

3/9/82

No. 4



**THE STATE
OF THE JUDICIARY**

A MESSAGE BY
CHIEF JUSTICE EDMOND W. BURKE
TO THE TWELFTH ALASKA LEGISLATURE
March 9, 1982

3/9/82

Mr. President, Mr. Speaker, Members of the Twelfth Alaska Legislature, ladies and gentlemen. Thank you for the opportunity to appear before this joint session of the House and Senate, to report on the state of the judiciary.

I will begin by introducing those members of the judicial branch accompanying me here today. They include the other justices of the Alaska Supreme Court and, for the first time, a representative of the Court of Appeals. My colleagues on the Supreme Court, in the order of their seniority, are: Justice Jay Rabinowitz, a member of the court since 1965 and twice its chief justice; Justice Roger Connor, a member of the court since 1968; Justice Warren Matthews, whose tenure began in 1978; and, our newest member, Justice Allen Compton. Justice Compton was appointed in 1980, to replace former Justice Robert Boochever, following Justice Boochever's appointment to the United States Court of Appeals.

On past occasions such as this, the chief justice has been accompanied only by his own colleagues. This year, at the request of President Kerttula, I have broken that tradition. Also with me today is a member of Alaska's newest court, the Court of Appeals. Representing the Court of Appeals is its chief judge, Alexander O. Bryner, under whose leadership the court was organized and began its work in 1980. Judge Bryner is a former District Court judge and, from 1977 until his appointment to the Court of Appeals, was the United States Attorney for the District of Alaska.

3/9/82

CHANGES IN THE JUDICIARY

Since the time of the last state of the judiciary address, delivered by our then chief justice, Jay Rabinowitz, several changes have taken place in the make-up of the state judiciary.

In the First Judicial District, the Juneau Superior Court has two new judges. Judge Roger Pegues was chosen to fill the vacancy created by Justice Compton's appointment to the Supreme Court. The second new judge was appointed to replace Judge Thomas B. Stewart, who retired last fall, after fifteen years of distinguished service. Judge Stewart's replacement is Judge Walter Carpeneti.

In the Third Judicial District, changes have taken place in both the Superior and District Courts. In Kenai, Judge James Hanson retired after more than eleven years on the Superior Court, and several years of earlier service as a judge of the Anchorage District Court. In early January, it was my privilege to administer the oath of office to Judge Hanson's replacement, Judge Charles Cranston. In the District Court, Judge Richard Avery of Anchorage resigned and was replaced by Judge Elaine Andrews.

Several changes also took place among our magistrates, those unsung heroes, whose dedicated efforts bring the justice system to many of our smaller communities. I regret to report that one of those changes was brought about by the tragic death of our Galena magistrate Louis Mass, who died in a plane crash in Mystic Pass, on a flight from Galena to Anchorage.

On the administrative side, I have appointed a new presiding judge in three of the four judicial districts: Judge Thomas Schulz is now the presiding judge in the First

Judicial District, Judge Mark Rowland in the Third Judicial District, and Judge Gerald Van Hoomissen in the Fourth Judicial District. Judge Charles Tunley, of Nome, was reappointed to the position of presiding judge for the Second Judicial District. Also, Pat Aloia, formerly area court administrator for the Fourth Judicial District, moved to Juneau last summer, where he is now area court administrator for the First Judicial District. His replacement in the Fourth Judicial District, is Charles (Mac) Gibson, formerly the city attorney for Fairbanks.

ANNUAL REPORT

In delivering this message, I do not intend to burden you with unnecessary statistical details. Such information is adequately set forth in our annual report, copies of which were made available to you earlier today. The significance of those details, however, cannot be over-emphasized. Thus, I hope that you will study our annual report carefully, keeping in mind that the facts and figures represented there are largely the result of burdens thrust upon the judicial branch by the demands of the state and federal constitutions, the statutes that you have enacted, and the activities of other governmental agencies.

WORK OF THE COURTS

The work of the Supreme Court has changed significantly in recent months, both in terms of the number and type of cases handled. In large part, this is due to the dedicated efforts of Judge Bryner and his colleagues on the Court of Appeals. Few criminal cases now reach the Supreme Court, in sharp contrast to earlier years. The most encour-

aging aspect of this phenomenon is the relatively small number of petitions for further hearing, once a case has been decided by the Court of Appeals. In all but a few instances, that court's decision marks the end of the case, contradicting the claims of those critics who predicted that the Court of Appeals would merely add another step to the appellate process. Moreover, in those cases where petitions for further hearing have been filed, all but a very few have been denied by the Supreme Court.

