

THE STATE OF THE JUDICIARY

February 28, 2007

Chief Justice Dana Fabe

President Green, Speaker Harris, Senators and Representatives, and guests. This is my first opportunity to speak to you during my second term as chief justice, on behalf of the dedicated judges and staff of the Alaska Court System, and I am very grateful for the opportunity. I'm also delighted to be speaking to you at a unique moment in our state, when for the first time women have top leadership roles in all three branches of government. Tomorrow is the first day of women's history month, and I wouldn't want to begin my remarks without recognizing that Governor Palin and President Green are women leaders who have made history, and who will no doubt continue to play a vital role in the leadership of our state for many years to come. This year also marks the 35th anniversary of the occasion in 1972 when Chief Justice George F. Boney appeared before this body to offer the first state of the judiciary address. The legislature had invited him to speak as a way to bridge what they referred to as the "communications gap" between the legislature and the judiciary, and to strengthen cooperation and understanding between the two branches. Both the tradition of annual addresses, and the need for strong communication and cooperation, continue to this day.

First, I would like to recognize several people who work every day to ensure that our court system is one of the finest in the nation. 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 Alexander Bryner has served on the court for ten years and was my immediate predecessor as chief justice. The court system was in excellent hands during his term as chief, and we are thankful for his leadership. 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 chaired the Judicial Education Committee for the last six years. I would also like to acknowledge a colleague who is not able to join us today. Justice Warren Matthews was appointed to the supreme court in 1977, and this spring marks his 30th anniversary on the court. We are indebted to him for his many years of dedicated service to the people of Alaska, including two terms as our chief justice.

Next, I would like to introduce members of the court's administrative staff, without whom we could not do the work we do. Deputy Director Chris Christensen is the court's main liaison to the legislature, and as many of you know is a strong advocate for the strength and health of our justice system. Deputy Director Christine Johnson is a life-long Alaskan who manages the day-to-day operations of the court system statewide. Administrative Attorney Doug Wooliver spends much of the session in Juneau evaluating bills that affect the court and is an excellent resource for all of us on issues of mutual concern.

When Chief Justice Boney first spoke to you 35 years ago, the Alaska Court System was barely a decade old. We were still in the formative stages, facing incredible challenges to bring a judicial presence to the far corners of our state. As we all know, Alaska makes tall demands of us. But as we also know, Alaskans are great adapters, and we don't let obstacles stay in our path for long. Chief Justice Boney and his colleagues were undaunted as they charted a course over unfamiliar terrain, and they were true pioneers. I'm very mindful and proud of their legacy as I speak to you today.

In re-reading the first State of the Judiciary address, I was struck by how many of its themes still ring true. Chief Justice Boney identified several major areas of concern, including: the need to address the link between substance abuse and criminal behavior; the need to seek less adversarial legal solutions for what he described as the "breakdown of the family unit"; and the need to respond more appropriately and effectively to youthful offenders and at-risk youth, to ensure they remain on the path toward responsible adulthood. Today, over three decades later, these stubborn social problems continue to undermine the health and spirit of our citizens and consume the lion's share of our judicial resources. But in the tradition of our early leaders on the court, we've continued to adapt creatively to the demands they pose, and we have reason to be hopeful about the progress we've made. Today, through innovation, collaboration, and an unwavering commitment to accountability to the citizens we serve, we have programs in place that offer renewed promise to citizens and communities across

our state. I would like to focus my remarks today on several that are making a difference.

Thirty-five years ago, when Chief Justice Boney first addressed this body, criminal defendants with alcohol or drug addiction had few options besides the revolving doors of our jails. No sooner would they serve time for one offense, than their addiction would lead them to commit another. Over time, it became clear that breaking the cycle of addiction had to be a component of our response to these crimes. As the saying goes, we realized that we could not do the same things over and over again and expect different results.

As many of you know, one new approach to the problem of substance abuse and criminal behavior is the therapeutic court model, where men and women with underlying drug or alcohol addiction undergo intensive treatment and rehabilitation programs, and must come to court frequently so that their progress can be monitored. They receive encouragement when they succeed in meeting their treatment requirements and swift sanctions when they do not. Today, there are active DUI and drug courts in Anchorage, Bethel, Juneau, and Ketchikan, and a new DUI court will soon be underway in Fairbanks. Since their inception in 2001, several hundred Alaskans have graduated from our DUI and drug courts, and about 65 participate currently in any given month. We appreciate the legislature's strong support for therapeutic justice programs and are happy to

report that they hold great promise for some of our state's most devastating problems.

