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State of the Judiciary Address

by

The Honorable Alexander O. Bryner

Chief Justice

Alaska Supreme Court

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of the

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THE STATE OF THE JUDICIARY
February 25, 2004
Chief Justice Alex Bryner

Mr. President, Mr. Speaker, members of the Alaska Legislature, and guests. Thank you very much for this opportunity to report on the state of Alaska's judiciary. This is my first chance to appear before you as Chief Justice. It's an exciting occasion for me.

I'd like to begin by introducing two colleagues who are with me today. Justice Robert Eastaugh has served on the court for 10 years. Although he now lives in Anchorage his roots are in Juneau. Justice Eastaugh's membership on the Court advances a tradition begun by his grandfather, who opened one of Juneau's earliest law practices and participated in Alaska's Constitutional Convention, serving on its Judiciary Committee. Also here is Justice Walter Carpeneti, who makes his home in Juneau. Justice Carpeneti is widely known for his legal skill and judicial talents; but locally he's famous for his passionate devotion to basketball. Since being appointed in 1998, Justice Carpeneti has proved to be the Supreme Court's most valuable source of inside information about Carlos Boozer.

Next, I want to introduce the Court's Administrative Director, Stephanie Cole, and two members of her senior staff. Stephanie Cole has served in the Court System for 27 years and has been our Director since 1997. Deputy Director Chris Christensen is here today too; and so is Administrative Attorney, Doug Wooliver. Those of you who have already met and worked with Stephanie, Chris, and Doug don't need to be told how talented, hard working, and dedicated they are.

Last, I'd like to extend greetings and regrets on behalf of two colleagues who couldn't attend today: Justice Warren Matthews and Justice Dana Fabe. Justice Matthews has been on the Court for 26 years and has served two prior stints as Chief Justice; as our longest serving current member, he is our historian and standard-bearer. Justice Fabe has been on the Court since 1996. She was my

immediate predecessor as Chief, and the clear course she charted has been my welcome guide since taking office last July.

Now to the subject at hand: the state of Alaska's judiciary. I'll cut to the chase and say unequivocally that Alaska's judicial branch of government is strong and sound. But instead of supporting my assertion with the usual facts and statistics, I'd like to base my report on the experiences I've had myself during 35 years with the system. By letting you see through my own eyes where the system's been, where we are now, and where we're headed, I hope I can give you some new perspectives you might not be able to glean from the cold statistics.

I came to Alaska in 1969 straight out of law school to work as a law clerk for the Alaska Supreme Court. I'd taken the job on a lark; my wife, Carol, and I were both anxious to see Alaska; and I didn't know anything about the court system or the Supreme Court Justice who'd hired me, George Boney. It was an exciting time in my life. But I quickly found that it was an even more exciting time in the young life of the State of Alaska.

Just 10 years after statehood, Alaska was coming out of its infancy: oil had been discovered at Prudhoe Bay; the first oil lease sale had just been held, and the pipeline project was being planned. The state was poised to start booming.

Like the state, our court system was just out of its infancy. Territorial lawyer and future Attorney General Charlie Cole once likened Alaska's territorial court system to chaos. The chaos ended in 1959 with statehood, and our new state system quickly began filling the void. From a tiny office over a hardware store on 4th Avenue in Anchorage, Alaska's first Chief Justice, Buell Nesbett, took only six months to establish superior courts in Anchorage, Fairbanks, Juneau, Ketchikan, and Nome. District Magistrate Courts — which would become our current District Courts — were set up in these same locations, as well as in Sitka.

Outside these cities, our system relied on a network of deputy magistrates that was patterned on our earlier territorial system. The

Deputy Magistrate Courts included 41 magistrates throughout the state who had power to try civil cases under \$250, to conduct preliminary hearings in felony cases, and to try misdemeanors with the defendant's consent. But while our Superior and District Courts in the cities were housed in adequate court facilities, the Deputy Magistrates only received a nominal housing allowance — about \$25 per month in most locations.

When I arrived in 1969, the court system was still largely confined to the state's largest cities. Superior and District Courts had developed healthy roots but remained largely in our cities. And outside the cities, our Magistrate Courts had changed little: to a large extent they remained poorly funded and inadequately housed. They had not yet become an integral part of our system.

Despite these disadvantages, our Magistrates worked valiantly to bring justice to the Bush with the limited resources at hand: Magistrate Sadie Neakok remembers holding court on her kitchen table in Barrow. Magistrate Nora Guinn did much the same in Bethel. Yet by and large, contact with our mainstream system still usually meant an occasional visit from a judge passing through or a trip to the city by a defendant in handcuffs. After its first 10 years, our system was healthy but still in the formative stages of becoming a full statewide system.

