

THE STATE OF THE JUDICIARY

February 28, 2001

Chief Justice Dana Fabe

President Halford, Speaker Porter, Senators and Representatives, and guests. This is my first opportunity to address this body, and I very much appreciate the chance to appear on behalf of all of the dedicated judges and staff of our court to report on the state of Alaska's Judiciary. With me today are my colleagues, Justice Bud Carpeneti and Senior Justice Jay Rabinowitz. I would also like to recognize our administrative director of the court, Stephanie Cole, and her deputy director, Chris Christensen.

Although this is my first address to you, it is the 29th time that a chief justice has come to speak to you. In 1972 Chief Justice Boney gave the first State of the Judiciary address, in an effort to foster better understanding between the legislative and judicial branches of government and to engage in a dialogue between our two branches on how we can improve the justice system for the people of Alaska. The legislature invited Chief Justice Boney to appear through a Senate Concurrent Resolution, dated in 1971 and signed by then Speaker of the House Gene Guess and President of the Senate Jay Hammond. It expressed the hope that a State of the Judiciary address might bridge the "communications gap" between the legislature and the judiciary. I believe that this purpose of strengthening the cooperation and understanding between the legislative and judicial branches is as valid today as it was in 1971, and I welcome this opportunity to talk with you about Alaska's courts.

There are three touchstones by which we can measure Alaska's justice system as it enters the new millennium and I would like to address them today: They are Innovation, Collaboration, and Improved Access to the Justice System.

I. Innovation

The face of justice is changing in response to new challenges and needs. In the criminal law arena, traditional justice approaches have produced some disappointing results, with repeat offenders who cycle through the criminal justice system. This is expensive for the justice system: Judges see the same defendants repeatedly, and the jails are housing these offenders in expensive beds with no realistic hope that once released they won't be back. Courts nationwide have been trying new approaches. One example is the therapeutic court model. These therapeutic court projects – also referred to as problem-solving courts – encourage prosecutors, defense attorneys, and judges to work together to reach beyond the immediate dispute that brings a defendant to court. Instead, there is a focus on the defendant's underlying problem, whether drug or alcohol addiction or a mental health problem.

How do these therapeutic courts work? An individualized plan is developed for a defendant, which usually includes drug or alcohol testing, treatment, and such other requirements as attaining a GED, finding and maintaining a job, and making restitution. Defendants are closely monitored and must come to court often, before the same judge. That judge becomes familiar with the defendant, and imposes immediate jail-time for non-compliance with the plan's requirements, while providing positive reinforcement when a defendant lives up to the plan's expectations. National results show a distinct reduction

in repeat offenses for the defendants who are involved with these programs.

In Alaska, we have three very promising ongoing projects that are based on this therapeutic court model:

The Mental Health Court project began in the Anchorage District Court in 1998 as a collaborative effort of the court system, the Department of Corrections, law enforcement, and social services agencies. This project has developed under the leadership of Judge Stephanie Rhoades, and is supported with funds provided by the Alaska Mental Health Trust. Mental Health Court focuses on chronically mentally ill offenders who would otherwise end up in jail for a variety of minor criminal offenses. Appropriate treatment and residential alternatives have been developed for this vulnerable and under-served population. As a result of their participation in this project, these mentally-ill individuals are spending fewer days in expensive jail beds. Instead, they are being directed into programs that can help them to avoid future criminal behavior and receive appropriate support and mental health treatment.

Also in the Anchorage District Court, Judge James Wanamaker is using a therapeutic court model in conjunction with administration of the physician-prescribed drug Naltrexone to address criminal behavior influenced by chronic alcohol abuse. The initial results are very promising. It appears that the use of drugs like Naltrexone, which curb an individual's craving to drink, may be an effective tool in our efforts to deter criminal behavior caused or aggravated by abuse of alcohol.

Finally, in the Superior Court in Anchorage, work is underway to establish a felony-level drug court. We have received a federal grant to support the operations of this court. Non-violent drug offenders who meet established screening criteria will be channeled into

this project, which will emphasize intensive treatment and offender accountability. Judge Stephanie Joannides has led the team that hopes to have this drug court up and running later this year.

We expect that the Alaska Judicial Council will be conducting a formal evaluation of all three of these therapeutic justice projects. The Judicial Council does an outstanding job in its evaluations of the justice system, and with its help, I hope to be able to tell you more about the effectiveness of the therapeutic approach next year.

