

**SENATE AND HOUSE
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February 11, 2009

Wednesday

No. 3

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**State of the Judiciary by
The Honorable Dana Fabe
Chief Justice
Alaska Supreme Court
Before a Joint Session
of the
First Session of the
Twenty-Sixth Alaska State Legislature**

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February 11, 2009

Juneau, Alaska

The following was submitted for publication:

President Stevens, Speaker Chenault, Senators and Representatives, and guests. On behalf of the judges, magistrates, and staff of the Alaska Court System, I am grateful for the opportunity to speak to you today. This State of the Judiciary address continues a tradition started thirty-seven years ago as a valuable way for Alaska's legislative and judicial branches to communicate. I look forward to this opportunity to come before you each year, to highlight promising justice programs and to share our mutual challenges. This year is especially exciting because we join our fellow Alaskans in celebrating the 50th Anniversary of Statehood. Our justice system, like the rest of our great state, embarked on a remarkable journey fifty years ago. Today, I would like to reflect on how far we've come.

Before I begin my remarks, I would like to acknowledge several of my colleagues on the supreme court. First, I would like to recognize Justice Warren Matthews, who is retiring this spring after thirty-two years on the Alaska Supreme Court. Justice Matthews has had an abiding influence on the court for over three decades, and has been a wise mentor to many. I will speak more about his legacy later, but I want to take this moment to say what a true privilege it has been to serve with him, and how much we will miss him.

Next, Justice Robert Eastaugh grew up here in Juneau and now lives in Anchorage. He was appointed to the supreme court in 1994 and is its second most senior member. He chairs the court's Fairness and Access Committee.

Justice Walter Carpeneti was appointed to the court in 1998 and serves here in Juneau, where he currently co-chairs the Criminal Justice Working Group with Lt. Governor Sean Parnell.

And finally, Justice Daniel Winfree, who just completed his first year on the court, recently moved to the supreme court's new chambers and courtroom on the fifth floor of the Rabinowitz Courthouse in Fairbanks, made possible by your support.

I would next like also to introduce members of the court's administrative staff. Administrative Director Stephanie Cole has worked for the court system for nearly thirty years and plans to retire

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this year. Stephanie has been a visionary leader, and she currently serves as president of the national Conference of State Court Administrators. Her election to this post demonstrates that her peers across the country admire her for the same leadership skills that we have long respected and appreciated. I would like to take this opportunity to commend Stephanie for her years of exemplary service to the people of Alaska.

Also present today is Deputy Administrative Director Christine Johnson, who will become Administrative Director when Stephanie retires. We are thrilled that Christine will be able to bring her considerable skills and long familiarity with court functions to her new role, and we are confident that she will continue the tradition of excellence in court management that our administrative office has long maintained. Deputy Director Chris Christensen has served as the court's chief liaison to the legislature for nineteen sessions, and as many of you know is a dedicated and effective advocate for our justice system. Administrative Attorney Doug Wooliver is also well known to many of you. He spends legislative sessions here in Juneau working with you on issues that impact the courts. Together, Stephanie, Christine, Chris, and Doug have ably served the court for many years, and we are fortunate to have such a capable and experienced administrative team at the Alaska Court System.

The 50th Anniversary of Statehood presents a great opportunity to remember where we've been and to imagine where we're going. To understand just how far we've come in fifty years, one need only hear what courts were like in the waning days of the Territory, before the new state court system was established. As Justice Jay Rabinowitz, who became the longest serving jurist in the Alaska Court System, reported, "the Territorial system was terribly lacking from the point of view of an ideal judiciary. . . . There were only 4 judges in all of the Territory. . . . The Alaskan citizen had . . . essentially no say in who got appointed and there was no way of evaluating these . . . judges. They were just subject to the political whims [and] would take off for 4 months a year. . . . The calendar would languish, and the cases wouldn't move. . . . Compared to today's system, it was . . . rock-bottom" And when, according to Justice Rabinowitz, did this state of affairs change? "When we obtained statehood," he said.

Territorial attorney and former Attorney General Charlie Cole also remembers that “civil cases, once you filed them, sort of disappeared . . . [lawyers] would simply say, ‘Don’t pay attention to the complaints of the plaintiff . . . because your case will never come to trial anyway.’ And that was . . . the way it was,” Cole says, “until statehood.”