Our experience has shown that the vast majority of graduates of therapeutic courts regain not only their sobriety, but productive lives free of crime. A recent recidivism study by the Alaska Judicial Council focusing on therapeutic courts shows that graduates of Alaska's felony therapeutic courts are significantly less likely to re-offend than comparison offenders with similar offenses and prior conviction records. Thirteen percent of therapeutic court graduates were re-arrested within a year of their graduation, compared to a 32% re-arrest rate within a year of release for the comparison group. That's a re-arrest rate for the comparison offenders that is two-and-a-half times greater than for graduates of therapeutic courts. When you consider how much each incident of recidivism costs the state, and the high societal damage each new offense causes, the positive public impact of ending the cycle of addiction and crime is tremendous. The private impact is remarkable as well. Program graduates often speak of the life-transforming effects of their experience.

Other court programs following the therapeutic model have demonstrated equal promise. The Mental Health Courts continue to thrive in Anchorage and Palmer, where they successfully direct defendants with mental illness to the treatment resources they need. Anchorage Family CARE Court, which handles child protection cases where a parent's substance addiction has contributed to abuse

or neglect, is operating at almost full capacity. Through regular monitoring, the court ensures that parents comply with treatment plans and other requirements in a strict and timely way. Anchorage Veterans' Court continues to address the special needs of defendants who have served our country. And in Barrow, plans are underway to establish a therapeutic court for defendants with Fetal Alcohol Syndrome, to help address the special problems associated with this disorder. As a state with chronically high rates of Fetal Alcohol Syndrome — a completely preventable birth defect — we are on the forefront of efforts to work more effectively with this challenging issue.

Each of these therapeutic court programs turns on the vision and dedication of individual judges and court staff, and on collaboration between the court and its institutional partners. But more importantly, the success of each case turns on the resilience of the many Alaskans who are making the changes they need to make — to restore their health and dignity and return to law-abiding lives. Alaskans have always viewed themselves as an independent breed, and the ideal of self-reliance runs strong. What therapeutic court programs offer defendants, their families, and their communities is the opportunity to help themselves, and it is an opportunity they have embraced. Again, I appreciate the legislature's vital support for these programs and the promise they hold.

The success of therapeutic courts has led many in the justice system to explore other ways to stem the tide that pulls so many repeat offenders back into our

jails. Yesterday, here in Juneau, I hosted the debut of *Open Court*, a series of fifteen community forums across the state. I will be traveling to every superior court location in order to bring together judges, justice system attorneys, government officials, and community members for discussion and problem-solving on a variety of topics concerning the justice system. The topic chosen by the Juneau judges was *Closing the Revolving Door: Therapeutic Courts & Community Corrections*. There can be little question that reducing recidivism will require continued collaboration among a wide spectrum of institutions, agencies, and individuals. Just as therapeutic courts require the investment of intense resources in the short-term for great benefits in the long-term, other effective measures to combat recidivism will demand much of all of us. I am confident that if we keep a steady focus on what has worked so far, build on what we've learned and the relationships we've developed, and work to continually improve the quality and availability of treatment resources for those who need them, we can offer the hope of rehabilitation to more and more Alaskans caught in the downward spiral of chronic criminal behavior. Ultimately, all Alaskans will benefit — from healthier neighbors and safer communities.

As one last note on the challenge of reducing recidivism, I would like to share with you another recent program that I was privileged to chair. Last November, the court system teamed with the National Association of Women Judges and other sponsors to host *Success Inside and Out*, a day of workshops at Hiland Mountain Correctional Center near Anchorage designed to help women inmates

prepare for the transition to life outside prison. Over 80 women took part, and many professionals from the community volunteered a full Saturday to teaching about everything from probation compliance and housing to personal finance and wellness. Judging from the level of enthusiasm and dedication of everyone involved, there is tremendous potential for creating support systems for those reentering our communities after serving their prison sentences, if only we can find the means to tap it. Perhaps Hiland Mountain Superintendent L. Dean Marshall best expressed how important this mission is: "We need to help (these women)," he said, "because eventually, they're going to be part of the community, working jobs and cheering their kids on at the hockey game, right beside you."

Another topic that Chief Justice Boney addressed 35 years ago was the volume of family cases, which were already beginning to strain the court's docket. Back in 1972, there were few options for families in crisis other than the traditional adversarial process, where each spouse hired a lawyer to battle out their differences in court. Today, innovative court programs are helping families help themselves, with positive impact not only for the parties involved, but also for the entire legal system.

As more and more parties in family cases are going to court without attorneys, the court system's Family Law Self-Help Center has established an excellent track record for helping these self-represented litigants navigate the legal system.

Through an extensive website with simple forms and instructions, free phone access from anywhere in the state, and educational classes, the center has offered vital legal information to thousands of self-represented Alaskans each year, and has received national recognition for its work. At a recent conference, the coordinator of the National Self-Represented Litigation Network told me that when other states want guidance on how to set up a self-help center and web site for self-represented litigants, he tells them to look to the Alaska court's program as a model. The program originally focused on divorce and child custody cases at the trial court level. Recently, we have developed comprehensive self-help materials for civil appeals and expanded the Center's web-based services to include some probate matters, such as guardianships and stepparent adoptions. And use of the service continues to grow, with annual calls to the Helpline now numbering over 6000, and annual visits to the website now exceeding 60,000. As the modern trend of self-representation continues, the Family Law Self-Help Center will no doubt continue to offer a valuable service.

