

**HOUSE AND SENATE
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State of the Judiciary Address

by

The Honorable Craig Stowers

Chief Justice

Alaska Supreme Court

Before a Joint Session

of the

Second Session of the

Twenty-Ninth Alaska State Legislature

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February 10, 2016

Juneau, Alaska

The following was submitted for publication:

President Meyer, Speaker Chenault, Senators and Representatives, and honored guests. Good morning and thank you for the privilege and honor to speak with you today.

I come to have a conversation with you about the budget challenges that the State of Alaska is experiencing, and more particularly what the Alaska Court System is doing to help you meet the daunting challenges you face. The stark reality is that the government, of which the courts are a part, can't afford to continue operating as it has in the past. It can't; and it shouldn't. You have sent the clear and proper message that we cannot have what we cannot afford. Therefore, one part of the solution is that the size of government must be reduced. There are other considerations – raising additional revenue, for example – which are not within the court's responsibility and I thankfully am not called upon to speak to those interesting issues.

I will say this, and it is perhaps the most important thing I can say to you. Now, more than at any time in Alaska's history, we Alaskans need smart, wise, effective leadership. We need the kind of leadership that the delegates to Alaska's Constitutional Convention exercised. Notwithstanding vast differences in political philosophy and ideas about the proper role of government, the delegates to the Constitutional Convention met and conferred, they exchanged ideas and debated, and they collaboratively created a constitution that has become a model for the world. The new State of Alaska faced economic challenges at least as daunting as those you face. But the delegates had a vision of what the government of Alaska should be, and what it could do in the future to protect and advance the best interests of Alaskans. Alaskans have benefitted from their vision and work in countless ways.

You are our leaders today, and we Alaskans need your leadership and wisdom and collaborative efforts as never before in our history. There is a book that says if you need wisdom, ask for it. I encourage you to ask for transcendent wisdom, and I will also ask for you. That book

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also says that you were called to such a time as this. I have no doubt that with wisdom and good faith and courage, you will rise to the occasion and make history just as the delegates to the Constitutional Convention did.

My Friends, do not be afraid: fear is the mind killer. Be bold. Also be selfless, and look to the greater good. You are our elected leaders, and leaders sometimes have to make hard decisions that their constituents don't immediately understand or agree with. But the represented will support leaders when leaders make wise decisions that protect and advance the best interests of the people.

In a time of great darkness and existential threat, Winston Churchill said: **Nobody ever launched an attack without having misgivings beforehand. You ought to have misgivings before; but when the moment of action is come, the hour of misgivings is passed.**

Churchill also said: **We must not lose our faculty to dare, particularly in dark days.** And he proclaimed: **The price of greatness is responsibility.**

I say to you: I believe in you. You have the capacity for greatness. I know you have the intelligence and desire to do what is necessary and what is right: to preserve and protect our great state; to create policies and a budget that ensures that core government functions are maintained, and that essential state services and programs are provided; and to create that balance where no one is disproportionately harmed and where all Alaskans rightly and fairly share in the responsibility to support a strong and viable, properly sized state government.

I believe in you, I wish you well, and I pray that you will be given great wisdom.

When I was elected chief justice and took office last July 1st I was well aware of the financial challenges facing Alaska and the Alaska Court System. I was also aware that you, the Legislature, and the Governor intend that the size of government in Alaska be reduced. In thinking about these economic challenges, I use two primary

analytical approaches. The first is to answer the question: "what is the right size of government?" To answer that question one must first answer the question: "what is the proper role of government?" What are the core functions that state government - or for my purposes, the Court System - is supposed to perform under our constitution and the laws of the state?

My second analytical principle is that everything has to be on the table, and nothing is sacrosanct. We need to evaluate everything that the Court System does to ensure that we do only that which is essential to our core mission, and that we eliminate all which is not essential, even if those non-essential things are of high value to the public.

I will not use my limited time to describe in detail what the court's core mission is: you well know that in our American history and culture the courts perform foundational public services to enable citizens, and businesses, and governments, to resolve legal disputes according to the rule of law and justice. Without rule of law and justice, democracy and government of, by, and for the people cannot survive.

Instead, I want to briefly remind you of exactly what the Alaska Court System is; and I want to share with you the Alaska Supreme Court's decisions regarding the court's budget for the remainder of the current fiscal year and for the next fiscal year.

