

**HOUSE AND SENATE  
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**State of the Judiciary by  
The Honorable Dana Fabe  
Chief Justice  
Alaska Supreme Court  
Before a Joint Session  
of the  
Second Session of the  
Twenty-Second Alaska State Legislature**

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**THE STATE OF THE JUDICIARY**

February 20, 2002

Chief Justice Dana Fabe

Senator Halford, Speaker Porter, Senators and Representatives, and guests. Thank you for welcoming me here today. It is a privilege to appear before you, on behalf of all of the dedicated judges and staff of the Alaska Court System, to report on the state of Alaska's judiciary. First, I would like to introduce two of my fellow justices, who are here today: Justice Robert Eastaugh and Justice Walter Carpeneti. Also present is Administrative Director Stephanie Cole, Deputy Director Chris Christensen, and Doug Wooliver, staff attorney for the court system.

This is my second opportunity to address you as Chief Justice. It is also the thirtieth anniversary of the first time that a chief justice of the Alaska Supreme Court came before this body. In 1972, you issued an invitation to Chief Justice George F. Boney, noting in your resolution that a State of the Judiciary address is ". . . an excellent manner in which to strengthen the cooperation and understanding between the Legislative and Judicial branches of government." I believe that your statement then remains true today, and I am pleased to be here to address you.

As I reviewed Chief Justice Boney's speech of thirty years ago, I was reminded of the old adage that the more things change, the more they stay the same. Chief Justice Boney opened his remarks with an observation that, "This country is undergoing a great deal of turmoil." The sources of turmoil that Chief Justice Boney described in 1972 — the threat posed by an increasing crime rate and the disenchantment among the young people of the country — may still be of some concern to us today, but we have also been touched by a different kind of turmoil. The terrorist attacks of September 11 focused not only on the physical structures of our cities but also on the structures of our American institutions and our very way of life. As I stand here today,

**HOUSE AND SENATE JOINT JOURNAL SUPPLEMENT**

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I am proud to join you in our mutual commitment to work together to preserve the rule of law and the integrity and strength of our system of government. Just as in Chief Justice Boney's days, we may be living in a time of turmoil, but we are resilient and our institutions remain strong.

I believe that we need to pair the resilience and strength of our judicial system with a willingness to adapt to the current needs of Alaskans. Although the needs of our citizens do change over time, it is interesting to note that many of the problems Chief Justice Boney spoke about in 1972 remain concerns for the court today. I plan to touch on several of the themes developed by Chief Justice Boney, but before I turn to these topics — and the progress we have made over the intervening thirty years — first let me give you a little sketch of the Supreme Court as it existed in 1972.

Several years before the first address by the chief justice to this body, the number of justices on the court had increased from three to five. Justice Jay A. Rabinowitz was serving on the court, along with Chief Justice George Boney, Justice John Dimond, Justice Buell Nesbett, and Justice Roger Connor. (And shortly before Chief Justice Boney's address to your predecessors, my colleagues Alex Bryner and Bud Carpeneti, fresh out of law school, had just finished their one-year terms as law clerks for the Alaska Supreme Court.)

In 1972, Justice Jay A. Rabinowitz was already well into his long history of service to this state. He had been appointed to the superior court bench in Fairbanks in 1960, and was then elevated to the supreme court in 1965. Justice Rabinowitz served on the supreme court for thirty-two years, including an unprecedented four terms as chief justice, until his mandatory retirement at age seventy in 1997. After his retirement, he continued to serve the court with energy and devotion, becoming renowned as the most effective settlement judge in state history. He had a waiting list of lawyers who were in line to have him settle their cases. His contributions to the justice system in Alaska were tremendous and unparalleled. As you know, Justice Rabinowitz succumbed to cancer in the summer of last year. I know that I speak for each of my colleagues on the court when I say that we miss him a great deal. Jay was a wonderfully talented justice and a

dear friend. In September of this last year, I had the great privilege of officiating at the opening of the Jay A. Rabinowitz courthouse in Fairbanks, which stands as a fitting tribute to a great man in the city where he made his home for so many years. On behalf of the court system, I thank you for your support which allowed us to build this wonderful new facility, and to name it in honor of an outstanding jurist and a great Alaskan.

