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**State of the Judiciary Address**

**by**

**The Honorable Dana Fabe**

**Chief Justice**

**Alaska Supreme Court**

**Before a Joint Session**

**of the**

**First Session of the**

**Twenty-third Alaska State Legislature**

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**THE STATE OF THE JUDICIARY**

**March 5, 2003**

**Chief Justice Dana Fabe**

Senator Therriault, Speaker Kott, Senators and Representatives, and guests. Thank you for inviting me here today to report to you on the state of the judiciary. First, I would like to introduce the other justices of the Alaska Supreme Court who are here today — we traveled to Juneau yesterday to hear an oral argument calendar: Justice Robert Eastaugh and Justice Walter Carpeneti. Also in the gallery are Administrative Director Stephanie Cole, Deputy Director Chris Christensen, and court system staff attorney, Doug Wooliver.

This is my third and last opportunity to address you as chief justice. As you know, in our state, the supreme court chooses a new chief justice every three years, and the court will be choosing my successor later this spring, to take office on July 1 of this year.

It has been an enormous privilege to serve as chief justice for the past 2½ years. I have had the experience of interacting with my counterparts from across the country, dedicated men and women who are the leaders in their state courts. And as we talk about our experiences in our home states, I am always impressed by the spirit of respect and cooperation that exists among the three branches of government here in Alaska. Not all states have this collaborative working relationship. Certainly, there is some tension inherent in the balance of power — a tension that our founders envisioned and one that, although uncomfortable at times, is healthy — but in Alaska we enjoy a harmonious working environment that isn't always present in other states. I hope that our practice of working together to meet the justice needs of our great state will continue for the benefit of the people of Alaska.

As I approach the end of my term as chief justice, I find myself focusing my attention on the road ahead and on where the Alaska Court System is heading. I believe public expectations of our courts should be high. I would like to speak with you today about four

challenges for the future that I believe we must address together. First, we must face the challenge of ensuring that our courts are accessible to all Alaskans. Second, I believe that we must work together on the challenge to promote our citizens' public understanding of courts and the justice system. Third, we must meet the challenge to ensure that cases are handled by our courts efficiently and without undue delay. And finally, I'd like to talk with you today about a fourth challenge: the need to develop and support meaningful solutions to the serious societal problems reflected in our caseload.

**The Challenge of Access**

I would first like to address the issue of access to our courts. Litigants have traditionally relied on the expertise of lawyers to navigate them through the court process. But times are changing, and an ever greater number of our citizens are making the decision to represent themselves, without the assistance of legal counsel. This change has huge implications for our courts. Self-represented litigants need a much higher level of assistance in their efforts to access court services effectively. We cannot ignore the needs of these citizens who are exercising their constitutional rights to seek legal redress.

One important step in meeting the challenge of serving this increasing population of self-represented litigants is the opening of the court system's Family Self-Help Center. To date, the Center has served approximately 4,000 customers statewide, primarily through phone and web-based services. The Self-Help Center's staff provides the type of nuts-and-bolts assistance that self-represented litigants need most, such as individualized help with identifying and completing court forms, information about what documents the judge will expect the litigant to bring to the courtroom, and assistance with accomplishing service of process of necessary pleadings. The Self-Help Center is funded by money returned to Alaska under an agreement with the U.S. Department of Health and Human Services, through a formula based on the number of child support orders entered by our courts and enforced by the state. This year, we are adding one additional facilitator to the Self-Help Center with funds from a federal Violence Against Women Act grant, which will allow the Center to assist self-represented litigants involved in domestic violence cases. I

will note, too, that in an effort to enhance access to our courts, we have hired one facilitator who can offer the services of the Center in Spanish. It is wonderful that the court is now able to provide this valuable resource, and I hope that in the future we will be able to expand the Self-Help Center's services into other types of cases involving self-represented litigants. In short, we must modify the way we do business in response to the changing needs of our customers.

