

JOURNAL SUPPLEMENT

February 15, 1983

No. 7

THE STATE OF THE JUDICIARY

A Message by

Chief-Justice Edmund W. Burke

to the Thirteenth Alaska Legislature

February 15, 1983

Mr. President, Mr. Speaker, members of the Thirteenth Alaska Legislature, ladies and gentlemen. Thank you for this opportunity to speak on behalf of the Alaska Court System.

With me today are several people that I would like to introduce, all colleagues of mine in the judicial branch: Justice Jay Rabinowitz, a member of the Alaska Supreme Court since 1965 and twice its Chief Justice; Justice Warren Matthews, a member of the court since 1977; and Justice Allen Compton, who joined us in 1981. Also with me is Chief Judge Alexander Bryner of the Alaska Court of Appeals.

CHANGES IN THE JUDICIARY

Since the time of my last appearance before this body, several changes have taken place within the ranks of the judiciary.

In the First Judicial District, a Superior Court judge has been assigned to the Wrangell/Petersburg area. That judge is Henry Keene, formerly the District Court judge at Ketchikan. His position, created by the Legislature in 1982, came into being upon the resignation of the former District Court judge at Wrangell, Robin Taylor.

In the Second Judicial District, Michael Jeffery was appointed to the Superior Court in Barrow. This position, also created in 1982, should greatly improve our ability to provide needed judicial services in the Second District, particularly in the North Slope Borough.

In the Third Judicial District, former Anchorage District Court Judge Beverly Cutler was appointed to the Superior Court in Palmer. Judge Cutler is the first woman to be appointed to the Superior Court since statehood, and her presence in Palmer also marks the first appearance of a resident judge in that location above the level of magistrate. The Palmer Superior Court, like those in Barrow and Wrangell/Petersburg, was created by legislation passed in 1982.

At the present time, due partly to the elevation of Judges Keene and Cutler to the Superior Court, vacancies exist in the District Court in the First and Third Judicial Districts. The Judicial Council is meeting today and tomorrow, and nominations for appointment to three of those positions should be forwarded to the Governor within the next few days. Once they are received, the Governor has forty-five days within which to make his appointments from among those nominated. In the meantime, with the assistance of a number of acting judges, appointed for temporary service by the Presiding Judges in the First and Third Districts, the District Court is managing to handle its caseload, even in those areas where vacancies exist, although not without considerable effort on the part of all concerned.

One additional vacancy will occur shortly. Our absent colleague, Justice Roger Connor, has informed me that he intends to announce his retirement from the Supreme Court within the next few days. As soon as I receive formal notification of this action, I will ask the Judicial Council to begin the nomination process that must precede the appointment of his replacement. It is essential that this be done with a minimum of delay, as the prolonged absence of even one member seriously impedes the court's ability to perform its duties.

ANNUAL REPORT

You have already been provided with copies of the Alaska Court System's 1982 Annual Report. In delivering this message, I do not intend to burden you with unnecessary statistical details. Such information is adequately set forth in the Annual Report. I hope, however, that you will study the report carefully since it contains information that, although often tedious, is essential to an understanding of the needs of the Alaska Court System.

WORK OF THE COURTS

I regret to inform you that the caseload of all courts continues to grow. In fiscal year 1982, the Superior Court experienced a twenty-three percent increase in the number of filings over the level in fiscal year 1981. In the District Court, the non-traffic case filings alone increased eight percent. The combined caseload activity of the appellate courts, during that same period of time, showed a seventeen percent increase.

The reasons for these increases are numerous and often complex. Population growth, increased or decreased economic activity, and statutory changes all generate litigation in one form or another. Other changes in our society do so as well, although in ways that are often less obvious.

One major cause of the steady increase in our caseload seems to be the fact that courts are being asked, with greater and greater frequency, to handle problems that traditionally have been handled elsewhere. Whether this reflects a failure of our other institutions, which I suspect is often the case, or simply the belief that the courts are somehow better able to handle these problems, a questionable assumption at best, the result is the same: more and more cases are being filed every year.

This is a problem not peculiar to Alaska. The same phenomenon has been observed in each of our sister states, and in the federal courts as well. Our own experience, however, is disturbing enough. I was shocked to learn, for example, the actual number of cases presently assigned to each of the judges in the civil division of the Anchorage Superior Court. Five of those judges handle the bulk of the civil cases in that location, not including domestic relations and juvenile matters. The average caseload of each of these judges, as of January 31, 1983, was 811 assigned cases.

Whether the courts will be able to meet these increased demands remains to be seen. Adequate manpower will be needed in order to do so, but I am convinced that we cannot long survive if our only answer is more and more bodies each year. The time is fast approaching when we must reexamine our whole operation, including some of those concepts that, until now, have been considered fundamental to our system of justice. Hopefully, when it becomes necessary to do so we can identify and make needed changes without sacrificing those values that set us apart from most of the nations of the world.

