

**HOUSE AND SENATE
JOINT JOURNAL SUPPLEMENT**

February 9, 2022

Wednesday

No. 10

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State of the Judiciary Address

by

The Honorable Daniel E. Winfree

Chief Justice

Alaska Supreme Court

Before a Joint Session

of the

Second Session of the

Thirty-Second Alaska State Legislature

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February 9, 2022

Juneau, Alaska

The following was submitted for publication:

President Micciche, Speaker Stutes, Honorable Members of the 32nd Alaska Legislature, guests, and all those joining to hear about Alaska's judicial system, good morning. Thank you for the opportunity to address you in my first, and, given my age-required retirement next February, perhaps *only* State of the Judiciary Address.

This is the 50th time a Chief Justice has addressed a joint session. In April and May of 1971, as I was finishing my last year at Lathrop High School in Fairbanks, the Seventh Legislature passed Concurrent Resolution No. 42. The Resolution invited the Chief Justice to address a joint session the next year and expressed an intent to make this an annual event. The Resolution noted that the United States Supreme Court had recommended such annual addresses "to strengthen the cooperation and understanding between Judicial and Legislative branches of government." And the Resolution stated it would be beneficial to the legislature and the public if Alaska's Chief Justice gave "an in-depth view of the successes, problems, and goals of the judiciary." The Resolution was signed by Senate President Jay Hammond and House Speaker Gene Guess. And yes, I'm old enough to remember them.

In that spirit, Chief Justice George Boney, Alaska's second Chief Justice, appeared in January 1972 for the inaugural State of the Judiciary Address. Fifty years later, I am the 13th person to address you as Chief Justice. Surprisingly I am the first born in Alaska, albeit the Territory of Alaska. I am very delighted, and deeply, deeply honored to be here.

I looked back to Chief Justice Boney's 1972 address. Despite the passage of 50 years, his opening comments resonated with me. After his greetings, he began: "This country is undergoing a great deal of turmoil. The basic values of society are being questioned. Citizens are growing more apprehensive about the threat posed by the lawless elements of society."

And a few sentences later, he said: "Among the young people of the country, there is a growing concern and disenchantment with the way

HOUSE AND SENATE JOINT JOURNAL SUPPLEMENT

No. 10

February 9, 2022

the law is being enforced....The young people have been critical of what they view as the hypocrisy of the Establishment....There is a feeling in some quarters that the poor and minority groups receive in many cases disproportionate punishment."

At this point, page three, I had to stop. I got a cup of coffee and sat down to reflect on the late 60s and early 70s from my then-teenage vantage point near the ends of the earth in Fairbanks, where live television had yet to appear, let alone internet. It *was* a time of turmoil and division. The federal Civil Rights Act was in its early years, but many remained vehemently and violently opposed. A civil rights icon was assassinated, and a few months later a presidential candidate was assassinated. There were race riots in cities; there were anti-war protests across the country, leading to a number of government-inflicted deaths at a public university; there was the so-called War on Crime, seemingly focused on the poor and minorities and raising concerns about constitutional rights violations; and there was rising concern about protecting the environment. This era ended with the exclamation point of a president resigning to avoid impeachment.

About that time, construction of the Trans-Alaska Pipeline ramped up and Alaska was in a frenzy. I headed off to construction camps, finished college, spent a few months in Prudhoe Bay, and went off to law school. Today I'm far detached from the palpable pain of the late 60s and early 70s. Now, especially for you young ones, it's just another emotionless history lesson, like reading about World War I.

As Chief Justice Boney did 50 years ago, today I acknowledge our country is undergoing a great deal of turmoil. Public divisions, focusing on national and state elections rather than wars overseas, are just as vehement. There is apprehension about lawlessness, but there are differing views on who the lawless might be. And people young and old are critical of the Establishment about racial, economic, and environmental injustice.

I was one of the young ones who 50 years ago criticized the Establishment and feared for democracy's future. Now I'm part of the Establishment. But the current pain is as visceral as it was then, and I find myself wondering why we haven't made more progress.

At least two things might be taken from this. One is that the more things change, the more they stay the same. The other is that despite social and political unrest since the United States was formed, our fundamental structure of government, and thus democracy itself, lives on. Democracy is not easy. We must be mindful to protect democracy, but we must look to history and believe democracy will survive. Look at us in Alaska.