Another aspect of access hinges on the availability of suitable and secure court facilities. Our courts cannot be effective unless those who are in need of our services can come into an environment that is physically appropriate, safe, and designed to meet their needs effectively. The court facility itself plays a very important role in the justice process, enhancing the dignity, fairness, and importance of the proceedings for the community members who bring their controversies to court. In prior years, you have been very responsive when we have brought our urgent facility needs to your attention. This year, I will mention a specific need which is particularly compelling. We are asking you to help us improve the seriously substandard justice facility in one of our primary far-North superior court locations, Kotzebue. I have seen the facility in Kotzebue firsthand, and I have heard the complaints about the building from members of the public. The space is old, worn, and poorly laid out — and it has a myriad of functional problems, including an antiquated heating system that channels furnace fumes into the building under cold weather conditions. It does not adequately serve the people of Kotzebue and the surrounding region. We are asking for funds to allow us to enter into a lease for space in the Kotzebue armory building, owned by the State Department of Military and Veteran's Affairs. The space available in the armory is well suited to meet the court's long-term needs. If, together, we can provide this improved facility for the people of Kotzebue and the surrounding villages, we will have greatly improved the access to justice for this region of the state.

Another extremely important aspect of access to justice is physical security. Our citizens must feel that they can enter court facilities to transact their business safely and securely. Even before the tragic events of September 11, we had been seeing an increase in reports of dangerous incidents in our courthouses. Most often, these incidents

stem not from criminal cases, as you might expect, but from cases involving families in turmoil — divorces, child custody proceedings, and cases involving domestic violence. People in these types of cases are often angry and distraught, and may be going through the most traumatic events of their lives. We are fortunate that we haven't seen a fatal incident here, but we have experienced some scary close calls — and security experts tell us that it may only be a matter of time, if more protective safeguards are not put into place. The new threat of domestic terrorism only exacerbates these concerns. The courthouse stands as a prominent symbol of the American way of life and the Rule of Law, and could well become a target.

Unfortunately, only a few court facilities in our state provide for even rudimentary weapons screening upon entry. Without weapons screening, we are placing Alaskans who enter our facilities at risk: jurors and witnesses who are ordered to appear in court; our judges and court staff; and victims seeking redress.

Our goal is to improve security systems in courthouses statewide, focusing first on superior court locations that serve the largest populations. We cannot ignore the fact that these new systems are urgently needed. I ask for your support this year of our budget request to improve the security of our courthouses. Together we can work to make the safety of our citizens a reality.

### **The Challenge of Promoting an Informed Citizenry**

The second challenge I'd like to discuss with you today is our need to promote public understanding of our courts. Many Alaskans are interested in learning more about the operation of our courts — and the more they understand the important functions of our judges and our courts, the more trust and confidence they have in our justice system. Yet, the respective responsibilities of our three branches of government in the administration of justice is a subject that historically has been covered only briefly in school curricula. Although many of our citizens may be interested in the workings of the justice system, few educational resources on this topic have been widely available.

Over the past few years, the court system has been working on several fronts to improve public awareness and understanding of justice issues. When I became chief justice, I formed the Alaska Supreme Court Judicial Outreach Commission. This energetic group of judges, lawyers, community leaders, and legislators has made a number of recommendations to help foster public understanding of our legal system, and many of these recommendations have already been successfully implemented. With the Commission's support and encouragement, we have expanded our statewide "Law Day" efforts, developed outreach brochures for schools and community groups, sponsored Juror Appreciation Week, and fostered ties with educators to promote law-related education. In conjunction with the Alaska Bar Association and with financial assistance from the Alaska Humanities Forum, the court system last year created a statewide photo-text exhibit for Law Day, entitled "The US in JUSTICE is...EVERYONE!" The exhibit features portraits of 37 diverse Alaskans and their personal statements about what equal justice means to them. This exhibit received an Outstanding Law Day activity award from the American Bar Association, which has resulted in significant national exposure for Alaska's judicial outreach efforts. I would like to publicly thank the members of the Outreach Commission for their enthusiastic support of the court's efforts, including the efforts of your members who have contributed time and energy to this project, Senator Gary Wilken and former Representative (now U.S. Senator) Lisa Murkowski.