Court-sponsored mediation programs for family cases also continue to grow with great success. Mediation offers parties the opportunity to reach agreement between themselves on issues in dispute, with the help of a trained mediator. If successful, mediation avoids the conflict and stress of a contested trial. Because parties to mediation are able to craft the terms of their own agreement, they are typically more comfortable with the requirements and more willing to live

by them. As a result, successful mediations not only resolve initial conflicts more efficiently and cooperatively, but help ensure against future conflicts over such issues as child custody, visitation, and support, which can draw parties back into court many years after their initial decrees are entered.

Currently, the court sponsors three mediation programs, all of which are growing steadily. The Child Custody and Visitation Mediation Program, funded by federal grants, has served over 500 families since its inception, and has been successful in achieving mediated resolutions of some or all issues in dispute in over 80% of the cases referred by the courts. The Child in Need of Aid Mediation and Family Group Conferencing Program has also served hundreds of families, with a success rate of over 85%. Experience has shown that even the most troubled parents — those whose children are removed from them because of child abuse or neglect — can reach fair agreements about their family's future when given the opportunity. The Adult Guardianship and Conservatorship Mediation Program, funded by the Mental Health Trust Authority, was piloted in several communities over the past year with positive results. Of 30 referrals handled, all but two resulted in mediated agreements, which allowed the parties to avoid contested proceedings. These new approaches to family conflict show that Alaskans are eager for alternatives to the traditional court process when faced with the most intimate and difficult decisions of their lives.

Parental education and outreach are also critical initiatives that the court has undertaken to more effectively serve families engaged in custody disputes. When parents are required to view the court's video entitled "Listen to the Children," they are offered ways to decrease the stress and pain children face when their parents separate. The court's video entitled "Two Homes" encourages couples to reach a mediated settlement by curbing their hostilities towards each other and putting the welfare of their children first. Family break-up remains a significant problem in Alaska, but times have clearly changed since Chief Justice Boney's day. In the modern era, the court system no longer simply adjudicates family cases through traditional adversarial models, but also plays a role in helping families help themselves through difficult times.

On one final family law topic, I'd like to share a very special highlight of the past year for many Alaskan families — and for me personally. Last November, the court system helped host Alaska Adoption Day, a special ceremony to honor the adoption of 23 children from foster care by thirteen Alaskan families. As I offered remarks to this joyful gathering, I was profoundly moved by the commitments the new adoptive parents were making to some of our state's most vulnerable children. You could feel the love and excitement in the room. But the occasion also brought the painful reminder that so many Alaskan children whose parents' rights have been terminated remain in foster care awaiting adoptive homes, each representing the heartbreak and hardship of growing up without a safe and loving family. In recent years the legislature has shortened the timeframes for

achieving permanency plans for abused and neglected children, and the justice system is meeting the new deadlines and resolving cases more quickly. But as Adoption Day illustrates so poignantly, much work remains to be done.

A third and final topic highlighted by Chief Justice Boney that I would like to address is the challenge of youthful offenders. Some things change little in 35 years. Then, as now, we hear about youth who cause problems and get into trouble, and it is always with great sadness that we see young people make choices that are tragic — both for their victims and themselves. Currently, escalating gang violence among young people has been a cause of great concern, especially in the Southcentral region. Third District Presiding Judge Morgan Christen and Children’s Court Master William Hitchcock are serving on the Anti-Gang Task Force, meeting weekly with a range of community leaders and government officials to help seek solutions to this disturbing trend. Yet while our juvenile justice system handles the fallout, we all find ourselves asking if there isn’t something more we can do. In my view, reaching out to offer young people positive ways to be involved in their government and engaged in their communities is an important way in which we can make a difference.

Youth courts continue to offer great promise for fostering youth engagement and accountability. Led by youth — for youth — youth courts handle hundreds of minor juvenile offenses each year that would otherwise burden our juvenile justice system or not be addressed at all. Alaska has the good fortune to have

fifteen youth courts statewide, in communities ranging from Ketchikan to Nome. In the past year alone, youth courts served nearly 900 new clients, secured nearly 17,000 hours of community work service, and collected over \$5000 in restitution for victims. Historically, youthful offenders who have their cases heard in youth courts show remarkably low rates of recidivism, which indicates that early peer intervention and consistent consequences work. In the most recent statistics available, 89% of Anchorage Youth Court defendants who satisfied their probationary conditions did not return to the juvenile justice system. I have personally had the gratification of working closely with Alaska's youth courts since their inception 18 years ago. Their success has been very rewarding to witness, but it has never surprised me, since I've seen first-hand the enthusiasm and commitment of the youth involved. A recent annual report for Anchorage Youth Court says it well: "The quality of our program is measured in the youth who turns his or her life around, the teenager who grows closer to her family, and the defendant who will never again steal, use drugs, or vandalize our great city. The quality of our program is also measured in our members...sources of hope and inspiration for teens in our community." It is my hope that support for youth courts will always remain a key component of our state's juvenile justice strategy.