Alaska's governors come, and Alaska's governors go. I have lived under every governor, whether Republican, Democrat, or Independent; strong, weak, or indifferent; liberal, moderate, or conservative; popular or unpopular. Alaska's legislatures, and legislators, come and they go. I have lived under every legislature, whether controlled by Republicans, Democrats, or Coalitions; liberal, moderate, or conservative; spendthrifts or penny-pinchers, popular or unpopular. Despite societal disagreements and policy disagreements within and between the two political branches of government, *Alaska still stands*. We must never, in the midst of the politics of the day, fail to respect and maintain the long-term institutional integrity of the state's political branches.

Similarly, Alaska's judges come and they go, all appointed under our constitutionally mandated merit selection process by various Republican, Democrat, or Independent governors. Alaskans as old as me have lived under every iteration of the Alaska Supreme Court with its 26 different justices, 14 of whom served as chief justice. *Alaska still stands*. And as with the state's political branches, we must never, in the midst of politics of the day, fail to respect and maintain the judicial branch's long-term institutional integrity.

So, to help you understand the judiciary, let me explain a few things I hope you will keep in mind. Judges, like you, are just regular people. We have families, and all the joys and challenges that come with them; we ride watercraft and snowmachines, hike, ski, bicycle, and more. I know at least one of us was a curler in younger days! We fish, hunt, and travel around Alaska seeing its wonders; we engage in community activities; we take off our robes and live everyday lives outside the courthouse.

HOUSE AND SENATE JOINT JOURNAL SUPPLEMENT

No. 10

February 9, 2022

We actively sought our jobs because we believe in public service and justice. Like other Alaskans, we work long hours and weekends, only we're plowing through mountains of paperwork and piles of law books. We are very mindful that the mountains of paperwork involve some of the most important matters in people's lives, and, of course, the occasional high-profile political dispute.

The judiciary's most basic constitutional duty is deciding disputes brought through the front doors of our courthouses. We are a reactive institution; our work begins only when a case is filed. We don't encourage cases being filed, and honestly, we might prefer that some political disputes be resolved without our need to weigh in. *But we don't fear them.* It's our duty to make the hard calls and to ensure that our reasoning is transparent; *everyone* can read our decisions and see exactly why we decided what we decided.

A central feature of being a judge is making a conscious effort to put aside personal views when deciding cases. And it's not just personal views; we are required to consider only the evidence presented in court and relevant law, and to disregard *everything* else about a case that could influence the outcome. In each case we focus only on the facts and the law and rule accordingly, whether the decision affects one person, a few people, or everyone in Alaska.

This is quite a contrast to how governors and legislators make important policy decisions. Expressing personal views is a central feature of your job, as is listening to and responding to public views. Your constituents talk to you, complain to you perhaps, and maybe ask you to change the law. You may seek information from many sources and decide what policy you think is best, or you may try to vote in response to public opinion in your district because you'd like to continue being a legislator. Just as you take seriously your responsibility to talk to constituents, and perhaps even survey your district before you vote, we take just as seriously our duty to decide cases uninfluenced by our personal views, by views from the political left, center, or right, or by prevailing public sentiment. *That's what the rule of law is all about.*

Our system of government will fail if judges rule in a litigant's favor only because of who that litigant is or what that litigant stands for, or if judges rule only by trying to follow the swirl of then-prevailing public opinion. *Democracy relies on the rule of law.*

It's a real strength that the branches of government have separate duties and separate methods for fulfilling them. But we have important common ground. All three branches strive for fair and predictable government, equitable law enforcement, and respectful resolution of disputes. These are the linchpins of a functional government. I hope that in 2072, after I'm long gone, the 100th State of the Judiciary Address speaker may look back, refer to our current turmoil as a history lesson, and say *Alaska still stands.*

Now I'll turn to more recent events you and the public should know about. First, unsurprisingly, is our ongoing response to the loooooong days of the COVID-19 pandemic. Although the pandemic brought society close to a halt in many ways, people continued being charged with crimes, couples continued filing for divorces, and children and vulnerable adults continued needing protection. I am very proud to say that no court location closed for business due to the pandemic – not a single day! I wish I could say the same for what the weather did to us this winter.