Mainly as a result of the assistance that you have given us, by the creation of the Court of Appeals, Supreme Court filings have dropped, and it appears that the court's ability to discharge its responsibility to the citizens of Alaska has greatly improved. This does not mean, however, that we can afford to relax our efforts, or that we are satisfied with our own performance. Despite a temporary reduction in the total number of cases filed, the Supreme Court's caseload continues to grow, and we are still plagued by the problem of delay. Our ability to respond to these challenges will continue to require a great deal of hard work on our part, as well as the tools and manpower needed to do the job.

In addition to providing much needed relief to the Supreme Court, the Court of Appeals has earned our respect for the quality of its own decisions. Those decisions reflect a degree of wisdom and scholarship that is of the highest order. The Court's job, however, has not been easy.

The Court of Appeals began its work in September, 1980, faced with an already accumulated caseload of nearly 180 cases. That caseload has grown steadily ever since, due to an increase in criminal appeals, so that the court now

3/9/82

handles substantially more such appeals than did the Supreme Court before the Court of Appeals came into being. In fiscal year 1980-1981, the total criminal filings in the appellate courts, including sentence appeals, showed a 44% increase over the number filed in calendar year 1979. As a result, the Court of Appeals is already hard-pressed to fulfill its duty, with existing staff. One step that I think must be taken immediately, in order to avoid a crisis situation, is the addition of additional support staff, particularly the assistance of a sufficient number of law clerks.

Some of the most impressive work done during the past year has been in the trial courts. Although filings have risen in almost all locations, dedication and hard work has allowed the trial courts to not only meet their responsibilities, but also to make substantial improvements in several areas. One such example is the improvement made by the Anchorage Superior Court, in the handling of its civil caseload.

In 1980, the Anchorage judges began a reorganization effort, largely because the judges themselves were unhappy with their own performance. After considerable debate, it was agreed that the court would be divided into two main divisions: civil and criminal. The civil division consists of six of the court's ten judges. Those judges in the civil division, in a break with local tradition, began to set and manage their own calendars, rather than continuing to rely on a central or master calendar system. As a result of the shift to individual calendaring, plus a great deal of uncompensated overtime on the part of the judges involved, a dramatic change occurred.

3/9/82

I am told that a civil trial expected to last five days or less can now be heard within three months after the trial setting conference. More complex cases are being heard within six months of the trial setting conference and, in some instances, have actually gone to trial within six months of the date of filing. This is a tremendous improvement. The reason this has come about, I believe, is that the Anchorage judges have discovered the very essence of sound caseload management: early control by the court. Rather than leaving matters entirely in the hands of the parties, discovery and other pre-trial activities are closely monitored and controlled by the court itself.

One statistic that I would like to share with you vividly illustrates some of the benefits of this change in philosophy. Between June and December of 1980, 1,065 civil cases were filed in the Anchorage Superior Court. During that same period of time the court disposed of 1,305 such cases. In the first six months of 1981, after the court's reorganization plan was implemented, essentially the same number of civil cases were filed. The number of civil cases disposed of during that period, however, rose from 1,305 to 2,023.

While this remarkable accomplishment is by no means typical of the overall changes that have taken place, or even one that we can reasonably expect to be repeated, it does provide a striking example of some of the good work being done by our trial courts.

Those courts, unfortunately, are all too often the subject of criticism, rather than praise. Much of the good work that they do is largely ignored. For example, each year trial judges are criticized for their handling of criminal cases, generally with regard to the sentence

3/9/82

imposed or, perhaps, for having released the accused on bail. Often, the judge had little or no choice, given the requirements of the constitution and the statutes involved. Also, while he or she may have been dead wrong in that particular case, the critic generally ignores the judge's excellent performance in dozens, or perhaps hundreds, of other cases.

I am not suggesting that courts and judges should not be criticized. I am only suggesting that their achievements should also be recognized and that they should not be criticized unjustly. Such criticism is harmful in several ways. First, it is destructive of morale, perhaps our most valuable resource. Second, it breeds distrust of our institutions, and does much to convince those inclined to break the law that they can do so with impunity, a result that seems inconsistent with our shared desire to deter criminal conduct. That idea also seems inconsistent with the recent report by the Director of the Division of Corrections, that Alaska incarcerates a higher percentage of its citizens than all but three or four of the other states.

In my judgment, the State of Alaska is extremely fortunate when it comes to the quality and performance of its trial courts. Those courts are working well and the people involved are constantly striving to improve the justice system. Although they make mistakes from time to time, because they are human, the integrity and overall performance of these individuals is outstanding.

THE BUDGET

Our budget proposal for the next fiscal year has been prepared with the greatest of care. Inflation alone makes it impossible to operate the courts tomorrow for the

3/9/82

same cost at which they are being operated today, without a reduction in the quality of our performance. This, together with the ever increasing demand for judicial services, requires us to ask for a budget increase. I can assure you, however, that we have made every effort to trim our proposal to the bone.

