

STATE OF THE JUDICIARY

JOINT SESSION ADDRESS

BY

CHIEF JUSTICE JAY RABINOWITZ

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CHIEF JUSTICE RABINOWITZ: Thank you, Madam President. Mr. Speaker, members of the Alaska Legislature and fellow Alaskans. For those of you who are new members of Alaska's Legislature I'd like to remind you that I'm here today pursuant to a joint resolution, which in the early 70's found that there was a communication gap between and a lack of understanding between this co-equal branch of government, which I represent, and you the Legislature.

Indeed I do appreciate this brief moment that we have together, and I will make it brief, for you to receive a report from me as head of the Alaska State Court System. It's not inappropriate to begin by mentioning that this is the 200th anniversary of the framing and ratification of an extraordinary document from my place of birth, Philadelphia. And that extraordinary document and the concepts that it framed and the people ratified are being played out today, right here in this chambers. And we are the active recipients of the genius of that gathering that had such luminaries as George Washington, Benjamin Franklin, Alexander Hamilton, George Mason, James Madison. They had brilliant delegates to this Constitutional Convention.

And what did they conceive of? A sharing of power within the federal government and the tripartite division of power. Independent, co-equal, but yet cooperative and understanding of each other's functions. And this model to the federal system served as models to the states. And here today, although we are a relative newcomer to the union of the United States, we have the same system that the constitutional fathers 200 years ago staked their best guess, their best hunch that this is the type of government in which you could balance order and liberty and have a true democracy.

And one thing that they did assume and there's very little debate on this, is that the judiciary must be independent. That was a given. And what did they do? What are the true ramifications of this? In the federal system they gave the federal judges life tenure and there was the compensation clause; you cannot reduce the federal judges compensation during his term of office.

Well, I come before you as a representative of a co-equal branch of government and an independent judiciary. Now, I've heard talk before coming here today that Rabinowitz is coming down here with his hat in his hand and a tin cup. That's not the function of this address I assure you. And I'm wise enough and I saw the beginnings of the state, that you people have control and that's your function of our budget. I'm here to tell you about what the judiciary did last year and what we have to have to maintain a republican form of government in the State of Alaska and a truly functioning independent judiciary.

What have we done in the last year? We've operated on a budget that has permitted us to handle, and I think with expedition, 160,000 filings. And who does this? We have 29 superior court judges; 16 district court judges, you've recently raised their jurisdiction; we have five intermediate appellate court judges, that's our criminal court of appeals, and five of us on the supreme court. We also have 59 court locations. Now, with the small number of judges and 490 employees, non-judicial employees, so you're talking about 600 people are manning -- and look at the logistics from Ketchikan to Point Barrow and then over to Point Hope -- are manning a system that's handling for Alaskans 160,000 filings last year.

Now, is it a costly system? You bet. And I know some of the house and members of the judiciary want to know this. You can just start right up the geographical coast, you can start with a superior court judge in Petersburg/Wrangell, then a superior court judge in Sitka, a superior court judge in Valdez, a superior court judge in Kenai, a superior court judge in Bethel, a superior court judge in Kotzebue and a superior court judge in Barrow, these are costly positions. These are things that throughout the years the legislature has approved,

mandated and we are giving rural Alaskans top-flight judicial services. And they do not come cheaply in Alaska.

For instance, in Barrow I would predict that we have the highest cost per case in the country. Per filing it costs the court system \$2,102.00 per case to process a case in Barrow. I think that probably when you research it you'll find we're dealing with the highest cost in the United States. Well, merely because we're an independent branch of government and because our share is 1.5% of the operating budget, does this mean that we are immune from cooperating with you and immune from the drastic fall-off in budgets and that we shouldn't do anything about it?

I can't come here and tell you that we are not subject to cuts. On our own, when we saw these declining revenues, we have news for you; we are going to be able to turn back \$1,500,000.00 at the end of this fiscal year. And how did the court system do it? We denied merit increases to our employees. We imposed a freeze on hiring. We cut down on expenditures in every category: the use of pro-tem judges; through travel; leasehold improvements; supplies, anything you can think of. We've done it in a good faith effort and we will continue this to comply with the dramatic changing fiscal period in Alaska.

It's up to you, when you evaluate our performance, to determine where to draw the line. There is no easy answer, but we are not just another agency with a whole bunch of discretionary programs. I said at the outset, you know, the government was conceived that we'd be an independent co-equal branch of government. That was the theory of the founding fathers. We have to operate. Where the cuts will have to be made it's up to you to decide. But we pledge to you that we will continue in good faith to make every effort to give you a streamline, cost-efficient judiciary.