During his State of the Judiciary address thirty years ago, Chief Justice Boney focused on several themes, which still resonate today. They include the connection between substance abuse and criminal behavior; the need for innovations in the family law area; the importance of fair treatment of all Alaskans; and the importance to the court of technological advances. I would like to touch briefly on these same themes today.

In the first State of the Judiciary address, Chief Justice Boney identified and spoke about the connection between criminal behavior and alcohol and drug abuse. He urged that we "not only treat the symptoms of crime but the underlying causes of crime" and he pressed that "it is incumbent upon us to take constructive steps to alleviate this grave social problem." As you well know, thirty years later we are still contending with the fact that a great deal of the criminal activity in our state is committed by persons who abuse alcohol or drugs. We are still struggling to find the most effective ways to address this connection between substance abuse and criminal behavior and to reduce the extremely high recidivism rates in these types of cases.

In recent years, with your assistance and collaboration, we have been establishing pilot projects that try a new approach, a therapeutic or problem-solving approach, in appropriate cases. I spoke with you last year about the therapeutic court model, in which the prosecutor, the defense attorney, and the judge work together in an intense cooperative effort to treat the offender's addiction and modify the longstanding destructive behaviors associated with it. Although these courts have been labeled "therapeutic," they are in no way soft on the participating defendants. Defendants must commit to an intensive course of treatment. The offenders in these programs face many more obligations and much closer supervision than defendants do in the

traditional justice system environment. The goal of the program is to break the cycle of reoffense, and successful participants go through a graduation ceremony that symbolizes their readiness to move forward and to commence living a productive life without engaging in substance abuse or future criminal behavior.

We now have therapeutic court projects at various stages throughout the state. Last year, you appropriated funds and authority for the establishment of "DWI" therapeutic programs in the Anchorage and Bethel superior courts. In Anchorage, that program began operating on December 1, 2001, and in Bethel, we have been planning for the new program that will begin functioning soon after the upcoming appointment of the new Bethel superior court judge.

Our first therapeutic court pilot programs began in the Anchorage district court, which has to be one of the most innovative courts in the country. First is the "Wellness Court" project in Anchorage, initiated by Judge James Wanamaker, which uses the therapeutic court model along with administration of a physician-prescribed drug, Naltrexone, to address criminal behavior influenced by chronic alcohol abuse. Second is the felony-level drug court in Anchorage superior court which began in June 2001, under the leadership of Judge Stephanie Joannides; this drug-court program was initially supported through a federal grant program. And finally, there is the Mental Health Court, started by Anchorage District Court Judges Stephanie Rhoades and John Lohff. But now these efforts are not limited to Anchorage. For example, a fledgling therapeutic court program has begun here in the Juneau district court, where Judge Peter Froelich has started a small Naltrexone-based Wellness Court project. And in Fairbanks, Judge Ray Funk has been exploring establishment of a Wellness Court program in the Fairbanks district court. The court system is also considering the therapeutic model and some of its principles for use in children's cases.

So, Chief Justice Boney recognized this problem thirty years ago, and we recognize it today. Will these new therapeutic court programs succeed where others haven't? Courts nationwide have reported successes in drug courts based upon significant reductions in recidivism. Our programs are new, so I can't report definite results to

you yet. But initial reports are certainly promising, and the Alaska Judicial Council is currently conducting formal evaluations of each of these programs. This persistent problem of alcohol and drug abuse, and its connection to criminal behavior, is one that I hope we will continue to address together, in partnership, because of its profound effect on the lives of Alaskans.