Background

The Alaska Court System operates 39 trial courts and two appellate courts. We employ 65 trial judges, 3 court of appeals judges, and 5 supreme court justices. We also employ about 750 court employees, including administration, court staff, and magistrate judges. The Court System's operating budget for FY16 is \$112.7 million, a mere 1.5% of the total state government operating budget. Most of the costs to operate the Court System are personnel costs: 76% of our budget is for employee salaries and benefits.

For the current FY16, the Alaska Court System proposed, and you accepted, a \$3.4 million reduction to our budget.

Historically, because the Court System has operated with little excess in its budgets, there are no options available to cutting millions of dollars from our budget without directly affecting the level of court services that we provide to the public, and without directly affecting our employees and their incomes. There are many things we have already done in response: we have and will continue to eliminate purchasing many supplies; we will defer purchases of new computers and printers and the like; we can get by for several years without replacing worn courtroom and office furniture, old carpets, etc. We can do many other things like these, but these savings do not come close to adding up to \$3.4 million.

FY16 Strategies

To make the level of cuts required by the new budget reality, for FY16 the supreme court adopted three principal strategies: (1) savings derived from attrition; (2) savings derived from employees taking voluntary leave without pay; and (3) savings derived from targeted court closures.

First, the Court System is achieving savings through the normal attrition of employees. When an employee retires or leaves employment, we can keep that position unfilled for an indeterminate period. This partial hiring freeze provides the biggest source of savings. All divisions – trial courts, appellate courts, and administration – have contributed to the long-term vacancy pool created by reduction in force from attrition.

Second, the Court System has achieved savings through employees taking voluntary leave without pay. We have asked all employees, including our judges, to voluntarily take a number of days off as leave without pay. On July 5, as my first act as chief justice, I sent a letter to all judges asking them to consider taking six days of leave without pay (the equivalent of giving up the 2.5% pay raise enacted at the end of the last session) or foregoing the 2.5% raise.

I am pleased to report that every member of the supreme court has agreed to take the equivalent of at least six days leave without pay during FY16. 84% of our judges contributed to voluntary leave

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without pay, as have the senior administrative staff. And many of the Court System's non-judicial employees have positively responded. To date over 300 court employees, and judges have contributed approximately 9000 total hours of voluntary leave without pay or taken a reduction in salary, achieving a savings of over \$650,000 in salary and benefits. I express my deep and profound gratitude to each person who has contributed so selflessly to the Court System to meet its budget goals.

The third strategy to achieve savings in FY16 is targeted court closures: all courts throughout the state were closed for the day after Thanksgiving and the day before Christmas. We also selected three additional days for potential court closures this spring: Friday, March 25; Friday, April 29; and Friday, May 27. For the court's non-judicial employees, court closure days result in furlough without pay for each of these days.

However, on all closure days the court in Anchorage and a small number of other courts will be operated by a skeleton staff to act on emergency petitions for domestic violence protective orders, involuntary commitment orders, Child in Need of Aid matters, bail hearings, and other similar emergency or critical proceedings.

Having said this, I am happy to report that we believe we will be able to meet our FY16 budget requirements without closing on any of the days this spring because our strategies to reduce the size and cost of the Court System have generated more savings than originally anticipated.

FY17 Strategies

For FY17, beginning next July 1, I anticipate that the Alaska Court System will be required to take additional budget reductions. The supreme court has proposed a 3.5% reduction to our budget below what we received last year: this amounts to another \$3.8 million reduction. (Please remember; the Court System's FY16 operating budget is just \$112 million; a thin sliver on the overall State of Alaska operating budget pie chart.) To meet these additional cuts, the Court System will continue to rely in large part on reductions in force from

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attrition - leaving positions vacant as employees separate from court service; voluntary leave without pay; and limited court closures. But the Court System's approach to court closure days will change for FY17 because there are only so many positions that can be eliminated while still providing core court services. As I mentioned earlier, not counting judicial officers the Court System employed about 750 employees last year. We have already achieved a reduction in force from attrition of 35 positions since the beginning of this fiscal year. This translates into a 4.7% reduction in court staffing so far this fiscal year. We expect to add another 17 positions to our attrition-based reduction in force pool by the end of this fiscal year. We thus have achieved a very significant reduction in the size of the Court System; but I must warn that given how small the Court System is in real terms, and in relative terms compared to overall state government operating costs (1.5%), and given the vast size of the Court System geographically, and given the scope of critical justice services we provide, all additional loss of positions will have a direct negative affect on the public services we are able to provide.

The supreme court has decided to close courts statewide during FY17 each Friday at noon, beginning July 1. All non-judicial court staff will be furloughed every Friday afternoon: no court proceedings apart from emergency proceedings will be allowed.