Now, let me tell you about some of the aspects of our courts in this time. Besides saving and turning back 1.5 million, we have taken continued cost measure reductions to reduce the cost of litigants and to cut into the delay. What you have to balance when dealing with us is that we have to take the cases. We're mandated by the constitution. We don't have any discretionary programs.

You can think of variables in some areas to have mediation or diversion, but when the litigants walk through the door and they want their commercial important case decided, they want their family law dispute decided, the society wants the criminal adjudicated guilty. The victim, the family of the victim and friends of the victim want that case decided.

You've got to balance. If you don't give us an adequate budget, you have to balance – these are not numbers, 160,000, these are individuals with very emotional, very important cases to them, and commercially important cases too. You have to balance what's on the other side of the equation for the judicial system. It's delay, it's psychological waste and it's additional costs. Because if the governor's budget figures that he propose to you stand, a 9.69 reduction in the state court system budget means that we have to terminate 105 employee positions. And most of these are lower level, at levels 10 or 10 to 12. That means that out of the 490 non-judicial employees, at the governor's present figure, we would lose 105 employees.

And you ask your constituents what they think of the court system. I think we got a good reading in the last performance of the court system. I think we got an excellent reading in the last retention election. We had 18 judges and justices, all levels, who were up for retention. All 18 were retained by the people of this state. I think that speaks to whether or not the people approve of the current operating level of the Alaska Court System. Walking in, one of you joked about the opening meetings act case. And if I can be personal

for a minute, I want to go back to the theory. The theory of a judiciary and what the judicial function is.

And, you know, visually we're probably the most boring branch of government. And this is unusual. We concentrate on the written word. The theory of our constitution is that this branch, not that we have sole and exclusive monitoring of this really complicated and complex and it's got a lot of nuances, a system of checks and balances, but the theory is that at times courts will be called upon to go against majority groups, go against the governor, go against the legislature, go against the chief executive, go against powerful interest groups. We are committed to deciding cases according to precedent, principle and we receive a lot of gray area cases.

Now, it's been said and it pains me to say this, that we might hold the open meetings act case as hostage for our budget. Nonsense, ridiculous. If you look at our record, Justice Moore lost the opportunity to become a federal judge because he released Casey Jones, some of your lawyers know this, at the time he was under active consideration. It hurt him. Mortally wounded his chances to be a federal judge. If you'll recall, Justice Matthews was almost taken out in a retention election. Why? Because the Zobel case came down. We have never, never timed a case so that we would potentially avoid the impact of a decision. And you have my word that that's not what is going on.

The case is under active consideration, it's a difficult question, you don't want the supreme court to come out with a half-thought through decision and get egg on its face. We want to come out with the most reasoned, best decision, principled decision we can. We are a collegial undertaking where we are subsumed under constitutional principles to deciding a case on neutral constitutional principles. And, as you all know as legislators, there's some areas where there are gray areas and we just have to take our time. The opinion will be out as expeditiously as we can, but we are not holding it hostage. Do what you want to do with our budget. That is not driving us.

Well, the overall message that I'd like to get to you is that I think, and it's very difficult for a judge to say our performance is good, but I think the people have said that in retention elections. You have a judiciary that is functioning now. The nature of the judicial system is that we're going to have hard cases. Sometimes the legislature is going to lose as a body. I know that upsets some of you. That is the nature of the judicial process, that is nature of democracy. We're not going to get every dime we ask for in our budget, but we think that in the years past we have submitted to you credible, supportable budget documents. And look at our growth over the 10 years compared to other agencies. I think you'll see a remarkable differential. Our graph goes this way over the years, level. Other agencies are way up there.

We have been very steady and very conservative. And I really think that when you come to consider our budget, I would ask you to remember the role that Alaska's judiciary plays. And if I might end on a personal note, I've spent a great deal of my adult life in this system. I know some of you think, for instance, going back to the recent election count case, that I as an individual reached out for that case, that's nonsense. If you had sat through the oral argument on that case, we had four hours of oral argument, which was highly unusual. The court went through ballots, affidavits. It was a collegial undertaking to reach that decision, which is all our decisions. It is not one individual running the Supreme Court.

I think those of you who thought that initially, it demeans the collegial undertaking and the abilities of my colleagues. We are Alaskans. I as an individual, this is the last time that I'm going to appear before a joint session of the Alaska Legislature. And I want to tell you, I

came to Alaska right out of an area of the east coast, I came up here to clerk for a United States Territorial Judge, I didn't know anyone in Alaska. And if anyone is committed to the democratic system and to the openness of Alaska's society, I owe everything to Alaska. You could come here without a friend, without any power and you can achieve remarkable things in your life. And that is a society I'd like to preserve for Alaska. I'd like to ask you to give us the tools to continue what I think is a darn good performance by the Alaska Judicial System. Thank you.