All of these efforts demonstrate our commitment to continue to examine the way we do business. As we struggle with the same issues today that we did with thirty years ago, it's certainly appropriate to consider new strategies to address these issues. Let me share one other exciting innovative effort to address the challenge of preventing misdemeanor probationers, many of whom have alcohol or drug abuse problems, from cycling through the system. Although it is only in the planning stage, Anchorage District Court Judges Sigurd Murphy and Natalie Finn have been working on finding ways to help misdemeanor offenders meet their court-imposed conditions of probation. As you know, we do not currently have a system that provides probation officers or formal probation supervision to misdemeanor offenders. So Judges Murphy and Finn are seeking to develop and enlist a network of volunteers who could assist these defendants in their efforts to comply with the requirements imposed by their sentences. These would be community mentors, who could help persons convicted of minor misdemeanor offenses to make their alcohol counseling appointments or help them find clothes to dress for an interview so that they can find a job in order to pay restitution. I have appointed a committee of court personnel and representatives from the Anchorage community to work on this project, and I hope to have more to report to you next year.

The second major theme sounded by Chief Justice Boney was his concern with what he termed "the breakdown of the family unit." He stated that, "throughout the nation and in Alaska, the solidarity of the family unit is being undermined by divorce and marital strife." Well, the issues relating to the maintenance of the family unit are certainly still with us today. From the court's perspective, we recognize that traditional, formal court proceedings, in which both sides operate at arm's length and focus on their legal rights and obligations, often don't adequately serve the needs of these families in transition. In family

cases, the need for legal resolution is combined with the emotional needs of the parties — and sometimes the need to continue the family unit in a different form to serve the best interests of the children.

Mediation is one promising approach that we're using to address the complicated set of problems in family law cases. We currently have two mediation projects, funded through three federal grants, providing mediation services to families. The Child Custody and Visitation Mediation project, a statewide effort operating in Southeast Alaska, Fairbanks, and Anchorage, helps minimize problems between parents who are experiencing high levels of conflict. This mediation project helps parents by coordinating the details of child visitation, providing a safe, neutral place for parents to drop off and pick up their children for visits, and sometimes directly supervising visits.

We also have a mediation project addressing the needs of children and families involved in child protection cases. The Child in Need of Aid Mediation and Family Group Conferencing project has received 116 referrals involving 239 children from Anchorage, Kenai, Barrow, Fairbanks, Bethel, and Palmer. Families have been able to reach agreement on some or all of the issues in about eighty-five percent of these cases. Initially this project focused on early case intervention, but it was quickly flooded with referrals for resolution of late-stage permanency issues for children, 150 of whom have been in the system for more than two years and some for as long as thirteen years. For dozens of these children, the mediation process created plans for reunification as well as plans for open adoptions and guardianships. These mediations have been able to address details for ongoing contact between children and their biological families, tribes, and cultures.

Another exciting development in our attempts to assist families — for whom court is an unfamiliar and often intimidating place — is the opening of our new Family Law Self-Help Center. As you probably know, a high number of Alaskans who have family law cases come into court representing themselves, without the assistance of a lawyer. It is very difficult for these self-represented litigants to understand the procedures of the court and to prepare their cases. From our new Self-Help Center in Anchorage, which provides telephonic services throughout the state via an 800-number, self-represented litigants can

obtain basic information and help with their cases. The facilitators in the center do not give legal advice, but they do provide a great deal of hands-on support for family court litigants — helping them with court forms, explaining the court process, conducting workshops on child support, and making appropriate referrals to other agencies.

There are other ongoing efforts to help families through the court process. For example, Fairbanks Presiding Judge Niesje Steinkruger produced an easy-to-use form and check list, which helps divorcing parents to develop a comprehensive parenting plan for their children. That form is now available and in use statewide. Just as in Chief Justice Boney's day, today we must continue to strive to meet the significant and specialized needs of families in our courts.