But signs of change could already be seen. In 1967, under Governor Hickel, Alaska's constitution was amended to expand the Supreme Court from three justices to five. Before expanding, the Court consisted of Chief Justice Nesbett, in Anchorage, and two other justices: John Dimond in Juneau — one of the most thoughtful judges I've ever met — and Jay Rabinowitz in Fairbanks, still just beginning a brilliant judicial career that would span four decades. To this powerful mix, Governor Hickel added two new justices less than a year before my arrival: Justice Roger Conner and my new boss, Justice George Boney.

It's interesting to note that most of the Court's current lineup was already in the wings. Warren Matthews was starting up a thriving Anchorage law firm; Bob Eastaugh was beginning his career with a

job in the Anchorage DA's office; and Bud Carpeneti would soon arrive in Juneau to start as a law clerk for Justice Dimond. The only current member of the court missing from the scene was Dana Fabe, who was barely out of high school and would have to wait almost a decade before finishing law school and coming to Anchorage to clerk for Supreme Court Justice Ed Burke.

In 1969, of course, nobody could have predicted how the Supreme Court would look 30 years later; indeed, nobody suspected the sudden changes that were just a few months ahead: In April 1970 Chief Justice Nesbett would retire, unable to work because of injuries from a recent airplane accident. Soon after, in early May, Governor Keith Miller would appoint Boney to fill Nesbett's seat as Chief.

Boney was a young, politically savvy, and very ambitious Chief Justice. Still in his thirties when appointed to the Court, he had risen quickly to the top of Anchorage's legal community. He saw Alaska as a great frontier with resources that promised its citizens almost unlimited growth and prosperity; and as Alaska's boom years approached, Boney was a man in a hurry — a true "boomer" anxious to see Alaska and its new court system start growing. But like many Alaskans, he was fiercely independent, and firmly convinced of the need to defend the personal liberties guaranteed by Alaska's new constitution. His military service and working class roots had convinced him of the importance of equal justice for all.

These beliefs informed Boney's judicial philosophy, prompting a series of changes that began as soon as Boney became Chief.

- Within six months after Boney took office, the court system added five new superior court judges and created new superior court locations in Sitka, Kenai, and Kodiak; additional district court judges and court locations followed.
- Boney immediately called for and obtained a constitutional amendment changing Alaska's original method of appointing the Supreme Court's Chief Justice, which made the position a lifetime appointment, to our present method, which rotates the position among the Court's members every three years — a change

designed to foster collegiality and protect the court system from undue influence by a dominant personality.

- As a way of bringing justice to all Alaskans, Boney helped organize the first Bush Justice conference in the summer of 1971.
- In 1971 Boney cemented the court system's standing as a separate branch of government by persuading the Legislature to adopt Senate Concurrent Resolution 42, which called for an annual State of the Judiciary Address and invited Boney to give the first address the following January.
- And Boney used his first — and only — State of the Judiciary Address as an occasion to press for court system growth. Here's how Boney described the system in his speech:

At the present time in rural Alaska, there are virtually no justice facilities. Magistrates and village policemen have no offices. There are no jails. Today, court and land records are not secure, and Magistrates are required to hold court in their living room, in a store, or in a school room. If we are to have a meaningful justice system in all of Alaska, justice facilities must be constructed during the next two years.

Boney thus urged the Legislature to embark on a long term plan for modernizing and building courts throughout the state — including 8 major new courthouses; 14 smaller court buildings; and 50 new facilities for magistrates and village police officers.

Boney would never see this new system built. An untimely accident claimed his life in the summer of 1972, barely two years after he started as Chief. But the changes he set in motion had far reaching effects.

After he died, his mantle passed to Jay Rabinowitz, who became Alaska's first Chief Justice to serve a rotating three-year term. Already renowned for his judicial skills, Chief Justice Rabinowitz quickly

proved his genius as an institutional leader. Rabinowitz renewed the court system's commitment to justice for all Alaskans and relentlessly pressed the importance of judicial independence. Yet at the same time, he saw that if the system had any hope of growing, the judicial branch would have to work closely with Alaska's other branches of government. Rabinowitz was convinced that the only way the court system could work effectively with other branches of government while still preserving the independence of its judges was to build a strong administrative office to conduct the system's daily relations with the legislative and executive branches.

When an opening in the administrative director's position occurred in 1973, the Supreme Court launched a nationwide search. Chief Justice Rabinowitz held interviews and hired a young Washington D.C. lawyer with extensive training in court system administration, Art Snowden. The rest is history. These early efforts of Chief Justices Boney and Rabinowitz nudged the court system out of its pre-oil-boom infancy and propelled it on a long and prosperous course to maturity as the modern, effective, and independent system that I see in Alaska today.