So what was it about statehood that changed our judicial system so dramatically? First and foremost, Alaska’s new constitution included a Judiciary Article drawn from the highest recommendations of the day for what fair, impartial, and effective courts should look like. Instead of the tired and unresponsive courts of the Territory, authors of the Judiciary Article envisioned a model system of justice based on the best court systems in the country.

First, the article prescribed a method for selecting judges based on merit, not political influence or position. Applicants are evaluated based on their legal abilities, fairness, and temperament, and only the most highly qualified candidates are nominated to the governor, who then makes the appointments. This approach was designed to ensure that courts were free from political pressures that might interfere with a judge’s duty to decide cases strictly on the facts and the law. Our state’s founders were well familiar with the inadequacies of a system where judges are selected based on political credentials instead of judicial aptitude, having just emerged from such a system in the Territory. They were also familiar with the miscarriage of justice that occurs when courts are allowed to be intimidated by fear and pressure, as they were in many countries of the world. Our founders also knew that they didn’t want the judicial branch of government - the branch charged with upholding the constitution’s protections of individual rights and liberties - to be subject to direct popular elections. A judge whose selection depends on a majority vote might be less likely to protect the rights of a minority - rights that may be unpopular but are the hallmark of a free society. The American Judicature Society, a world leader in justice administration, recognizes that merit selection is “the best way to choose the best judges,” and we are very lucky to have it.

Second, the Judiciary Article required that judges, once appointed, stand before voters periodically for retention. This provision was viewed as an important measure of accountability and a way to ensure

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a high level of public trust and confidence in the judiciary. A system of merit appointment combined with voter retention was a balanced compromise that ensured the highest quality judges yet preserved a mechanism for citizen oversight.

Third, the Judiciary Article created the independent Alaska Judicial Council, whose role in the strength and growth of our judiciary cannot be overestimated. The Council performs extensive investigations and evaluations of all applicants for judgeships and judges standing for retention. As a result, Alaskans receive more information about their judges than any other citizens in the country - or the world. This open and continuous assessment of sitting judges has guarded against insulating our courts from the people they serve.

The Judicial Council was also charged with another major role that has led to steady improvements in our legal system: “conduct[ing] studies for the improvement of the administration of justice, and mak[ing] reports and recommendations to the supreme court and to the legislature.” Since 1960, the Council has issued a significant body of vital reports and recommendations - many at the legislature’s request - on topics ranging from misdemeanor sentencing and plea-bargaining to rural justice and alternative dispute resolution. These reports, and the information and analysis they offer, have often helped the legislature and the courts respond to challenges we’ve faced and have contributed to the steady improvement of our justice system.

Finally, the Judiciary Article established a unified statewide structure for the court system, to ensure that delivery of justice would be centrally organized, consistent, and efficient statewide. As a result, Alaska was free from the confusion and expense experienced under the territorial system, where “[e]ach court had its own bookkeeping system, such as it was. Each court had its own system of keeping records and files and each established to a certain extent its own judicial procedures.”

The centralized administration established at Statehood ensured that all courts in the state would be “an integral part of one state system,” functioning together with common purpose. On our 50th Anniversary, it’s important to recognize that when it comes to Alaska’s judiciary, our state’s founders got it right. The system they designed is working, and working well.

To me, looking back, the most valuable legacy of our judicial structure is the fair and impartial justice system Alaskans enjoy today. Competent and diligent judges ensure that cases are handled with intelligence and skill by those with both the talent and the patience to render the most thoughtful decisions. Unbiased judges ensure that everyone who enters our courtrooms is treated equally, regardless of their station in life, and that decisions are based on the law and the facts of each case, not improper pressures or influences. And finally, judges who are accountable to rigorous and ongoing evaluation do not become detached from those we serve or complacent about the work we do. In government, scrutiny is a good thing, and I think we can all be proud that in the past fifty years our justice system has welcomed it, and has grown from it. A few examples of familiar challenges illustrate the value of a constitutional structure that fosters ongoing exchange between the public, the judiciary, and the legislative and executive branches.

Since well before Statehood, the use and abuse of alcohol has been a persistent problem for our justice system, and its effects on the people of our state have been nothing short of tragic. Yet fifty years ago we confronted the problem very differently. Alcohol abuse was perceived predominantly as a vice, not as the product of a debilitating addiction with major public health consequences. It was illegal to drive while intoxicated, but penalties were minimal and the entire governing statute was only a paragraph long.