FY 1984 BUDGET REQUEST

Our operating budget request for the coming fiscal year is \$36,904,000, compared to the current year authorization of \$34,355,300. The additional funding that we have requested represents an overall increase of slightly over seven percent. This increase is necessary due largely to inflation and our need for additional positions to handle the increased flow of paper, most of which are clerical in nature.

While this figure represents a considerable expenditure, it is important to consider it in context. The current operating budget for the entire Court System accounts for only about 2.2% of all state general fund expenditures, a percentage that has not changed significantly in several years. Thus, the cost of providing judicial services is small compared to the cost of operating the other branches of state government.

The caseload increase that I have already mentioned also helps to place the budget in its proper perspective. While many of the best things in life may be free, that has not been our general experience in the Court System.

Our 1984 capital budget request is comprized of one item: equipment to replace our statewide electronic recording system.

The Court System has utilized electronic court recording since statehood. The advantages of electronic recording have been repeatedly documented, most recently by the Legislative Budget and Audit Committee in a report dated March 21, 1980. This report identified a cost savings to the Anchorage trial courts alone of approximately \$800,000 per year, due to our utilization of electronic recording rather than manual court reporting services.

This request is due to the fact that our present system is now obsolete. The unavailability of new or replacement machines that are compatible with our present system makes it necessary to change.

ANCHORAGE COURT FACILITY

One of the most significant needs of the Alaska Court System for fiscal year 1984 is to begin construction of a major addition to the Anchorage Court complex. This need is extremely critical. Just as Anchorage has outgrown its airports, many of its roads, and other public facilities, the Anchorage courthouse is no longer large enough to adequately house many of the activities that are essential to the efficient operation of an integrated court system. Serious overcrowding is the rule in most parts of the building and several state agencies that should be located there, as they once were, have been required to move to other locations. Indeed, most of our own administrative staff has been housed in rented space for upwards of three years.

Unfortunately, there have been many delays in getting this project under way, not all of them related to funding. Our planning has been hampered by our inability to obtain any clear statement of policy from the City of Anchorage on a number of items, including the future of one or more of the existing buildings on the land that we have already acquired for this purpose.

The construction of any addition to our present facility, if it is to serve its purpose, must be efficient and adequate to serve our needs. If this cannot be accomplished within the space that is available to us, I see no alternative but to begin exploring the possibilities of relocating the Court System, to a suitable site outside of the downtown area. Hopefully, this will not become necessary.

OFFICE OF ADVOCACY

A significant part of our operating budget is the amount needed to pay attorneys appointed to defend indigent persons accused of crime. The appointments paid for by the Court System include those where a conflict of interest prevents representation by the Public Defender Agency. We also pay attorneys appointed to serve as guardians ad litem and those appearing in certain civil cases, including children's proceedings and divorce cases. In addition, we provide public guardian services.

The public guardian's role, as a provider of social services, stands in sharp contrast to the court's primary responsibility, which is the adjudication of disputes between adverse parties. Also, we see a serious conflict of interest in the present system, when the public guardian, an employee of the Court System, becomes an advocate seeking relief before the same court that employs him, as will often be the case.

With regard to court appointed counsel, although it is appropriate for the court to identify the need for counsel in a given case, ongoing supervision of his representation is an administrative function. Also, we have learned that the cost incurred when we appoint private counsel is usually several times that incurred when the same services are provided by a state agency, such as the Public Defender.

Thus, we believe it is both inappropriate and costly for the Court System to continue to oversee these functions. We, therefore, propose the creation of an Office of Public Advocacy within the executive branch. This office would provide public guardians to persons unable to otherwise procure guardianship services, guardians ad litem when required by the court, and experts and visitors in all guardianship cases. The office would also provide legal representation and/or guardian ad litem services to minors in custody proceedings, representation in Public Defender conflict cases and other related services. It is estimated that such an office could save the state as much as \$750,000 in fiscal year 1984 alone.

DELAY AND THE COST OF LITIGATION

Reductions in delay and the cost of litigation continue to be primary goals of the Alaska Court System. The achievement of these goals is complicated by the increase in case filings, but there is much that can be done.

My own court recently began holding weekly conferences on all pending matters, a change that has already proved beneficial. In the trial courts, changes in calendaring methods and an increased determination on the part of the courts to play an active role in the preparation of all pending cases have shown good results. Other steps are already in effect or are being considered.

In 1982, the Court System embarked upon a large scale project to automate its operations. With the aid of micro computers and other word processing equipment we hope to more efficiently control and direct the activities of all courts, while at the same time minimizing our need for additional staff.

Other measures that will allow us to take advantage of the new technology are also being studied. One example is an undertaking to determine the feasibility of utilizing a video hook-up between the court and certain jail facilities, which could be used to conduct arraignments and other proceedings, thereby decreasing the cost and security risk involved in transporting prisoners between the jail and the courthouse for routine matters.