In his 1972 address to you, Chief Justice Boney also recognized ". . . a feeling in some quarters that the poor and the minority groups receive in many cases disproportionate punishment." The issue of fair treatment for all Alaskans within the justice system has been a recurring one over the last thirty years. The Fairness and Access Implementation Committee, chaired by Justice Robert Eastaugh and Fairbanks Superior Court Judge Meg Greene, has been working energetically to address the troubling perceptions of racial and ethnic bias in the court. This committee's work has resulted in changes to the jury system and to the court's employment practices, as well as increased judicial training on the use of interpreters. In response to the committee's recommendations, the Alaska Judicial Council has undertaken a study of racial and ethnic disparity in felony sentences and has gathered preliminary data from over 2,300 felony case files from superior court locations throughout the state. The committee is also working to increase judicial presence in rural Alaska and to encourage the use of local resources, such as tribal elders and tribal councils, to help resolve disputes. Also as a result of this committee's efforts, we now require all court employees to participate in annual diversity training sessions — a step that has been viewed as a model by other courts throughout the nation. The efforts of the Fairness and Access Implementation Committee demonstrate the court's commitment to provide all Alaskans with equal justice, regardless of cultural background, race, or ethnicity.

I can't leave my discussion of topics that Chief Justice Boney addressed in 1972 without mention of the promises he made with regard to automation. He told your predecessors that efforts were underway to make the Alaska Court System the most modern in the nation, and that he anticipated that the new computer system in development would "render statistics instantly" and "enable us to evaluate any given judge in the performance of his duties." Given the state of technology in 1972 — when the first "mini computers" just hitting the market were the size of the average household refrigerator, using disk cartridges the size of a large serving platter — Chief Justice Boney's statement was visionary. Unfortunately, when we examine the speed with which this dream could be implemented by the courts, that vision was a bit clouded. The court system, along with other justice agencies, has struggled for years with issues relating to automation. We have limped along with a home-grown, inadequate computer system that can provide us with only rudimentary information. However, in the last two years, you have appropriated funds to allow us to purchase a modern case management system, and we have selected a contractor to provide that system. Our goal is to have that system operational statewide within an eighteen-month period. Although I hesitate to echo Chief Justice Boney's predictions of thirty years ago, we do believe that our new system will allow us to manage our caseload much more effectively, and will provide us with accurate and meaningful statistics about our work. I thank you for your support in providing funding for this new system.

I would also like to talk with you about one subject that Chief Justice Boney didn't address, but which is particularly important to the court today: judicial outreach. This is an area in which I believe we have made great progress. We now recognize that service to the public includes an obligation to make the justice system understandable and approachable. We know that we must enter into a more active relationship with our citizens, more of a two-way dialogue, so that Alaskans can develop a deeper understanding of the justice system, and so that the court can better understand and address public needs. There are several projects underway to accomplish this goal. First, as I mentioned last year, I have committed to participating in "Meet Your Judges" forums in every superior court location. These "Meet Your Judges" forums encourage the public to come to an evening meeting

where judges and court staff are available to answer their questions in a relaxed atmosphere, where citizens aren't stressed about their own court cases. Judges are able to answer questions about court procedures and policies and provide some personal insight into the challenges and rewards of the job of judging. So far, we have held "Meet Your Judges" programs in Juneau, Kenai, Anchorage, and Fairbanks — Palmer and Dillingham are next on the list. And we have received an enormously positive response from members of the public who have attended these meetings.

Law Day is another outreach effort that we are continuing and expanding upon from previous years. In 1961, Congress designated May 1st as Law Day — a day on which to celebrate our country's unique and wonderful justice system. In 1999, the Alaska courts began a special effort to have every judge and magistrate participate in a Law Day outreach activity — usually traveling to a classroom or hosting children for tours and mock trials in the courtroom. Last year, judges and magistrates statewide made Law Day efforts in communities throughout the state, reaching literally thousands of school children and members of the public. Our Law Day program continues to evolve, and this year for the first time we will enter a partnership with the Alaska Bar Association to further expand the program. In particular, we want to include more adults in our Law Day efforts, so in some locations we will have judges and lawyers teaching short seminars in the courtroom about procedures for handling different types of cases.