But we had to make changes. Courthouses traditionally are places where people come together, often in groups and in close proximity. In early 2020 it became clear that traditional in-person proceedings would not protect citizens' health and safety. We shifted quickly to remote hearings, using technology ranging from teleconference equipment to new videoconference systems, making sure we could safely continue having emergency hearings and time-sensitive proceedings. We never stopped holding priority hearings, including criminal arraignments, domestic violence protection proceedings, mental health proceedings, temporary conservator and guardianship hearings, and children in need of aid hearings. It is important that you and the public understand that these priority hearings *NEVER* stopped, but continued with little interruption.

HOUSE AND SENATE JOINT JOURNAL SUPPLEMENT

No. 10

February 9, 2022

We postponed and rescheduled non-priority hearings while we gained a better understanding of how to conduct business safely. Our staff worked incredibly hard to physically change offices and courtrooms for proper social distancing for those who must be in the courthouse and to procure and install expanded technology options for conducting more hearings remotely. And we quickly resumed holding almost every type of hearing Alaskans need. Even though we were prevented from resuming most *jury trials* for many months, which I'll get to shortly, let me share some data illustrating court activity.

In 2021:

- courts resolved *over 30,000 petitions* in CINA, domestic relations, probate, and domestic violence cases;
- judges held *more than 327,000 court hearings* in criminal and civil cases, nearly the same as in 2019, before the pandemic began;
- *over 5,500 trials* were held by a judge sitting without a jury, usually in civil cases, again almost the same as in 2019; and
- judges issued *about 88,000 rulings and orders* resolving disputes, which might be evidentiary questions, motions to change the amount of child support a parent has to pay, or proceedings to finally close a case.

Numbers are dry, but they tell a compelling story: We weren't just sitting around twiddling our thumbs. Judges were judging. Court staff were working *really* hard, in fact *over-working* in many instances, making changes to overcome all the pandemic-related hiccups along the way. I hope everyone will appreciate the challenges we've faced and how the court system's dedicated administrators, technology people, and clerical staff routinely handled these challenges with patience, creativity, and flexibility.

But, you ask, what about criminal jury trials? Thank you for that question. Safely holding criminal jury trials within prevailing health and safety guidelines has been a logistical challenge. Criminal jury

trials involve a very diverse collection of citizens showing up in a courtroom. There will be a judge and an in-court clerk. Prospective jurors with no personal stake are *ordered* to participate. Defendants, who want to participate in person so the jury can see them up-close as individuals, often are held in high-risk facilities. A defendant in the courtroom usually means Judicial Services Officers for security. The defendant has at least one lawyer, and maybe assistants; the prosecution may be similarly staffed. Victims have the right to watch the trial. It's not a trial without witnesses. And keep in mind that the public has the right to watch jury trials. So, depending on the case, a criminal jury trial can call for *at least* 15 to 20 people gathered in one room. Given the sizes of our courtrooms and the need for social distancing, we simply had to stop most jury trials to avoid spreading the virus.

But we persevered. We gathered information and recommendations from public health officials. We created trial safety protocols. And in the meantime we invited prosecution and defense lawyers to request a trial if a case had special needs requiring expediency. There were few takers on that invitation, and in fact the state's criminal agency attorneys supported the general jury trial suspension. But nearly 100 criminal jury trials did take place in 2021, generally during windows of time and in locations where COVID case counts were low. That number is not up to pre-pandemic numbers, but it's more than 2020's number.

Shortly after I became Chief Justice, we concluded that we could safely start criminal jury trials again. Orders issued to effectively set an early September 2021 restart date. Then the COVID Delta variant reached Alaska, and with skyrocketing case counts, hospital capacity reductions, and other public health benchmarks, we again had to delay restarting jury trials. When the Delta variant effects receded, orders issued to restart jury trials in early January 2022. Jury trials *did* start in early January, but by then the Omicron variant was creating havoc. I mentioned earlier that I am the 13th Chief Justice to address you; I've been wondering lately if that number 13 was causing this bad luck.