Another project is one aimed toward simplification of the civil litigation process, which will be carried out with the assistance of the Western Regional Office of the National Center for State Courts. This project got under way when I recently appointed three committees. After appropriate study, these committees are expected to develop specific recommendations on ways to simplify the procedures involved in three major areas: domestic relations, commercial and personal injury litigation. Each committee is composed of persons representing the various interests involved, including the public. Thus, for example, the committee on personal injury litigation consists of members of both the plaintiff and defense bar, the trial court judge, and an insurance company executive.

It is hoped that these measures, and others that may be taken in the months ahead, will improve our performance at all levels. Some of that improvement must take place in the appellate courts. Although considerable progress has been made by the trial courts, despite their ever increasing case-load, the appellate courts of Alaska still process many of their cases at a pace that is unacceptable. This is of concern to us all and I hope to be able to report a significant change when I next address this body. The ability to improve is there, as well as the desire, and I believe that a great deal can be accomplished without additional resources. Mainly, what needs to be done is to increase our efficiency by adherence to the internal operating procedures that we have already adopted.

Someone once said that the average congregation would be better served if sermons on the avoidance of sin were delivered by the worst sinner in the flock, rather than its minister, although I suppose the two titles are not necessarily inconsistent. In any event, being both the designated leader of the judicial flock and one of its worst sinners, I feel eminently qualified to preach on the continuing problem of delay in the courts.

PEREMPTORY CHALLENGE

A related problem is one caused by the right to a peremptory challenge. This right, which you gave to litigants in 1967, enables a party or his attorney to disqualify a judge without first establishing genuine cause. The problem is one of efficient administration of the courts, particularly in single judge locations.

As many of you know, it recently became necessary for the Presiding Judge in the Third Judicial District to transfer Judge Hornaday from Homer to Anchorage. The sole reason for this action is the fact that Judge Hornaday is being challenged in over eighty percent of the criminal cases assigned to him for trial. In order to handle those cases it became necessary to send other judges to Homer, a process that is both costly and disruptive of the business of the courts in other locations.

Similar problems have arisen elsewhere, although never to the degree seen in Homer. The potential, however, is there. At any moment, a judge in a single judge location can be rendered ineffective by the use of the peremptory challenge. In multi-judge locations the problem is less serious because of the ability to reassign cases from one judge to another, without calling for outside help. Even in these locations, however, the peremptory challenge continues to influence the efficient operation of the courts.

Finding an acceptable solution for this problem is not an easy task. There are respectable arguments on both sides of the issue. The problem, however, is one that you should address.

CITY PROSECUTIONS

The performance of the Public Defender Agency has a direct impact on the operation of courts. Due to the agency's caseload, the efficient handling of criminal cases is a serious problem. One reason for this is the fact that a considerable part of the agency's work is the defense of indigents accused of violating local laws. Last year, over twenty percent of the agency's statewide caseload involved alleged ordinance violations.

1,830 of those cases were handled by the Anchorage office alone, where four of the sixteen lawyers on the staff devote all of their time to the handling of city prosecutions.

Despite the fact that it is the city's obligation, as the prosecuting authority, to provide representation in these cases, this burden has been left entirely to the state.

I suggest that it is high time for local government to begin paying their fair share. They, rather than the state, should provide the funding needed to defend those cases brought under their own ordinances.

This requirement would have two immediate benefits: First, it would encourage careful preparation and screening on the part of local prosecutors, which in some locations is not always the case. Second, it would allow the Public Defender Agency to efficiently handle those cases involving violations of state law with existing staff, which is not possible at the present time.

In making this proposal, I must emphasize that I am not suggesting that the state should fund fewer positions in the Public Defender Agency than it does now. The agency is already almost a dozen lawyers short of the number needed to handle the maximum per attorney caseload once recommended by the Law Enforcement Assistance Administration. I am only suggesting that the cost of providing the defendant with counsel in cases brought under local law, should be charged to those responsible for the prosecution of those cases.

NEW LEGISLATION

I hope that in enacting new legislation you will keep these problems in mind. Our ever increasing need for additional staff, more equipment and more space, is due in large part to burdens that you have thrust upon us. The same is true of many agencies in the executive branch. You, and the people you represent, must recognize one simple fact of life: new rights and remedies, increase criminal penalties, and other such changes invariably have a substantial price tag attached to them. Unless you are willing to provide the money that will be needed to pay for these changes you cannot expect them to be implemented with any degree of success.

CONCLUSION

Although we have our problems, the Alaska Court System is generally regarded as one of the best in the nation. If you have any doubt about that, I suggest that you look closely at some of the systems existing in the other states, and talk to the people in those areas.

The strength of our system is in the men and women who operate it. Some of those people are judges. For the most part these individuals are dedicated professionals who have acquired their positions only after years of study and the completion of a required number of years in the practice of law. Often they could make substantially more money doing something else, but choose not to do so because they like their work and regard it as a position of honor.

The other people in the system, about whom you seldom hear, are the clerks, secretaries and administrative personnel without whom the system could not function. These people, like the judges, are deeply committed to what they do. Whatever you may have heard about government workers in general, I can promise you that they earn every penny paid to them.

Again, I thank you for inviting me here today to speak on their behalf.