One further comment seems appropriate here about Art Snowden's contributions to our system. Snowden retired in 1997 but hasn't been forgotten. Last November, in a ceremony presided over by United States Chief Justice William Rehnquist, Art Snowden was inducted into the Warren E. Burger Society of the National Center for State Courts — a national award given in honor of his lifetime contributions to the administration of justice.

This ends my story of our past and brings me back to the present. Thirty-two years after Boney gave the first State of the Judiciary Address, I'm honored to report, thanks in large measure to the Legislature's ongoing support, that Alaska has a court system that commands national respect and acclaim for the quality of its laws and its judges, for the efficiency of its administrative operations, and for its independence as a co-equal branch of Alaska's government. As my description of our early years illustrates, Alaska's strong court system is not an accident; our system took decades to build.

Compare today's system with the one I first saw 35 years ago. From its earliest beginnings in a few Alaskan cities, the Alaska Court System eventually reached throughout the state: we now have 52 district and superior court judges living in 14 locations; we hear cases at permanent facilities in 44 locations; we have a three-judge intermediate court of appeals for criminal cases; and we now use our magistrates as an integral part of our district courts.

We no longer conduct trials over kitchen tables in Barrow and Bethel. Superior Court Judge Michael Jeffery hears a full docket of cases at our Barrow courthouse. In Bethel, Nora Guinn's kitchen table has been replaced with a court facility housing two full-time superior court judges and two magistrates. Last year our Bethel courts held the third highest number of jury trials in Alaska, topped only by Anchorage and Fairbanks. And whenever existing facilities permit, we hold trials in even our smallest communities. For the first time in recent memory, the court system last year held a jury trial in the village of St. Paul, allowing jurors from the Pribilof Islands to deliver their own verdict in a murder case arising in their community. What better way is there to get people in our remote communities invested in our system of laws than to let them get involved first-hand.

And I should emphasize that the court system's commitment to justice for all isn't limited to the big trials that get all the publicity. It includes the ordinary but vital jobs that all court system workers perform every day.

- In Glacier Bay, a kayaking tourist watches helplessly as his wallet falls out and sinks to the bottom; the wallet contains his only photo ID — his only way of boarding his scheduled airline flight home. Our Skagway Magistrate — John Hutchins, at the time — spends a good part of his day securing and verifying paperwork allowing the tourist to board his plane.
- In Fort Yukon, Magistrate Tom Knutson takes an evening of his own time and bumps across eight miles of rutted, snowy ATV trails to perform a Halloween-eve wedding on the banks of the Sucker River.

- In Anchorage, a case manager in our new Family Law Self-Help Center takes a call on the center's helpline from a caller in Northwest Alaska who has no access to a magistrate or lawyer, whose spouse left years ago, and who hasn't been able to locate the right court forms to file for divorce; the case manager helps the caller get the needed forms from the court system's website.

None of these examples involves an earthshaking event. But taken together, and added to many more like them, they play a vital role in keeping all the people of our state connected to Alaska's orderly system of laws and justice.

For the last 35 years, I've had the honor of working in this system as a law clerk, as a public and private trial attorney, as a District Court Judge, as Chief Judge on our Court of Appeals, and as a member of our Supreme Court. I've worked also in our federal system as Alaska's United States Attorney. Over these years I've traveled our nation, seen many other courts, and talked with many judges. I can honestly say that our court system is envied by many and is second to none.

You may not agree with every case our courts decide. That's as it ought to be under a constitutional system of checks and balances. When you look beyond a given case, carefully examine the system as a whole, and compare our system with others for its history of integrity, reliability, fairness, equality, and efficiency, I don't think you'll find any court system doing a better job.

Alaska's boom is over; but the state continues to grow, and its problems and needs become exponentially more complex. The court system, like the rest of the state, faces this same transition. But the idea of justice for all is hardly a luxury that can be shelved for times when our economy is booming. It is the basic coin of a healthy democracy.

Yet despite being an independent and indispensable branch of our government, courts account for only a small fraction of our state's expenditures. The court system's annual budget amounts to about one percent of all state spending. And because our system has been

carefully built and managed to reduce duplication and waste, we have precious little fat to pare before we start to cut into the heart.

The critical question for our future, then, is how can we continue to meet the state's changing and ever increasing needs when we know that big spending and government growth are things of the past? Let me suggest three things that I think courts can do. First, I think that we can find new and better ways to do even more with what we already have. Second, we need to work cooperatively with our coordinate branches of government. And third, we need to use our communities and citizens as an integral part of our system.