Also over the past year, I have continued to work towards my goal of attending "Meet Your Judges" community forums at all superior court locations in the state. These community forums invite members of the public to attend a meeting with their judges, court staff, and other court representatives. So far, I have participated in forums in Juneau, Ketchikan, Kotzebue, Nome, Anchorage, Dillingham, Kenai, Palmer, and Fairbanks. Later this year we will present "Meet Your Judges" forums in Bethel, Barrow, Sitka, and Kodiak. Questions posed to panel members during these forums have ranged from inquiries about how judges make their decisions to concerns about the adequacy of court facilities for jurors. These forums have provided an opportunity for a two-way dialogue with the community, during which the judges

have both offered information about the court and listened to community concerns about the workings of the justice system.

Our efforts have been directed to members of the public of all ages, but I must confess that I have a special interest in our children, and in enriching their knowledge about the justice system. The Alaska Court System continues to support the efforts of Youth Courts statewide and works closely with Youth Court programs throughout Alaska. Many meet in court facilities and draw upon the resources of judges, law clerks and court staff to assist with their work. The benefits of Youth Court are twofold: Youth Courts use peer influence to impose and enforce meaningful consequences for youthful offenders who have committed minor offenses, and they educate participating youth about the structure and values of our system of justice. I have worked with the Anchorage Youth Court judges for twelve years, have conducted the installation ceremonies of new Youth Court attorneys and judges throughout the state, and have participated in several statewide Youth Court educational conferences, and I can tell you that these teens are providing an amazing service to their communities. They are worthy of our support.

On another front, the court system recently played a key role in securing funding from the national Youth for Justice program to revitalize law-related education in Alaska's schools. The court is working closely with teachers, school administrators, juvenile justice officials, law enforcement, and lawyers to develop a statewide network of individuals and agencies with a vital interest in educating our students about our justice system. Efforts will include development of a website and clearinghouse of resources for law-related education and sponsorship of a statewide conference to bring members of the educational and legal communities together to address our common goals.

These are just a few of our major outreach efforts. Work continues on many fronts, not only on a statewide level but at the local level. As just one example, last August, Presiding Judge Niesje Steinkruger of Fairbanks organized a booth at the Tanana Valley Fair to focus on jury service, jobs in the justice system, and child custody questions. Over

800 people visited the court booth, which was conveniently located between the North Star Youth Court and the Klondike Visitors' Association.

As a final note on judicial outreach, I will mention an international outreach project. The Khabarovsk-Alaska Rule of Law Project is sponsored by federal grants from U.S.A.I.D. and the Foundation for American Economic Cooperation. Last June, a delegation of twelve judges and lawyers, including several chief judges, a dean of the Khabarovsk law school, and a member of the provincial legislature, visited Alaska for a week. This past September, a five-member Alaska delegation of judges and lawyers made their first visit to Khabarovsk. We are expecting our second delegation from Khabarovsk to visit us later this week. This upcoming weeklong conference will include sessions in court management, organization of a bar association, judicial ethics, and the development of a court observer program. The Rule of Law Partnership continues to foster good relations between the legal communities in Alaska and Khabarovsk, bolster legal reforms, and encourage the growth of institutions that will strengthen democracy. We are proud to be involved in this notable international project and particularly appreciate the participation of Representative Lesil McGuire and Representative Ethan Berkowitz who serve on this project's steering committee.

#### **The Challenge of Efficiency and Timeliness**

I'd like to turn now to a continuing challenge for the court: the challenge to ensure that cases are decided quickly and efficiently. Dispute resolution is the core function of our courts. When citizens, families, businesses, and governmental agencies bring their disputes to us, they have a reasonable expectation that we will give these disputes prompt and appropriate attention. We recognize the need for prompt resolution of cases, but this need must also be paired with the recognition that a thoughtful and thorough deliberative process takes time. And, as you know, we are obligated to accept all cases that are filed with us, regardless of the level of resources that we have available to decide those cases.