The practical effect of Friday afternoon closures will translate into an approximate 4% reduction in pay for non-judicial employees. The theory behind this approach is that it is fairer to ask all employees to take relatively small pay cuts rather than resort to the option of laying employees off. Obviously this strategy goes only so far. If the Court System receives a larger than 3.5% budget cut, we will have to consider other options, including staff layoffs and closure of some low-volume courts. At the least, it is likely that some court locations with a small number of case filings will have their hours of operation reduced, and some magistrate judge operations may be re-engineered. On a positive note, we expect that as our eFiling project becomes completed and operational in the next two years - a project that will transform the court into a paperless process - we will achieve substantial savings through reductions in the number of positions currently necessary to process paper court filings at every stage.

The Way Forward

I understand that there are many differences of opinion on what the best strategy may be to manage the Court System's budget situation. Some strongly believe that the better policy alternative is simply to lay off whatever number of employees it takes to meet the budget target, rather than modestly reducing court hours and service and requiring all staff to proportionally share in the reduction of employee pay. Of course, the practical effect of laying off one employee is the same as one employee leaving court service and keeping that vacant position in the reduction in force from attrition pool. I wish to again emphasize: the Court System's number of non-judicial employees has been reduced by about 4.7% since the beginning of FY16, and we expect additional positions to become vacant and be placed in the reduction in force pool.

Others have advocated closing completely those courts whose case filings and other activities are very small. I can respect these alternative policy approaches and will say that these may become options in future years if Alaska's financial circumstances continue to deteriorate; but for today and next year these more draconian strategies are not yet necessary because we are achieving substantial reductions in the size and cost of the Court System by less drastic means while preserving the court's ability to continue to provide high quality justice services to the people of Alaska.

I do not like having to close courts even on a very limited basis as a strategy to meet budget targets, but the simple fact is that there is a real and direct cost to the loss of funding. Down-sizing government necessarily means down-sizing the services government provides. I also reflect on the fact that closing courts on certain days was a common strategy used by many courts Outside during the recession in 2008 when those courts were facing then what we are facing now.

I want to make sure that what we do and what we pay for advances the Court System's core mission. This core mission includes providing a fair and impartial forum for the resolution of disputes, making our justice system as accessible to the public as possible, ensuring that all employees receive the training and support necessary to provide for

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the highest quality of service possible, and being good stewards of the public's money which is entrusted to us to meet our constitutional mandate.

The Alaska Court System has a well-deserved reputation of being a first rate justice system. Through our efforts the Court System ensures that all parties receive due process of law and that the public who uses the Court System receives the service it has a right to expect. But the public also understands that government, including the Alaska Court System, simply cannot continue to operate as it has in the past. We have a legal duty to work within the constraints of our budget, and we will do so. In the process we will become more efficient, and we will provide the best public service and access to justice as is possible.

All Alaskans should be very proud of their Alaska Court System and especially its employees, who lead the way in finding innovative, effective ways to serve the public in the face of real financial cost to themselves. I thank all Court System employees for their dedicated service, their understanding, their good will, and their sacrifices.

I will conclude by briefly reporting some good news that has resulted from our strategies.

The court uses retired judges as pro tem judges for court proceedings when our regular judges become unavailable due to judicial vacancies, preemptory challenges, or on occasion, long term illness. We could not do business without them and are grateful for their service. They, too, are sharing in our efforts to reduce spending. We have reduced using pro tems in all but the most critical circumstances; their daily pay has been reduced by 2/5s; and many of them are providing their services without charge. I thank them all.

The supreme court increased many court fees for filing and copying court documents. This will result in an additional \$1.2 million in income to the State's general fund (not to the Court System).

We have instituted a process for electronic distribution of court notices, orders, judgments, and other court mailings to attorneys and litigants. This means eliminating the cost of paper, envelopes, and

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postage. Using a very conservative estimate we expect to achieve an annual savings of approximately \$131,700.

We have continued to monitor and reduce travel costs. As you know, the Alaska Court System is, geographically, the largest court system in the United States. We have courts from Ketchikan to Unalaska to Kotzebue to Barrow. We must pay to send judges to many courts where there are no sitting judges, and we pay to send judges when, for example, a judge in a one-judge court gets peremptorily challenged. And we pay for juror travel, which accounts for roughly one third of our travel costs and is largely uncontrollable. But we have reduced travel costs overall from December 2014 to December 2015 by \$600,000, a 38% reduction. This is due in part to a reduced number of cases going to trial; reduced juror costs; capping out-of-state travel; using videoconferencing instead of face-to-face meetings and events; using videoconferencing for interpreter services instead of flying interpreters to court locations; and employees voluntarily foregoing reimbursements for travel expenses. We also use airline miles earned on state-funded travel to pay for expensive tickets for travel to remote court locations.