Another way we can help combat juvenile delinquency is to educate youth about law and its role in their lives. In 2003, with help from the federal Office of Juvenile Justice and Delinquency Prevention, the Alaska Court System founded the Alaska Teaching Justice Network, a coalition of educators, lawyers, and

others dedicated to advancing law-related education and civic learning. The network has presented statewide *Educating on Law and Democracy* conferences that have drawn over 200 teachers from across the state, and in 2007 we will offer the first summer institute on law-related education through the annual Anchorage School District Summer Academy. And late last year, the network completed the Alaska Civic Learning Assessment project, a survey of civic education opportunities and civic knowledge in our communities. We hope that through our collaborative efforts Alaska's citizens can better understand our democracy and the important role they play in its success. We are grateful to Senator Con Bunde, Representative John Coghill, and Representative Berta Gardner for their assistance with the civic assessment project, and to Sue Gullufsen of the Legislative Affairs Agency for her ongoing contributions to the Alaska Teaching Justice Network.

As I hope these examples illustrate, the Alaska Court System has initiated a number of innovative efforts since Chief Justice Boney's first address to the legislature, to take on the decades-old challenges of substance addiction, broken families and at-risk youth. I believe that Chief Justice Boney would be pleased with the new trails we've broken and the resilience we've shown in the face of an ever-changing landscape. Just as Alaskans in the early days relied on each other to survive and thrive, our progress has turned on a sense of shared responsibility and collaboration with others — not only other agencies and institutions, but also the affected individuals themselves. The success of our new

approaches underscores to me that justice is an enterprise of our entire community, and that our court system functions best when it works in partnership with Alaskans of all ages who are willing to do their part. Justice can never begin and end inside the walls of a courtroom. Justice begins with each of us — with how we treat each other in our homes and communities, how we react to conflict, how we show fairness and mutual respect in our daily lives, and how we instill these principles and values in our children. No justice system in the world can ensure a just society if the people themselves are not committed to it. Similarly, no court system in the world can effectively serve the people without their trust and respect. This is the final subject I would like to touch upon.

Chief Justice Boney was invited to give his first State of the Judiciary to this body 35 years ago to improve communications and cooperation between our two branches of government. Countless times in the history of our country and our state, communication between the judicial branch and other branches of government has become strained as each seeks to define the limits of its respective constitutional authority. The system of “checks and balances” that underlies this tension is arguably the most brilliant concept adopted by our constitutional framers. But achieving the equilibrium they envisioned is hard work. As dedicated public servants, we are all ultimately on the same page, pursuing the same goal — the best interests of Alaskans. Yet tensions inevitably arise.

Sometimes the judiciary has come under attack for fulfilling its role in the system of checks and balances. Criticism of judicial decisions is fair play in our democracy, but as Justice Sandra Day O'Connor recently observed, criticism of the judiciary itself for fulfilling its constitutional duties is dangerous ground. We may strongly disagree about judicial decisions, but we must guard against undermining the strength and integrity of our judicial system. As Woodrow Wilson once wrote, our government "keeps its promises, or does not keep them, in its courts." There is simply more at stake here than the controversial issues of the day.

We are tremendously lucky for the system we have, and for the dedication, talent, and commitment of the men and women in our judiciary, and in our legislature, and we should not forget the many successes we have achieved as partners in striving for excellence in our justice system. Over the past year, the legislature's support has been critical in ensuring the strength of our courts by helping us attract and keep high quality judges, by adding judgeships in our fastest growing communities, and by expanding court facilities in several locations. Our partnership in such efforts provides an excellent example of how the legislative and judicial branches can work together for the benefit of all Alaskans. On behalf of the thousands who enter our courthouses every month, we are very grateful for your support.

In closing, we have come a long way as a court system since the day Chief Justice Boney first stood before you. We have blazed new trails with energy and enthusiasm, adapting as we go, developing new solutions to long-standing problems. We have learned that through creativity, resourcefulness, and strong partnerships with our fellow Alaskans we can confront even the most difficult obstacles in our path. Thirty-five years after the first State of the Judiciary address, there is still much to accomplish for our justice system, and there is still uncharted terrain. But I'm confident that with your continued help our courts will grow even stronger and more responsive to Alaskan's needs. Because in the true Alaskan spirit, we are all still pioneers.

Thank you very much.