As I reported to you last year, the court system has taken steps to establish time standards for disposition of court cases, both at the trial and appellate level. The trial court standards describe goals for resolving various types of cases at the trial level. We are continuing our work to streamline and expedite trial court proceedings in each of our courts, but I will not be able to give you a definite report on our achievement of our time standards goals until we are able to produce better statistics about our caseload. As you know, we are severely hampered in our ability to produce meaningful caseload statistics beyond the most basic level because we have never had a computerized case management system that could provide us with detailed and accurate information about our cases. With your generous support in recent years, we have been able to acquire a modern case management system, which we are currently modifying to meet our state-specific needs. We anticipate that this new system will be installed in every court statewide by the end of calendar year 2004. Once the new system is operational, we will be able to collect much more detailed and accurate information about our cases. This new system will allow us to manage trial court cases more effectively and to provide you and the public with appropriate statistical information.

But our efforts to streamline court decision-making haven't stopped at the trial court level. In March 2001, our supreme court became one of just a handful of supreme courts in the nation to adopt time standards for our own cases. I am pleased to be able to tell you that the supreme court is close to meeting the time standards in all civil appeals, and is actually surpassing the time standards that we established for expedited matters — those cases involving issues of child protection and child custody. And, as you know, we have been very successful in addressing unusual and urgent matters in a highly expedited fashion. In the recent complex redistricting controversy, we issued a decision six days after oral argument, and the total time between opening the appeal file and publication of the result was 44 days. And in a more recent election controversy, we issued our decision on the same day as oral argument, in recognition of the public importance of resolving that case immediately. I certainly can't promise you that we will be able to resolve many of our cases on a same-day basis, but I can assure

you that we will continue to press towards excellence in the timely handling of all aspects of our cases.

Although we are always cognizant of our independent role as the third branch of government, we do not view that independence as a bar to collaborative efforts. Judicial independence ensures the primacy of the rule of law by guaranteeing the ability of the courts to protect individual rights, to provide a check on the exercise of governmental powers, and to decide individual disputes fairly and impartially. But we also have the responsibility to demonstrate that we are serving the public with maximum effectiveness and responsiveness. I assure you that we take this responsibility seriously, that we focus on performing our core dispute resolution functions swiftly and effectively, and that we strive to use our resources wisely and efficiently.

**The Challenge of Meeting Changing Societal Needs and Expectations**

I turn now to a fourth and final challenge that we have been addressing — and must continue to address — in partnership with each other. For certain types of disputes, we must look beyond the traditional court system adjudication model to support meaningful solutions to the types of societal problems that are reflected in our caseloads.

We have known for years that the complex and ongoing problems of families are often ill suited to resolution in the traditional judicial forum. Similarly, we know that the resolution of a traditional criminal case, which often ends with the announcement of a sentence, may not really be a resolution at all, because the offender will so often appear back in court, on a revolving door basis, on either a probation violation or on a new criminal charge.

We certainly aren't contemplating an abandonment of the traditional adversary process. Rather, we are looking for modifications of that process, in appropriate cases, to better address the specific problems presented. I'd like to tell you about some of our efforts in this area.

Several years ago, you indicated as legislative intent in our budget that you wanted us to explore mediation as an alternative to traditional litigation in appropriate cases. Although no funds have been

appropriated to us for this purpose, we have established successful small mediation programs using federal grant funds, and one mediation project which is entirely staffed by volunteers. In cases involving families with children, mediation is an especially promising alternative. As we all know, family members will continue to interact with one another after the immediate conflict, such as a divorce case, is resolved. Mediation provides these families with a forum in which they can agree together on a plan for their future. Both legal and non-legal issues in controversy can be addressed. With funds from a federal grant, child custody and visitation mediation programs are now operating in ten superior court locations, and additional areas are served telephonically or through mediator travel, when funds are available. During the last calendar year, 193 cases received mediation services under this program. Of those cases in which mediation was completed, over 75% reached agreement on some or all of the issues mediated. These are not only issues which now do not have to be decided by a court, but they are also issues which may be less likely to resurface in a future controversy, because they have been resolved by the agreement of the parties. Through funding from federal grants, six courts now have mediation programs that attempt to resolve child in need of aid cases, and an additional six court locations have received services from visiting mediators. Program statistics for the last calendar year indicate that agreements were reached on some or all of the issues in 85% of the cases which completed the child in need of aid mediation process. The trend in both of these mediation programs reflects an increasing number of referrals and the mediations are producing good results in the vast majority of cases. Unfortunately, as is true with most grant programs, the grant sources will be only available for a finite period of time.

