, the Committee's recommendation urges your funding of an information system that would be able to offer the kind of up-to-date and meaningful sentencing facts that are so greatly needed. On behalf of the Alaska Court System, I urge the Legislature to support the Advisory Committee's recommendation in this regard, and to provide the Alaska Judicial Council with the resources to take the necessary steps toward reducing sentencing disparity.

CONCLUSION

It would be arrogant on the judiciary's part if we claimed exclusive guardianship of our fundamental constitutional rights. It is obvious that each branch of Alaska's government, as well as its citizenry, must be committed to a system of governance under laws which allow for maximum individual liberties and appropriately restrained government. This is indeed a time where anti-democratic events in many parts of our globe do not permit an overly optimistic prognosis for the survival of fundamental liberties. It is apparent that these events have serious implications for life in Alaska. Yet I am fully confident that Alaska's judiciary will, by its performance in the next decade, earn your respect in this never ending task to achieve and maintain a truly free society.