I understand that the legislature may be interested in the possibility of using the therapeutic court model to address repeat DWI offenders. The court shares your interest in this approach, and we look forward to cooperating and collaborating with you as you develop this or any other appropriate model programs. Perhaps I can take a moment now to expand on this idea of collaboration and partnership between the court and the legislature, as well as the executive branch and local communities.

II. Collaboration

Projects such as the therapeutic courts that I've just described not only incorporate innovative thinking but work best when there is a cooperative working relationship between the court and the legislature, as well executive branch justice agencies including the Department of Law, Department of Corrections, Department of Public Safety, Public Defender Agency, and Office of Public Advocacy.

The delicate balance that exists among the three branches of government is the genius of our American system of government and of the Alaska Constitution. Yet, the checks and balances that are designed to protect individual rights and ensure individual

freedom can quite naturally cause tension between our branches. One way of easing that tension is by increasing communication and by working on projects of common interest and concern.

A. Legislature

The judiciary and the legislature share an interest in providing the citizens of Alaska with an efficient, cost-effective, and accessible justice system. As one example, several years ago the legislature and the court system collaborated to change the rules associated with the appointment of public defenders, to require that persons convicted of crimes be held financially responsible for the cost of their public representation. At the court system's suggestion, the legislature modified statutory language to authorize this change, and the court system amended its rules accordingly. Now, in the last year or two, we are beginning to see major financial recoupments from these changes, as criminal defendants are being released after their prison sentences and are beginning to repay their attorney costs. Last year, the Department of Law's Collection Unit reported collections of \$888,900 for costs of appointed counsel, all of which was returned to the general fund.

Another noteworthy example of court-legislative cooperation -- and one that will certainly improve the accessibility of justice services -- is the new Fairbanks court building, to be completed and occupied in August of this year. The legislature authorized the construction of this modern court facility to replace the antiquated and poorly-designed existing courthouse. Members of the public who seek out court services in Fairbanks, whether as witnesses, litigants or jurors, will find the new facility a vast improvement. Jurors will find the large, bright jury deliberation rooms a welcome change from the dreary facilities available to them in the old courthouse. I thank you for supporting the judiciary

by your approval of this project. Together we have collaborated to provide the people of Fairbanks with a justice facility of which they can be proud.

B. Executive

The court has worked collaboratively not only with the legislature but also with the executive branch. For example, prior to 1999, when a driver with a minor traffic citation failed to respond or come to a scheduled court appearance, we issued what are called "bench warrants," arrest warrants issued by a judicial officer. Because of the vast numbers of these warrants – over 21,000 in Anchorage in 1998 alone – valuable law enforcement time was consumed, and, of course, there was an insufficient number of law enforcement officers to serve those warrants. As a result, many minor traffic offenders with moving violations did not respond to their tickets, and there was no consequence. Under the leadership of then-Chief Justice Matthews, the Alaska Supreme Court, in consultation with the executive branch, made a simple change to our court rules, allowing the court clerk to enter a default judgment against a traffic offender. These are offenses for which no jail time is possible; the only penalty is a fine. Therefore, the default judgment entered by the clerk is for the amount of fine that would have been imposed had the person come to court and been found guilty. But because of this rule change, in calendar year 2000 only 13 bench warrants were issued in Anchorage to minor traffic offenders. Instead, the Anchorage clerk of court issued default judgments in favor of the State in the amount of \$71,000 and in favor of the Municipality of Anchorage in the amount of \$1,879,000. Many of these judgments can be satisfied through executions against defendants' Permanent Fund Dividends.

C. Community

The court also needs to reach out to develop partnerships within our communities, both to promote public understanding of the courts, and to ensure that the needs of its citizens are heard and recognized. Let me give you some examples of how we have been working to achieve this goal:

1. Schools

For two years now, the Supreme Court has asked all judicial officers in the state to participate in a program in their local schools on May 1st, Law Day. Last year, seventy-six judges and magistrates statewide put on educational programs for students – either in the classroom or in the courtroom – in over thirty communities. In this manner we were able to reach out to over 3200 school children and members of the public. For example, right here in Juneau, Judge Patricia Collins presided over the trial of Goldilocks, who was found guilty of trespassing on the Three Bear's property. However, Goldilocks appealed, and Justice Bud Carpeneti found that errors had in fact occurred at trial and reversed her conviction. School-court events like this occurred all over Alaska in conjunction with Law Day. Alaska's judiciary received national recognition for this program from the American Bar Association, and it is an effort that will continue in years to come.