I should mention, too, one small and unique mediation program associated with the Anchorage district court. The small claims mediation program uses volunteer mediators from the business community to resolve small claims cases. Last year, these volunteers mediated about 200 cases, successfully resolving between 60-70% of them, usually with complete agreement on all issues. The court system is certainly grateful for the community support and commitment that this project clearly represents.

While the mediation projects focus on the resolution of cases outside of the courtroom, another set of projects focuses on changing the courtroom environment to reduce recidivism in certain challenging types of cases. I spoke to you last year of our emerging therapeutic court projects. These are court projects that generally focus on offenders who have a long history of violation of our laws but who have had little success in modifying their destructive behavior: persons whose behavior has been seriously affected by addictions to drugs or alcohol, and persons who are suffering from a mental illness or disability.

In order to address the long-term addiction and behavior issues associated with these offenders, several projects have been initiated which use a therapeutic court model in place of the more traditional court process. Although these courts are sometimes called "therapeutic courts," they operate on a model which actually requires much more commitment and work by an offender than the traditional model. An individual plan is created for each offender, who must meet stringent requirements involving treatment, monitoring, drug testing, school or employment, and other relevant requirements. Each offender's progress is carefully monitored, and each returns to court on a frequent and regular basis. There are immediate consequences for a violation of a case plan, and immediate recognition for progress and success. These projects include a mental health court project in the Anchorage district court, serving mentally disabled individuals who are charged with misdemeanors; an Anchorage felony drug court for non-violent drug offenders; the new Anchorage and Bethel "driving under the influence" court projects, targeting persons with drunk driving and related offenses; and the Anchorage and Juneau wellness projects, focused on the use of the physician-prescribed drug Naltrexone and other appropriate therapies for persons with serious alcohol problems who are charged with misdemeanors. The newest addition to the therapeutic court project is the family care court in Anchorage, which uses a modified therapeutic model in cases involving parents in child protection cases.

The committed individuals whose daily efforts support these projects will tell you, based on their own experience and observation, that these programs work. They report that individuals who have previously

been caught in the "revolving door" of the justice system are now leading productive and revived lives as a result of their participation in these projects, often after many years of destructive criminal behavior. An Alaska Judicial Council study, released last month, reports that defendants who participated in the Anchorage Mental Health Court project had fewer arrests, fewer days in jail, and fewer admissions to API. And I will be giving the commencement speech to the first group of graduates of the drug court and felony DUI court programs this Friday. I am very optimistic about the positive effects of these projects. But I also believe that we must have objective and careful analyses of all of these programs for your purposes and ours, as we plan the structure and funding for our courts in the future. Evaluations of most of these therapeutic court projects are already underway.

These therapeutic court projects do take more resources: the handling of a case through the therapeutic court process requires more court hearings, more judicial monitoring of the offenders, and more case coordination efforts by all of the involved criminal justice agencies. But in the long term, the state may realize a savings through a reduction in incarceration times and a reduction in all of the costs associated with recidivism. We thank you for funding the Anchorage and Bethel DUI projects, which you authorized and partially funded in fiscal year 2001. Support for the other therapeutic court projects has been provided through a combination of restructuring existing resources by the court and other agencies and funding from various grant sources and community resources. These projects have been patched together using whatever resources we can gather to support the effort, and that process has worked well in the short term. We want to join with you to work towards the continued development and funding of these programs that address the major problems facing our criminal justice system in a meaningful and effective way.

As we reflect on these four challenges, it is evident that they are challenges that cannot be met by the court system alone. All three branches of government must work cooperatively and collaboratively to meet the justice needs of Alaskans. I believe we have a good history of working together for common goals, and I hope and expect that these relationships and traditions will continue. With your

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assistance and support, the Alaska Court System will fulfill its constitutional mandate to provide the citizens of our state with judicial services of the highest caliber.

On behalf of all of the dedicated judges and staff of the Alaska Court System, I appreciate this opportunity to discuss the challenges facing the Alaska Court System in the years ahead, and I thank you for inviting me to speak to you today.