Expenses for supplies are \$300,000 less than this time last year. State law library expenses are down \$100,000. The Court System saved \$500,000 with the two court closures in the first half of FY16.

For FY17, counting all 52 Fridays, we expect to save about \$39,000 per afternoon of court closure, or \$2.1 million overall.

Savings to Other State Agencies

I think it is important that the Court System be a good soldier and a good team player as we all work to solve the challenges of the budget crisis. We are therefore also working with other state agencies to help them achieve savings even though our efforts will not create direct savings to the Court System.

For example, we are developing videoconferencing capabilities at DOC facilities to allow prisoners to attend certain hearings via

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videoconference at jail instead of being transported to courthouses (e.g., Goose Creek C.C. to Palmer; Anvil Mountain C.C. to Kotzebue or Nome). This will create saving to DPS and the Alaska State Troopers/Judicial Services from not having to bear the costs of transporting prisoners to what are often very short hearings of relatively small consequence. This also saves the transportation expense and loss of valuable time required when Troopers or Court Service Officers accompany the prisoners. Finally, this increases safety to the public and law enforcement officers by avoiding unnecessary prisoner transport.

We are similarly developing procedures where persons arrested in Anchorage on warrants issued from courts outside of Anchorage can attend hearings at the other court via videoconference or telephone from an Anchorage courtroom. Again, this saves DPS from having to incur prisoner and officer transport costs and increases public and officer safety.

Before I take my leave I wish to introduce my colleagues on the Alaska Supreme Court. The supreme court came to Juneau to hear four oral arguments in the Dimond Courthouse yesterday, and to visit with you earlier this morning. I thank all who took time away from your pressing business to talk with the members of the court.

Justice Daniel Winfree is a lifelong, third generation Alaskan from Fairbanks. He has served on the court since 2008. Justice Winfree chairs a supreme court task force on elder law, developing processes to protect the growing population of aging Alaskans from financial and physical abuse and neglect. He is a member of the Appellate Rules Committee and is the court's liaison to the National Conference of Bar Examiners.

Justice Peter Maassen joined the court in 2012 after a long and distinguished private practice, much of which focused on appellate matters. Justice Maassen chairs the court's Judicial Education Committee and the court's Access to Civil Justice Committee.

Justice Joel Bolger was appointed to the court in 2013. He has the unique distinction of being the only supreme court justice to have

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served as a judge at every court level: he was a district court judge in Valdez; a superior court judge in Kodiak; and a court of appeals judge before being elevated to the supreme court. Justice Bolger co-chairs the Criminal Justice Working Group.

Finally, I want to give special recognition to Justice Dana Fabe. Justice Fabe has served with distinction on the Alaska Supreme Court since 1996, and she will be retiring on May 31st of this year. Her professional accomplishments are astonishing. She began her legal career in Alaska in 1976 as a law clerk working for Justice Ed Burke. She went on to work as a staff attorney for the Public Defender Agency and eventually was appointed by the Governor to be the Chief Public Defender of Alaska. She was next appointed to the superior court in Anchorage, and then to the Alaska Supreme Court. She was the first woman to serve as justice, and she was elected by her colleagues on the court to serve three, 3-year terms as chief justice.

Her other many accomplishments and awards are too numerous to recount, but I will list five: Justice Fabe was elected to be president of the National Association of Women Judges; she co-chaired the Joint Federal-State Gender Equality Task Force; she is the recipient of the 2012 Distinguished Service Award from the National Center of State Courts; she is the recipient of the National Association of Women Judges' 2012 Justice Vaino Spencer Leadership Award; and she received the Woman of Achievement Award from the YWCA.

Most of all, Dana has been a wonderful friend and colleague to all of the justices who have had the privilege to serve with her; and indeed, to all who have been fortunate enough to have worked with her throughout her illustrious career. She has contributed so much to Alaska and the law in Alaska, and she will be remembered for her leadership on the court. I will miss you, my friend.

Please join me in thanking Justice Fabe for her lifelong service.

I thank you again for inviting me to speak with you this morning. I look forward to continuing to work together with you for the good of the State of Alaska.

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