2. Youth courts

Another example of the court's work with youth throughout the state is through the youth courts. The Anchorage Youth Court has been in existence since 1989 and has provided a model for youth courts throughout the state and the country. There are now 12 established youth court programs throughout the state, the most recent in Tetlin. And there are five emerging youth court programs, in Klawock/Craig, Nome, Shishmaref,

Wrangell, and Tok. In these youth court programs, young people who commit minor offenses consent to be judged and sentenced by their peers, rather than in the state court system. They are represented by student lawyers and judged by student judges who are trained and supported by volunteers of their local legal community. These programs are incredibly effective. Youthful offenders seem much more able to hear the judgments of their peers than the lectures of adults. And when a youth court judge imposes a sentence, it sends the clear message that these are not just the rules of adult society that have been violated -- they are the rules of our entire community. Although these youth court programs are not formally a part of our state court system, we support their operation by allowing use of state courtrooms and court facilities in many communities, and by providing other assistance when we can. For example, many judicial law clerks volunteer their time in the evenings to work as legal advisors to youth court participants. I have sworn in youth court attorneys and judges in Anchorage, Kenai, Mat-Su, and Homer, and I believe this movement promotes responsibility and accountability among our younger community members. It is a prime example of a successful partnership between the court and the communities that the court serves.

3. Adults in the community

But our outreach efforts should not stop with the young people of our state. Justice Thurgood Marshall once reminded us that “the only real source of power that we as judges can tap is the respect of the people.” I am convinced that the more Alaskans know about their courts, the more trust and confidence in our justice system they will have. We have a wonderful court system in Alaska – with committed judges who work hard, with the goal of providing a fair trial in every case, according to the law. And that is what judicial

independence is all about – members of the public trusting that when they bring a dispute of great importance to their lives into court, the judge is not going to be deciding based on personal whim or prejudice, public opinion or fear. The judge is going to be providing a fair trial, and deciding the case according to the law.

Yet judicial independence and judicial neutrality do not depend on court processes being shrouded by mystery or judges being detached from their communities. Maintaining a wall between the court and the community prevents the community from understanding the role of the court and keeps the court from fully enlisting the resources of the community. Judges need to take a leadership role in reaching out to the public to provide education and to make our processes more understandable. For the past two years, for example, the court's Fairness and Access Implementation Committee, led by Justice Robert Eastaugh and Fairbanks Superior Court Judge Meg Greene, has been developing and offering outreach programs to cultural and ethnic minority groups within Alaska's diverse population.

To further promote judicial outreach efforts, the court is planning to conduct a "Meet Your Judges" program in all thirteen superior court locations throughout the state. This will provide an opportunity for community members to meet their local judges in an open forum and to ask questions in an atmosphere where they are not stressed by their own traffic ticket or divorce case. As chief justice, I plan to participate in all thirteen "Meet Your Judges" forums. We conducted one last week, right here in Juneau. But this is just one example of what we can do. In order to continue coordinating these outreach efforts on a statewide basis, I have just formed a new, blue ribbon commission, composed of representatives from the courts, the bar, the community, and the legislature. This should

present a perfect opportunity for all of us to collaborate in developing new ideas to promote public understanding of our justice system. I believe that better understanding of the courts will promote better access to the courts, and that is the last topic I'd like to mention this morning.

III. Improving Access to the Courts

Access to justice is a fundamental right of all Alaskans. There are many in our community, however, who do not have the resources or the knowledge to participate equally in our justice system. It is the responsibility of the courts – and of our entire profession – to ensure that all Alaskans enjoy affordable access to the courts.

The Supreme Court's Access to Civil Justice Task Force that I was privileged to chair explored many solutions to this challenge. One option suggested was to expand the scope of the Pro Bono program, in which lawyers provide free legal services. Over 42% of Alaska's lawyers have volunteered to provide free legal services to the disadvantaged and that number should increase. The Task Force also recommended increasing the funding and presence of Alaska Legal Services, particularly in rural communities, and exploring ways to provide legal assistance to those who do not qualify for Legal Services but are of moderate means.