Since January 1 we have 25 criminal jury trials completed or in progress, including 4 homicides, 2 sex assaults, and many other

HOUSE AND SENATE JOINT JOURNAL SUPPLEMENT

No. 10

February 9, 2022

felonies. That's just a start. But at that pace, we would be doing more criminal trials in 2022 than in many other years. As you might guess, trials have had COVID-related interruptions. But our judges persevered. I salute the efforts of our trial judges, court employees, the parties, their attorneys, and especially jurors. *We are and will remain committed to conducting jury trials.*

But let me emphasize an important point that you must understand. The typical criminal jury trial rate has been around 2% to 3%. Criminal cases usually are resolved by prosecution dismissals or plea bargains, *not by jury trials*. In recent pre-pandemic years, for example, out of every 100 misdemeanor cases filed, generally *only one* went to trial. And for every 100 felony cases filed, *only two or three* went to trial. But dismissals and plea bargains slowed dramatically during the pandemic, leading to a significant backlog of criminal cases. The backlog certainly is concerning, but it cannot be attributed *solely* to the suspension of jury trials.

We understand from the state agencies that not having a realistic trial date stifled incentive to resolve cases. We will continue our best efforts to schedule and hold trials as a matter of routine, so that prosecutors and defense attorneys will work to resolve cases before trial. Again, statistically, 97% of the backlogged cases will be dismissed or resolved prior to a jury trial. *We will get the backlog cleared.*

Since I've been in Juneau this week, I've heard suggestions that we also have a backlog of CINA cases and that it's somehow the court system's fault. I respectfully disagree. I check with presiding judges regularly, and what's going on in the trenches tells a different story. The pandemic has affected all the players in these cases, including service providers, social service agencies, and the attorneys; they all have staffing issues. The court is ready to hear these cases but the agency lawyers, given all their logistical problems from the pandemic, request continuances. I'm not casting blame. The agencies are in difficult positions, just like all businesses in Alaska. I just emphasize that whatever delay there is in these cases, it's not because the court won't hear them.

Now I'd like to move as *FAR* away as possible from the pandemic and highlight a few court system initiatives we're confident are making a big impact.

For years the number of people coming to court without a lawyer has grown steadily. Going to court alone is not easy. A judge can't give legal advice or help an unrepresented party make the right argument, for example, because it could be viewed as giving that party an unfair advantage. So we've been enhancing our Access to Justice Services Department, providing more resources for people without lawyers.

The Self Help Center's website, linked from the court system's home page, is easy to navigate. You will find plainly written explanations and hundreds of basic forms for getting the right information to a judge. There are videos explaining how cases progress. And there is a toll-free family law helpline staffed by facilitators to answer questions and guide people through the process. We very recently secured a federal grant to expand services we provide in the fast-growing world of guardianship cases. It's called the Silver Tsunami; a quick look at my hair will help you understand why. We'll use the federal grant to expand our Self Help Center's toll-free help line to include two facilitators to answer guardianship questions, explain procedures, and identify available forms.

We have offered self-help service for years, but I draw your attention to it again because of its expansion and a recent national award for overall excellence. The Alaska Court System has been and remains a national leader in self-help services, and our staff members have given presentations to help other states move toward our model. It's a cost-effective way to provide concrete and practical resources to help Alaskans navigate their legal issues, and we are very proud of it.

We provide other successful programs for resolving disputes without trial. One is the Early Resolution Program for family law cases. Self-represented parties work with mediators or volunteer attorneys who donate their time to give the parties realistic probable outcomes, helping them temper their approach (if needed) and compromise on their differences. The parties are able to negotiate an agreement in about 80% of these cases.

HOUSE AND SENATE JOINT JOURNAL SUPPLEMENT

No. 10

February 9, 2022

We offer mediation for parenting plans to reduce disagreements about child custody arrangements; for child protection cases when parents need help addressing an at-risk child's safety and family reunification hurdles; for family members to compromise on a guardianship plan rather than fight in court. And we are developing a dispute resolution platform where parties will be able to negotiate and mediate completely online to try to resolve civil disputes. We envision this useful tool helping people negotiate agreements without regard to regular business hours or going to a courthouse.

Another innovative program involves holding some guardianship hearings offsite. Magistrate judges are coordinating with social workers and administrators to hold hearings in the Anchorage Pioneer Home. Instead of requiring that elderly people travel to the courthouse or contend with confusing videoconference technology, the magistrate judges will "bring the court to them." For obvious reasons I intend that this program be available at the Fairbanks Pioneer Home by next year.