We are requesting an operating budget of \$34,266,400, an increase of 8.4% over the current year authorization. 3.8% of that figure represents adjustments for inflation and changes in the cost of personal services benefits. The balance represents our need for twenty new permanent full time positions and improvements in court facilities statewide.

What you must recognize is the fact that new programs and changes occurring elsewhere in our society, over which the courts have no control, often have grave impact on their work. For example, I am advised that since 1975 the number of officers in the Anchorage Police Department has increased by more than 40%. During that same period of time, the number of arrests made by the department increased nearly 84%, due in large part to the presence of those additional officers and an expanded geographical area of responsibility. The end result, regardless of the precise cause, is a substantial increase in the number of cases that must be handled by the Alaska Court System. Other examples can be found elsewhere.

With every increase in population, business activity, or the addition of new social programs, there is a direct impact on the workload of the courts. Whether it be an increase in the number of traffic accidents, due to the construction of new roads, industrial injuries generated by

a pipeline project, contract disputes arising out of increased construction activity, or a change in the criminal laws, one sure result, from our standpoint, is an increase in the number of cases coming before the courts. Many of these added burdens are a direct result of statutes enacted by this body. For example, the statutes that you have enacted in recent years having to do with domestic violence, mental health, and the establishment of a public guardian program have had direct impact on the courts. One of these, in fact, appears to have the potential for creating an administrative nightmare.

As a result of legislation passed last session, the court system must provide a public guardian for any individual in the state whom the court determines is in need of such protection. This bill took effect on January 1, 1982, so its full impact is yet to be determined. However, it now appears that within the next year we may be required to assume the guardianship of some 400 to 600 individuals.

At the present time, only four positions have been authorized by this body to carry out the responsibilities of a public guardian. Needless to say, in the months to come we will attempt to operate the program as best we can. However, our review of similar programs in the states of California and Illinois causes us to believe that we will be drastically understaffed, if in fact a public guardian must be appointed in the number of cases that we presently anticipate.

Under this program, an employee of the court system will be appointed guardian of any individual qualifying for such service. The duties of the guardian include control over all aspects of the ward's life, including decisions on where he should reside, who takes care of him,

what medical treatment is to be provided, and what rehabilitation programs should be initiated. Also, the guardian is required to make periodic visits and to manage the financial affairs of the ward, which means that every dollar of income must be accounted for and every expenditure reviewed. If the four people that we presently have are each required to undertake this responsibility for 50 or 100 individuals, it will be impossible for them to satisfy the commands of the statute.

Since we are unable to predict with genuine certainty what resources may be needed in this area, we have included no new positions in our operating budget for this program. The need for such additional resources will have to be handled by way of a request for a supplemental appropriation, if and when the magnitude of those additional needs becomes known.

The reason that I have taken a few moments to summarize this particular example, is to impress upon you the fact that our needs are generally not of our own making, and that in those areas where we have asked for a budget increase our needs are genuine and, in our judgment, essential.

The largest single item in our capital budget request is funding for the construction of a major addition to the court facility in Anchorage. We believe it is critical that these funds be appropriated this year, because any delay in this project will substantially increase its cost. Also, the space needs within our present structure have reached the point where the efficiency of our operation is being significantly reduced. Several offices, including those of most of our own administrative staff, have already been located outside the court building, in rented space.

Another priority item in our capitol budget is funding for the implementation of a mini-computer system, which will automate all Superior Court records and approximately 95% of those processed by the District Court. This program will perform the routine day-to-day, labor intensive functions of trial court clerks, so that the courts can handle their existing and projected caseload with minimal personnel. No new personnel will be required or requested to implement or maintain this relatively simplified computer system, and value of the service it is expected to provide should far exceed its cost.

No mention of the budget would be complete, of course, without some comment on the subject of salaries. In my judgment, your decision in a recent session, to give the judges of this state a substantial pay increase, saved the state from irreparable harm. At that time, after five years of exposure to the ravages of inflation, the morale of the judiciary was at an all time low. Had the situation continued, I have no doubt that we would have lost many, if not most, of our best judges. Fortunately, you had the courage and wisdom to provide the solution, and since that time morale has remained high. In addition, the quality of the individuals that have since applied for judicial office is proof beyond a reasonable doubt that you made the right decision. I hope that you will do whatever is necessary to see that this state of affairs continues.

The same concern should also extend to our other employees. Their morale is every bit as important to our ability to function effectively as that of the judges.

EXTENSION OF COURT AUTHORITY OVER ITS FACILITIES

As you may recall, at the end of this fiscal year, the authority granted to the Court System, to control the building, remodeling, and other management aspects of its facilities will expire, unless extended by this body. We ask that this be done.