Beginning in the 1970s, these views began to change. The deaths and devastation from drunk driving, the growing medical consensus that alcoholism is a disease requiring treatment, and the rising public awareness about the problem led to a shift in our collective thinking. Following national trends, the Alaska Legislature increased significantly the criminal penalties for driving under the influence, requiring mandatory jail sentences for first offenses and mandatory license revocations. Yet despite the success of such reforms, including declining death rates from alcohol-related traffic accidents, too many offenders cycled in and out of our justice system with their underlying alcohol addictions unchecked.

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In the 1990s, therapeutic models for handling cases involving alcohol and drug addiction began to emerge. These models are based on the premise that treatment is a necessary component of any effort to achieve lasting modification of criminal behavior. With the essential support of the legislature and the executive branch, therapeutic courts with rigorous treatment programs have now been established statewide, resulting in reduced recidivism, safer streets, and a return to sober, law-abiding lives for hundreds of Alaskans. Certainly, therapeutic courts provide an excellent example of how a justice system can evolve and improve when the institutions responsible stand accountable to the public and work together to implement needed change.

Family law is another area that has seen considerable change over the last fifty years. At one time, a couple could obtain a divorce only by proving that one of them had done something wrong. Recognizing the damage that intense conflict causes families in transition, the judicial and legislative branches have tried over the years to shift family conflict away from courtrooms towards more peaceful alternatives for dispute resolution. Together, we have implemented successful mediation programs for child custody and visitation disputes, and have even implemented mediation for families involved in difficult child in need of aid cases. Hundreds of families have resolved their conflicts through mediation in the last decade, which has not only spared them the unnecessary strife of a contested trial, but has saved the court considerable expense and judicial resources.

Together, we have also responded to the rising number of self-represented litigants in family cases by creating the Family Law Self-Help Center, which continues to evolve and expand. Last year, the center received over 70,000 hits on its website, and fielded over 7,000 direct calls on its helpline. Thousands of Alaskans have received instructions, forms, and vital information to help them navigate and resolve their family cases since the center's inception in 2001. Examples range from the woman in Northwest Alaska who had been separated from her husband for over ten years and finally was able to obtain a divorce without ever leaving her village, to the serviceman in Afghanistan who was able to resolve his case while on active duty thousands of miles from home.

Today, we're exploring reforms to ensure that family cases are heard quickly, as soon as the parties are ready, to avoid the anxiety and hardship of unnecessary delay. We're also implementing educational programs for divorcing parents to help them understand the effects of divorce on their children, and to teach them ways to help their children cope. The break-up of a family is always a sad and often a traumatic event for those affected, but we're doing what we can to ensure that our justice system itself does not add salt to the wound.

A third area of progress that I'd like to highlight concerns emerging technology. At the time of Statehood, Chief Justice Nesbett pioneered the audio recording of court proceedings, using a huge but portable machine called the Soundscribe that he'd seen on ships during World War II. Most states at the time used court stenographers, but there were too few stenographers here to meet the new demand. Over the years, the Soundscribe yielded to reel-to-reel tapes, then to cassettes, and finally to the current digital recording system. From the beginning, Alaska's courts have been able to change and adapt as technology has changed. Yet few would have imagined fifty years ago the incredible technological leaps of recent years, or the promise and challenge they pose to our justice system today.

The computerized case management system, CourtView, tracks case information at most locations statewide and makes it accessible online almost immediately. Court-imposed fines and fees can now be paid online, saving members of the public countless trips to the courthouse. Video arraignments are showing promise in several communities as a way to increase public safety and court security and allow the time and expense of transporting prisoners to be put to better use.

Collaborative efforts now underway in the criminal justice arena promise even more positive technological changes. Under the leadership of Lt. Gov. Parnell and Justice Carpeneti, the Criminal Justice Working Group is identifying the causes of delay in criminal felony cases. One problem often cited is the difficulty prosecutors and defense attorneys encounter making discovery available to each other in a timely way. Discovery is information about their respective cases that parties are required to disclose, and without it, a case is at a standstill. With the Judicial Council's help, the working group is exploring the possibility of making discovery materials available electronically, through a central repository of case information known as a "digital

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evidence locker.” Such a system would not only ease the clerical burden on the agencies and attorneys involved, but also help alleviate the tremendous costs that case delays pose to the court system, witnesses, jurors, and victims.