But in addition to looking for ways to provide lawyers for those who can't afford them, the Task Force also explored the special problems faced by those who venture into court without a lawyer – the pro se litigants. An extraordinary number of persons attempt to represent themselves, in all types of cases but particularly in domestic cases. The court

has responded by developing new forms and informational material for pro se litigants, providing much of this information on the court's web page. One exciting development is an agreement that the court has just completed with the federal Department of Health and Human Services and the State Child Support Enforcement Division. It will allow the state to recover from the federal government a percentage of state funds spent in certain child support cases. If you authorize us to do so, the court plans to use these funds to establish a pro se center, located in the Anchorage courthouse but serving statewide needs, to provide further assistance to pro se litigants. In this center, litigants will be given information about court procedures, provided assistance in filling out court forms, and directed to appropriate offices and service providers, both within the court and within other agencies. People in locations outside of Anchorage will be able to access the services of the pro se center through the use of an "800" telephone number. With the assistance provided through the pro se center, we hope that coming to court will be less of a mystifying experience for those who choose to represent themselves.

Also of significance to both unrepresented and represented parties are several small mediation projects around the state, funded through a variety of federal grants. These projects assist parties in their efforts to resolve their disputes through compromise, outside of the traditional adversarial processes of the court system. In the past, the legislature has encouraged the judiciary to explore mediation. With funding from federal sources, we are now able to provide mediation services in some child protection and domestic relations cases. And in a new project, we are collaborating with a non-profit association that provides volunteer mediators, many from the business community, to help resolve small

claims cases. Through such projects, we can increase the number of cases in which mediation can promote satisfactory resolution of disputes outside of the courtroom.

Yet another aspect of access to the courts is physical security. As parties, witnesses, jurors, court employees, and members of the public enter onto court premises, they must feel that their physical safety is secure and protected. In this regard, many of our court facilities are not providing an adequate level of security, either through screening devices such as metal-detectors, or through the presence of trained court security officers. During this past year, I visited several court facilities, and court employees reported to me incidents involving physical threats and intimidation. Our employees, jurors, witnesses, and other members of the public deserve to feel safe in court. We have to recognize that many court proceedings, especially in the areas of domestic violence, domestic relations, and criminal cases, involve volatile people and dangerous situations. We have included in our budget request this year funding for screening services at two key court facilities, Kenai and Palmer, and we have forwarded a request from the Department of Public Safety for new court security officers. I urge you to give serious consideration to these requests, before we see an incident of violence of the type that has already occurred at so many courthouses in other states around the country.

But helping people navigate through the court house easily and safely is not the complete answer to the question of access. Because if citizens are not able to have their disputes resolved swiftly and fairly, we as courts have not done our job. Our courts need to be prompt in our decision-making. We recognize that individuals, businesses, families, and governmental entities put their affairs "on hold," as they wait for the resolution of court actions. Justice cannot be administered instantaneously, but courts can and must take

steps to ensure that every attempt is made to streamline procedures and that cases are handled as swiftly as possible, taking into account the resources available to resolve them.

In order to accomplish this goal, the Supreme Court adopted performance measures for Alaska's trial courts in the form of a set of Time Standards. These standards, developed by a committee co-chaired by Justice Alex Bryner and Presiding Judge Elaine Andrews, create target time frames for the disposition of various categories of cases. Now, we are hard at work collecting information about the age and status of our caseload to target particular problem areas and to work to improve procedures. Our plan is to have relevant data about our caseload collected quarterly to insure a process of continuous review and improvement.

It must be noted that our efforts in this regard are hampered by the limitations of our antiquated computer system. However, last year, you generously appropriated approximately 40% of the funds we estimate will be necessary to acquire a modern case management system. We are asking you to appropriate the remainder of the funds this year. With a modern system, we will be able to monitor and manage our trial caseload much more efficiently.

And our work does not end with the trial caseload. The Appellate courts are also developing time standards. We are currently in the process of adopting time standards for the Supreme Court, covering the period of time between submission of a case to us for decision, and our publication of that written decision. Moreover, the Supreme Court has, over the past year, piloted new internal procedures to increase the speed with which we are able to resolve most of the cases that come before us. In all of these efforts, we balance the need for efficiency and speed against the time necessary to make reasoned

and thoughtful decisions. In the Supreme Court, the great majority of litigants are facing the last possibility of review of their cases. While we are committed to handling these cases more expeditiously, we are also charged with giving each case and controversy the attention and time it deserves in this last stage of review.

In conclusion, the state of Alaska's judiciary is strong. It is strong because Alaska's judges and court staff have worked hard to find innovative ways to meet old and new challenges. And it is strong because we have been working in partnership with you and with the community on many projects that will improve access to the courts and the quality of justice that our citizens receive.