The final program I'll mention that provides non-traditional but effective resolution of legal problems is our therapeutic courts. I know most of you are familiar with these courts – they're an alternative way to work with criminal defendants suffering from substance abuse, a mental health disorder, or some other underlying issue likely driving their criminal conduct. The therapeutic court team uses intensive therapies to address and treat the root problem; in addition, participants get focused help from social workers and coordinators to get into stable housing and find a job. The treatments, the social and life-style support, and intensive judge involvement combine to disrupt negative cycles many defendants are trapped in. Graduating from therapeutic court is a time-consuming process taking about 12-18 months, and the participant's likelihood of reentering the justice system is substantially lower than someone sentenced to jail. It's a winning program for safer communities and diverting people from the revolving door the criminal justice system often sees.

That update on therapeutic court successes seems like the right time to mention budget requests. We're asking for about \$136,000 to fund therapeutic court treatment services not covered by Medicaid in Kenai,

HOUSE AND SENATE JOINT JOURNAL SUPPLEMENT

February 9, 2022

No. 10

Palmer, and Anchorage and to fund a Bethel probation officer to conduct monitoring and testing.

A second budget request is for computer software and network-related services. We're asking for a bit over a million dollars, mostly for unanticipated costs of securing our computer networks. I'm sure you heard about last year's cyberattack on the court system. We are incredibly fortunate that our technology staff quickly contained the threat. The overall fiscal damage was kept to a minimum, no personal information was accessed, and we learned an awful lot. (I want to extend our deep gratitude to the legislative branch for accommodating our human resources and fiscal operations staff after the cyberattack. When we had no access to the internet or the IRIS financial management system, our people were allowed to use legislative branch computers to keep up with payroll and accounting. Thank you!) But the court system simply cannot risk a future attack giving access to our networks. The risks from not fully protecting our sensitive information are just too high, and the bulk of the budget request will fund services necessary to protect and safeguard judicial operations.

The final budget item is funding to keep courthouses open to the public on Friday afternoons. The request is for a little over a million dollars. Judges, of course, have always worked Friday afternoons, and courts have always remained open for critical hearings. This is about staff who perform clerical and administrative work and provide customer service. You may recall that when we shortened the staff work week and closed for routine business on Friday afternoons, we *saved* over \$2 million each year, and we've done that for six years now. It was necessary at the time, but we always recognized and appreciated that many of you advocated our return to full operations. Our plan is for a measured but steady return to the full-week schedule to minimize cost. Existing staff members may choose to stay on the shorter schedule, but new employees will be on the full schedule as we move forward.

Funding the added staff hours will mean that the public can return to conducting routine business at the courthouse on Friday afternoons and that case processing will move more rapidly and effectively. We don't seek additional funding lightly, but this is a prudent and responsible investment.

HOUSE AND SENATE JOINT JOURNAL SUPPLEMENT

No. 10

February 9, 2022

Now before I introduce my supreme court colleagues and some of our senior staff members, I want to return once more to Chief Justice Boney's 1972 address. He focused on what he referred to as "Bush Justice," noting the court system's cooperative efforts with the Department of Safety to train village police and safety officers as well as village magistrates.

Fifty years later, I think it would be fair to say that the village safety officer program has had its ups and downs. And the chorus of voices calling for more police protection in rural Alaska has never been louder. As for the court system, 50 years on we have 40 court locations, 22 of which we refer to as rural courts; this means a court where no superior or district court judge resides at that location. We now have some circuit magistrate judges covering multiple locations, and a superior court judge is assigned to handle matters at each location when needed. It remains our strong intent to provide timely and effective judicial services in rural Alaska to the fullest extent possible, and we will continue to look for ways to do that. We are exploring the feasibility of a new justice center in Bethel and a replacement facility in Unalakleet. You will hear more about that during the court's budget presentations.

I'd now like to introduce my friends and colleagues on the Alaska Supreme Court, who have the incredibly good fortune to have me as their current Chief Justice. First is my friend of some 40 years, Justice Peter Maassen, appointed to the court by Governor Sean Parnell in 2012. Justice Maassen, who sits in Anchorage, heads our court security committee. Next is Justice Susan Carney, appointed in 2016 by Governor Bill Walker. Justice Carney came to Fairbanks in 1987 for one year to clerk for Justice Jay Rabinowitz; as she often says, it's been a very long year. She sits in Fairbanks and heads our diversity and fairness committee.