Similarly, the Multi-Agency Justice Information Consortium - MAJIC - has continued to make progress towards better information sharing between state agencies and the courts, thanks to the legislature’s generous support. Recently, the MAJIC group embarked on an exciting project to improve access to bail information. Currently, officers on the street have no way to find out what bail conditions may apply to someone they have stopped. They can check immediately for outstanding warrants or domestic violence restraining orders, but officers can’t check for bail conditions such as restrictions on drinking and driving. The MAJIC group is working to develop a protocol that would turn the current paper-based system for issuing and distributing bail orders into a computerized one that could be accessed on the scene. I’m confident that by continuing to work together, we can increase public safety by ensuring that defendants out on bail are held responsible for their court-ordered conditions of release.

The fourth and final example of change and improvement that I would like to touch on concerns a topic that is very much on all of our minds today: fiscal responsibility. Since Statehood, the court system has prided itself on being frugal and innovative. From the early days when our caseload hovered around 5,000 to today, when we handle over 150,000 cases a year, we have operated on a very small percent of the state’s operating budget - only about one percent. Throughout, we have worked hard to ensure that we take advantage of cost savings whenever we can. We were using phone cards long before other state agencies were encouraged to do so, which has saved the court up to \$100,000 each year in long-distance services. We also signed up for the Alaska Airlines “EasyBiz” mileage program when it first started, which saves us thousands each year in travel costs. We maintain a thirty-day hiring freeze before position vacancies can be filled to reduce our annual personnel costs. We have conducted energy reviews of all older buildings and installed energy management devices where appropriate. And in the entire statewide system, we own or lease only six vehicles - including one 20-year-old car. Economizing in these ways might seem to have minimal impact, but it adds up to real savings.

In addition to adopting wise business practices of our own, the court system has contributed to great cost savings for other agencies by sharing data electronically whenever possible. For example, expanding the electronic data provided to the Department of Law and municipalities has facilitated their collection efforts for fines, costs of appointed counsel, Department of Corrections surcharges, and other outstanding debts.

As we all know, our state and nation face a financial crisis of historic proportions, and the future is uncertain for all of us. We recognize that the court must tighten its belt now more than ever before. But we also recognize that troubled times can lead to even greater demands on the court's resources, as foreclosures, domestic violence filings, and criminal caseloads all tend to increase. At the court system, we have a long track record of surviving difficult challenges. And we will do so again, with your support.

Over the past fifty years, the evolution in our justice system's approaches to alcohol-related crimes, family break-up, emerging technologies, and fiscal constraints illustrates how well we are situated to respond to changing knowledge and changing times. Our system's ability to change smoothly and positively owes much to the judicial structure we were given by our state's founders. But our founders' vision would have gained no traction without the dedication and determination of those who brought it to life. In the days since Statehood, many talented people have applied their energy, creativity, and intelligence to the establishment and growth of the Alaska Court System. Today, we stand on the shoulders of those who have come before us, and we reap the benefit of their efforts every day.

Buell Nesbett, our first chief justice, had formidable take-charge skills and a legendary work ethic, and he knew how to get things done. The Statehood Act anticipated a three-year transition period between the territorial courts and the new state court system, but Chief Justice Nesbett completed the task in six months. Justice John Dimond of Juneau was a quiet voice of conscience on the early court, urging humility and respect for fellow Alaskans as the new court system found its way: "There is no place in the judiciary for tyranny, which is the antithesis of law," he reminded the first superior court judges at their swearing in. "There is room only for a humane and proper

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recognition of the dignity of man, regardless of his creed, his color or his race, or his position in life.” In Justice Jay Rabinowitz’s three decades on the supreme court in Fairbanks, he set high standards for intellectual integrity and professionalism. By his example and leadership, he expelled any notion that the rough and tumble reputation of the Territorial courts would carry over to the state’s new judiciary. Under his influence, Alaska’s jurisprudence would be well-reasoned, thorough, and of the highest caliber. Chief Justice George Boney served only briefly in the 1970s before a tragic accident took his life, but his enthusiasm for improving rural justice delivery helped lay the foundation for expansion of court facilities and staff statewide. Justice Boney also presented the first State of the Judiciary address before this body in 1972, fostering closer ties between the judicial and legislative branches, which have continued to keep a clear focus on issues of mutual concern.

Judge James Fitzgerald and Judge James von der Heydt of Anchorage are two other legends of the Alaska judiciary. Both were among the first eight judges appointed to the superior court bench in November 1959. Judge Fitzgerald also served on the Alaska Supreme Court, and both judges were appointed to the United States District Court for Alaska, where they remain senior judges to this day. Between them, Judge Fitzgerald and Judge von der Heydt have served the people of Alaska for 100 years. Certainly we owe them both a great debt.