Since the Court System took over responsibility for its own construction and remodeling, our facilities program has functioned very smoothly. We were able to complete a major remodeling of the fourth floor of the Anchorage court building for the use of the appellate court within four months from the time of the appropriation. Also, this project came in at a cost substantially below all estimates. Other remodeling projects in Kenai and Anchorage are currently underway and appear to be moving smoothly.

Over the past year and a half we have worked closely with the Department of Transportation in developing our procedures and in seeking technical assistance, and we would like to see this arrangement continued. To date, we have added no additional staff for this function, and there is no doubt that we have already saved the state a considerable sum in overhead and administrative expenses that would have been incurred had the court system not been responsible for its own projects.

INDIGENT DEFENDANTS

One of the constitutionally mandated requirements relating to criminal trials is that the state must furnish counsel for indigent defendants. In this state, much of that work is handled by the Public Defender Agency. I am deeply concerned that the Public Defender Agency, through no

3/9/82

fault of its own, is reaching the point where it will be impossible for it to carry out its responsibilities.

This is of concern to me for two reasons. One, it is clear that in order to provide representation outside of the Public Defender Agency, the cost to the state is three or four times as great as when that agency handles the case. At the present time representation outside the agency must be paid for by the Court System. Second, the activities of the Public Defender Agency have a direct impact on the work of the courts. Due to the agency's caseload, congestion and delay, both at the trial court level and in the appellate courts, is becoming a problem. I know this is of great concern to Judge Bryner and his colleagues, as well as the Superior Court.

The problem is not that the attorneys within the Public Defender Agency are lazy or that they are doing unnecessary work. The problem is that they simply have too many cases per attorney. A great deal of their work involves defending indigents against charges filed under a municipal ordinance. In Anchorage, in fact, the vast majority of the misdemeanor work done by the Public Defender Agency is in those cases. If it were not for that burden, both the Public Defender Agency and our own District Court would have a substantially reduced caseload and be far better equipped to perform their responsibilities.

It is not my role to tell you your business, part of which is to determine how much is to be spent for the defense of indigents, but I must urge you not underestimate the gravity of this problem. It is unavoidable, and it will not go away. The State of Alaska, one way or another, is

3/9/82

required to pay for the defense of indigent persons. In my judgment, the best way to do that is to provide the Public Defender Agency with adequate staff. Not only will that result in better representation for those individuals charged with a crime, it is by far the most economical solution to the problem.

FUTURE GOALS

One of our main goals is to work toward a more inexpensive system of litigation. At the present time the cost to litigants, in even the simplest of cases, is simply astounding. I suppose that, in large measure, this is due to nothing more than the problem of inflation. Just as it is hard for us to accept the fact that the car or home we bought in 1955 now costs several times as much as it did then, it is hard to accept the fact that the cost of legal services has undergone a similar increase. I am convinced, however, that many of those costs are due to other factors and that they can be substantially reduced by modifying our existing procedures. In the next few years, we intend to make this one of our major priorities.

Another problem that we will continue to attack at all levels is the problem of delay. In many cases, delay can result in catastrophic consequences for the litigants. Fortunately, that is one item that we are able to do something about, as we have already demonstrated.

Here in Alaska, of course, the problem of delay is in fact small when compared to that same problem in many of our sister states. However, any unnecessary delay is intolerable and should be avoided. For this reason, at our next statewide judges conference, a major part of our program will be devoted to that subject. With the cooperation of

the National Center for State Courts we have already made arrangements to bring to that conference several individuals who have helped implement successful delay avoidance programs in other courts, often without the need for additional resources. With their assistance, we hope to do a great deal toward eliminating this troublesome problem in Alaska.

Also, we hope soon to be able to provide better judicial services to areas such as Barrow and Palmer, where, despite a tremendous increase in the need for such services, there is still no resident judge above the level of magistrate.

THE COURT SYSTEM--OVERALL

Overall, the state of the judiciary in Alaska is excellent. With your support, we have developed a system that commands nationwide attention and respect. The strength of that system is its personnel. Some of those individuals happen to be judges, but for the most part they are deputy clerks of court, accounting officers, file clerks, secretaries, and other people whose names are never heard outside the Court System. Many of them live and work in the relative luxury of our larger cities, such as Anchorage, Fairbanks, and Juneau. Others, however, work in remote locations, often alone, without adequate facilities and without ready access to the information needed to handle difficult problems. Wherever they work, however, there is one quality that stands out: they are men and women totally committed to the concept of providing this state with the best justice system possible. The message that I bring to you from them is that they intend to get that job done, come hell or high water.

Thank you for inviting me to appear here today as their representative.

JOINT SESSION

YUKON TERRITORY LEGISLATIVE ASSEMBLY

AND THE

COUNCIL OF NORTHWEST TERRITORIES