Our two newest justices co-chair our access to justice committee. First is Justice Dario Borghesan, who was appointed in 2020 by Governor Mike Dunleavy and sits in Anchorage. Justice Borghesan came to Fairbanks in 2008 to clerk for me, of all people, and he is a history maker: he is our first justice to serve with an active justice for whom he previously served as a law clerk. Second is Justice Jennifer

Henderson, who came to Alaska in 2001 to clerk for Justice Warren Matthews, and who was appointed in 2021 by Governor Dunleavy. She sits in Anchorage and just passed the half-year mark with us, after serving on both the district and superior courts for a total of eight years. And if you are wondering, yes, it's correct that Justice Maassen and I both were lightweighters who didn't clerk for a justice in our younger days.

I also want to introduce our Administrative Director, Stacey Marz, who came to Alaska in 1993 and clerked for both Justice Ed Burke and Justice Robert Eastaugh. Stacey assumed her position with us in November 2019, shortly before the pandemic. That was sort of like being Chief Justice number 13. She has been a tireless champion of the court system since well before that time, particularly with access to justice issues. But her work under the difficult circumstances of the pandemic, and the cyberattack, has been inspirational. She is incredibly devoted to fair treatment for all Alaskans, to a strong, fiscally sound judiciary, and to doing the right thing. We are very appreciative of her work, and I am proud to introduce her to you.

The next two people you already know, but it is nonetheless an honor to recognize them before you and the public. Deputy Director Doug Wooliver, like me, is a life-long Alaskan, although he had the misfortune to be raised in Anchorage. This is about his 30th year in Juneau working with the legislature in one capacity or another. Over my 14 years I've seen his boundless enthusiasm and regard for the legislature and the legislative process, and from what I've heard from legislators, he is a trusted ambassador for the judiciary. I cannot begin to express my respect for Doug.

General Counsel Nancy Meade came to Alaska in 1987 to clerk for Justice Ed Burke. She joined the court system in 2004 as the court rules attorney and moved into her current position in 2011. That, of course, was the start of her work with the legislature. I don't know what Nancy expected, but I can tell you she absolutely loves helping you understand court system operations and how proposed legislation might impact the judicial system. I hold her in very high regard.

Finally, I'd like to acknowledge Susanne DiPietro, the Executive Director of the Alaska Judicial Council for the last eight years. The

HOUSE AND SENATE JOINT JOURNAL SUPPLEMENT

No. 10

February 9, 2022

Council plays a constitutional role in the judicial nomination process and is a key reason ours is one of the country's most respected judiciaries. Susanne came to Alaska in 1987 for a one-year adventure clerking for a superior court judge; it's been a long year for her, as well. She has been a public sector attorney for over 30 years, including long tenures with the Council and the court system, and she has volunteered internationally to assist emerging democracies establish judicial systems. We thank her for her dedication and hard work.

As for me, from my early teenage-years I dreamed I might someday help make important decisions for Alaska. I'm one of the luckiest people around: I've been able to live my dream in what is, for me, the best job in the world. To all the young people out there, here is a little-known resolution the Alaska Constitutional Convention Delegates directed to Alaska's children, which I have hanging on a wall outside my office:

We bequeath to you a state that will be glorious in her achievements, a homeland filled with opportunities for living, a land where you can worship and pray, a country where ambitions will be bright and real, an Alaska that will grow with you as you grow. We trust you; you are our future. We ask you to take tomorrow and dream; we know that you will see visions we do not see. We are certain that in capturing today for you, you can plan and build. Take our constitution and study it, work with it in your classrooms, understand its meaning and the facts within it. Help others to love and appreciate it. You are Alaska's children....

Be concerned; be active; be involved in government. You too can be a governor; a legislator; or a judge or justice. Live your dreams and make Alaska an even better place.

With that, I'd like to say it was an absolute honor and privilege to speak to you, and to all Alaskans, on behalf of the nearly 800 Alaska Court System employees around the state. Thank you for your time, and to this 32nd Legislature I extend my best wishes for a safe, healthy, and productive session for the benefit of all Alaskans.

Please report corrections to the Chief Clerk's office.