"Meet Your Judges" and Law Day are only two of the many ways we can make the justice system more understandable and accessible. I mentioned to you last year that I was in the process of forming the Alaska Supreme Court Outreach Commission, composed of representatives from the courts, the bar, the community, and the legislature. Senator Gary Wilken and Representative Lisa Murkowski both graciously agreed to serve on this Commission. With their help — and the advice of other Commission members — we have identified and are implementing a number of ideas to improve communication with the public, including the development of speaker

**HOUSE AND SENATE JOINT JOURNAL SUPPLEMENT**

**No. 13**

**February 20, 2002**

lists, public outreach packets, invitations to students to observe oral arguments when the court travels, invitations to community groups to observe our therapeutic court programs, and an expansion of juror appreciation week activities.

And our outreach efforts have now transcended our borders, both state and national: I have just appointed a steering committee to develop an ongoing partnership between the Alaska Court System, the Alaska Bar Association, and lawyers and judges in the Russian Far East region of Khabarovsk. We are the first western state to participate in this exciting project, sponsored by the Russian-American Rule of Law Consortium and supported primarily by USAID funding. Two of your members, Representative Lesil McGuire and Representative Ethan Berkowitz, have agreed to serve on the project's steering committee and help us with this exciting endeavor.

I especially welcome the participation of legislative representatives in these outreach efforts. This is but one area where the legislature and the courts can work together for the public good. Our system of government balances state power by distributing it among three equal and separate branches of government. As we all recognize, this delicate balance can create an unavoidable tension between our branches, because of the different roles we are called upon to play. However, we can each bring our own knowledge and strengths to work together, cooperatively, for the benefit of all Alaskans.

And although the essence of judicial independence is to allow judges to make fair decisions, based on the law and facts before them, without regard to outside pressures or public opinion polls, we as judges also recognize that judicial independence must be paired with judicial responsibility. It is the duty of the judicial branch to insure that cases be processed and disposed of expeditiously, that all citizens have access to justice, and that judges and court personnel be courteous, knowledgeable, and responsive. It is our duty to see that jurors' time is used efficiently and that courthouses are secure, easily accessible, and provide an appropriate environment for meeting the public's justice needs. It is our duty to spend the money appropriated to us intelligently, prudently, and in accordance with sound fiscal practices. It is our duty to assess and measure our own performance, and to give

citizens an opportunity to air their complaints about the operations of the courts. The Alaska Court System must strive to be accountable to the public in our performance of these responsibilities.

Your requests for information about the timeliness of our case processing demonstrate your interest in having court cases resolved expeditiously and without unnecessary delay. We share that interest, and we are actively working on that goal. As you know, we developed time standards for Alaska's trial courts in 2000. We are continuing our efforts to streamline and expedite case processing in the trial courts. Efforts are also underway at the appellate level, and I can report to you that we are making significant progress. Last year, the Alaska Supreme Court became one of just a handful of supreme courts in the nation to develop time standards for supreme court case processing. We have committed to decide the cases that have been submitted to us more quickly, and we have examined and made changes to our procedures with the goal of meeting these standards. Statistics compiled on cases decided in fiscal year 2001 indicate that we have come close to meeting these new standards in all Supreme Court appeals, and that we are achieving these standards in expedited appeals involving child custody and child protection cases. So, while our courts occupy a unique position within our system of government that demands independence, we must also be accountable to the public for the effective management of court business.

It has been a pleasure to appear before you today, thirty years after the first State of the Judiciary address, and to talk with you about our courts. It is my experience that the men and women who make up the court system in Alaska are dedicated and energetic — committed to making our court services as fair, accessible, and effective as possible. Thank you for inviting me today, and I hope that you'll continue this tradition for at least another thirty years.