Others have left their mark on our court system in important ways that are perhaps less familiar. Aniak Magistrate Arlene Clay identified some of the tension and challenge that resulted from serving remote communities with little or no local law enforcement in the early days of Statehood. She remembers being called out to domestic violence disputes with no back-up. “[T]he husband would be standing by the door with the wife . . . hollering [to] anybody that came in that door [that] he was going to shoot. But I just kept on walking towards the door, said a little prayer . . . and it was fine.” Magistrate Clay served Aniak and surrounding communities for over seventeen years, and continues to live in Aniak today, well into her 90s.

The late Magistrate Craig McMahan served the Bethel region for nearly thirty years, where he made a point of visiting outlying villages whenever possible for arraignments and sentencings. “I would just tote

a little tape recorder with me,” he once explained, “and set up [court] in the bingo hall or city office.” McMahon went to the extra trouble because he felt it was good for both the court and villages for people to see the judicial process that affected them.

Magistrate Sadie Neakok of Barrow, District Court Judge Nora Guinn of Bethel, and Superior Court Judge Roy Madsen of Kodiak, were all early Alaska Native luminaries in the court system, and each played a major role in raising our awareness of local culture, customs, and concerns.

Without the courage and commitment of Alaskans such as these, the Alaska Court System could not have become the strong institution we know today. Which brings me to a special recognition: As I mentioned in my introduction, Justice Matthews will be retiring this year after almost thirty-two years of service on the Alaska Supreme Court - well over half the years that we’ve been a state. He was appointed to the bench by Governor Jay Hammond in 1977, just after the Trans-Alaska Pipeline had been completed, the first *Star Wars* movie had debuted, and *Saturday Night Fever* had the nation dancing disco.

Justice Matthews and his wife Donna drove up the Alcan Highway right after he graduated from law school in 1964, arriving when our state was still in its infancy. Upon his appointment to the bench, Justice Matthews quickly gained a reputation as a thoughtful and meticulous jurist with a patient temperament well-suited for an appellate judge. His command of the law and his rigorous analytical skills contributed to a legacy of excellence, and the high standards he set for integrity and professionalism remain the ones to which we all aspire. Justice Matthews served two terms as chief justice, and it is fitting that we celebrate his career in the same year we celebrate the anniversary of Statehood, because few have done as much as he has to shape Alaska’s judiciary during our first fifty years. Justice Matthews, you have been a steady and faithful servant to Alaskans, and we thank you.

In conclusion, looking back over fifty years, we can see that many of the challenges faced by the judicial branch at Statehood have been resolved. Courts have been established across the state, and a solid justice system has long been in place. Of course, over the years we’ve faced new challenges that our state’s founders could hardly have

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imagined. In 1959, who could have envisioned the scourge of methamphetamine or the permanent effects of fetal alcohol syndrome on too many of our citizens? As we all know, many of the problems that now impact our justice system are not problems that laws alone can solve. Yet throughout the journey from Statehood, our justice system has responded to the best of its ability to the changing social and legal landscape.

And what will the next fifty years hold in store? Of course it's impossible to know, but several patterns are emerging. First, technology will continue to have a tremendous impact on our justice system. Paperless courts, where all documents and files are maintained electronically, are on the horizon. Increasingly transparent courts, where the public has access to all court proceedings and information almost immediately, are inevitable. In more substantive areas, we are likely to see a more individualized approach to justice delivery that focuses on the root causes of the problems we confront, not simply the symptoms and effects. As therapeutic courts have demonstrated, a justice model that recognizes an individual offender's unique situation can be more successful than a one-size-fits-all approach. Whatever problems the next fifty years may bring, I'm confident that our justice system will continue to respond with creativity and dedication to the needs of the people of Alaska.

Today, in honor of our 50th Anniversary, and on behalf of the Alaska Court System, I would like to express our gratitude to the drafters of our constitution and its brilliant Judiciary Article. They laid a strong foundation for our justice system. I would also like to thank the many judicial officers and members of the court's staff who have labored hard, and often in lonely ways, in the name of justice. They have built the sturdy walls. Finally, I would like to thank you, the members of the legislature - both past and present - for your dedication to making our justice system one of the finest in the world. You have truly put the roof over our heads. With our continued joint commitment, the house of justice in Alaska will remain strong for the next fifty years - and beyond.

Thank you very much for the opportunity to speak with you today.

Please report corrections to the Senate Secretary's office.