These aren't new ideas; they're already at work in our current system. We work daily to find ways to resolve disputes amicably before they reach the costly and contentious last stages of formal proceedings. In a mediation program currently working in Anchorage District Courts, volunteers from the Alaska Dispute Settlement Association mediate small claims cases between unrepresented parties. Other innovative mediation programs make specially trained mediators available in disputed child custody and child-in-need-of-aid cases. And most recently, we've even extended mediation to appellate cases. Last year, with skilled help from retired Superior Court Judge Elaine Andrews, the Supreme Court launched a mediation program aimed at early settlement in selected appeals; and I'm happy to report that we've recently had our first successful settlements.

But many of our mediation programs are supported by external sources of funding — some by grants that last for only a limited time. We risk losing those programs unless they are funded as a regular part of our system.

We've found other tools to improve the way we handle cases. Our new Family Law Self-Help Center uses an Anchorage-based telephone helpline and a website to guide thousands of self-represented litigants through the web of paperwork and procedures needed to present their cases. The center saves judges and court clerks countless hours of trying to straighten out last-minute confusion and snarls, and helps all parties obtain a fair disposition based on the merits.

Improving our technology will also help us do more with less. Our courts are in the midst of an ambitious project to link all our locations to an automated case management system so that we can collect, store, and exchange a vast range of case information.

While the costs of installing our network and the software needed to keep it running can seem surprisingly high, networks like these are a gateway to the future that we need to build now if we want to keep pace with advancing information technology. After all, the laws we apply to our cases are information; the evidence we hear and preserve at trial is information; and the decisions we reach are information. Our ability to do justice depends on our ability to gather, keep, and exchange this information. And compared to the costs of expanding with bricks, mortar, and new employees, the price of our network seems tremendously reasonable.

Therapeutic courts also show how we can work together. These courts can provide a safe and uniquely effective alternative for people with long histories of legal trouble stemming from drug or alcohol addiction, mental illness, and family dysfunction. They use closely supervised treatment to make our system work with defendants instead of working against them. A recent therapeutic court graduate put it like this: "For years, it seemed like it was the State of Alaska against me, and I had a real hard time with that. But now it's the State of Alaska against my addiction, and that I can handle."

But therapeutic courts are time-intensive, and the court system alone can't make them work: we need the help and cooperation of prosecutors, defense attorneys, probation officers, police and correctional officers, social workers, and community volunteers. Coordinating this effort is hard work, but we're working together and beginning to see results.

The Alaska Court System now has eight separate therapeutic courts running in Anchorage, Bethel, and Juneau. At least two others are being developed: one in Fairbanks and one in Ketchikan. These programs are working because dedicated people are willing to try new ways to do things better, and because all three branches of government are willing to support them.

The third way I've proposed for addressing the challenges of our future involves reaching out to our communities. Alaska's people are its greatest resource. Getting people and communities involved in the court system invests them in the justice process, and helps courts function without additional funding. For instance, our Family CARE Court helps parents whose substance abuse problems expose their children to harm. Some of the parents in the program were having trouble getting to critical appointments because of mechanical problems with their cars that they couldn't afford to fix. Students from UAA's Auto Mechanics Program volunteered to help, donating repair services to keep the cars on the road. These community resources proved vital to the program's success.

Youth Court programs are another form of community involvement, using peer pressure to get results. Magistrate Mike Jackson in Kake started a youth peacemaking circle for young offenders facing charges for minor offenses; his community saw a drastic reduction in repeat offenses by youths.

Our court system's success in community outreach owes much to the efforts of my immediate predecessor Justice Dana Fabe, who founded and continues to head the court system's Judicial Outreach Commission — whose membership, I might add, includes Senator Gary Wilken. Justice Fabe also heads the Alaska Teaching Justice Network, which helps teachers learn how to teach their students about our system of justice.

All in all, considering what we've done and what we're doing, I'd say that our future looks bright. In the last 35 years, our court system has dramatically grown and changed. It has changed for the better. We are by no means perfect; but we have faced, and largely met, the difficult challenge of bringing justice to all the diverse people of this vast and bountiful state. While our present times bring new demands, we face the same challenge now as we've faced in the past, the challenge of justice for all. If we build on what we have, work cooperatively with other branches of Alaska's government, and continue to involve Alaska's people and communities as part of the process, I know we will be able to keep meeting this challenge.

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The Chief Justice who stands before this body 30 years from now will then be able to look back and say the same thing I've told you today: We're doing a good job, but we still need to do more. And that same Chief Justice — someone in high school as we speak, perhaps even on a Youth Court somewhere — will still be able to take pride in one of the finest court systems in our great nation.

Thank you.