State of the Judiciary
Chief Justice Jay A. Rabinowitz, Alaska Supreme Court
Message to the Legislature
March 6, 1979

This marks the ninth occasion upon which the Chief Justice of the Alaska Court System has been accorded the privilege of addressing a joint session of the Alaska State Legislature upon the subject of the state of Alaska's judiciary. We in the judiciary are deeply appreciative of the invitation and share your belief that, despite the necessary and inevitable tensions inherent in a tripartite form of government, understanding can be strengthened by this opportunity.

Under Alaska's Constitution, the chief justice is selected by the justices: of the Supreme Court to serve as chief justice for three years. In September 1978, Chief Justice Robert Boochever's term expired. I think this an appropriate occasion to accord public recognition to the remarkable leadership Chief Justice Boochever demonstrated throughout his three-year term of office. In large measure due to his brilliance, conscientiousness, and unflagging energy, the Alaska Court System met the challenges of a dramatic growth in Alaska's population and diversification in its economy, which resulted in a greater and more complex volume of litigation at all levels of the Alaska Court System.

One of the most basic of the functions provided by government to its citizens is access to the courts in order that disputes between citizens, and between citizens and government may, with reasonable dispatch, be fairly and finally resolved. This dispute resolution role, and the articulation of rules of law so that similar disputes may be avoided and an element of certainty infused into society's dealings, is allotted to the Alaska Court System under Alaska's Constitution. The Alaska Court System has, I believe, thus far done an excellent job in carrying out its constitutional mandate, due in large measure to the efforts of dedicated and hard-working administrative staff, magistrates, district judges, superior court judges and justices of the Supreme Court. Not to be overlooked is the role played by Alaskan lawyers who have, on the whole, consistently demonstrated high levels of advocacy skills and ethics in litigation before Alaska's tribunals, and have rendered valuable assistance through voluntary service on numerous advisory committees which have assisted the Supreme Court in carrying out its ruling-making powers and functions.

I think it is apparent that as Alaska's population increases, its economy further diversifies, and the lifestyles of many of its citizens become more complex, the volume and difficulty of the issues necessarily faced by Alaska's courts will be significantly changed. I wish to assure you that we will address these challenges and will continue to make every reasonable effort to effectively allocate our limited judicial reserves within the constraints of an operating budget which comprises only 2.4 percent of the total government budget of Alaska.

THE SUPREME COURT

I believe that the Supreme Court is at, or very near, a saturation point. By this I mean that we have reached a point where the demands upon our judicial resources are such that, without modification of existing appellate structures, accompanied by a revamping of relevant

procedures, the quality of justice may be impaired due to insufficient time to give particular cases the study they warrant, and prolonged delays in reaching final decisions in those appeals.

Chief Justice Boochever pointed out two years ago that each year there is a case filed in the Alaska Court System for every four women, men and children who reside here. This somewhat astounding volume of litigation seems to continue unabated even at the appellate level. On the national average, there is one appeal for every 2,034 citizens. In Alaska we have the fact of one appeal for every 933 citizens, or three times more appeals than the national average.

At the end of 1978, this seeming penchant for appeals resulted in the Supreme Court of Alaska having pending before it more cases than at any time since Alaska obtained Statehood. On January 1, 1979, 557 appeals were pending, compared to 507 the year before and 366 the year before that. When petitions for review and original applications are counted, the Court had 624 matters pending before it on January 1, compared to 554 and 391 in the immediately preceding years.

To further illustrate the problem, the Supreme Court of Alaska handed down 237 opinions in 1978, or about 47 opinions per justice. In 1975, the court authored 122 published opinions. In 1975, the court disposed of 299 appeals, petitions for review, and original proceedings. By 1978, we had nearly doubled our dispositions to a total of 560. We have, I submit, reached the limit where five justices can adequately manage the appellate caseload, as presently structured, and still meet our constitutional obligations. What is really significant here is not solely the problem of an overburdened judicial tribunal. What is important is that the reasonable expectations of Alaska's citizens that their disputes be neutrally, intelligently, and expeditiously resolved must be realized, as economically as possible.

In his last message to this joint body, Chief Justice Boochever advised that the Alaska Court System was studying various potential solutions to its burgeoning caseload and would present a concrete proposal to this Legislature. As a result of an exhaustive year-long study and numerous conferences, it was decided to seek remedial legislation in the form of an intermediate appellate court. In reaching this conclusion, we carefully considered the alternatives of asking you to increase the number of justices on the Supreme Court from five to seven; requesting funding for expansion of the Supreme Court's central staff of research attorneys: internally dividing into panels with our available personnel; and requesting an intermediate appellate court.

With the exception of the latter, it was determined that each of the alternatives had serious defects ranging from an actual increase in disposition time, and loss of efficiency, to dilution of the law-making role of the Supreme Court.

The intermediate appellate court bill (Court of Appeals), which is presently being considered by the Senate, reflects our judgment that this alternative is a necessary and viable solution to the problem of rational management of our appellate caseload. Passage of this remedial legislation will in no way result in the diminution of the Supreme Court's constitutional grant of final appellate jurisdiction. The bill provides that the Supreme Court will have the discretionary power to hear any appeal from the Court of Appeals. The net gain, as we perceive it, is that with this discretionary authorization the Supreme Court can still hear criminal cases which involve constitutional issues or questions with either procedural or substantive ramifications beyond the confines of the particular case.

The proposed legislation calling for the creation of a three-judge intermediate appellate court will result in the quickening of the resolution of criminal appeals, and will in turn relieve both the Superior Court and the Supreme Court of portions of their respective case loads. The Superior Court will benefit through the removal of the necessity for Superior court judges to devote time to hearing criminal appeals arising from District Court misdemeanor prosecutions; and the Supreme Court will be relieved of the necessity to hear all sentence appeals from the Superior Court as well as all criminal appeals from the Superior Court. Thus, we anticipate an overall speeding up of the criminal appellate process and significant savings of judicial time at both the Superior Court and Supreme Court levels.

You are all keenly aware that the Supreme Court has been called upon to rule on a variety of cases of great public interest and concern, not the least among them being the challenges to the validity of the recent primary election and questions relating to the proper allocation of Alaska's resources. A careful reading of a sampling of the Supreme Court's opinions in these areas affords some degree of insight into the complexity of appellate problems and the efforts which must be expended before a decision is reached and published. In order to ensure that the cases which reach the Supreme Court of Alaska are given the thoughtful and careful scrutiny that has been the hallmark of the Supreme Court, we deem it imperative that you consider passage of the proposed intermediate appellate court bill. Without enactment of this remedial legislation, I have grave reservations as to whether the Supreme Court can successfully cope with its appellate workload; preserve its standard of careful judicial scrutiny; and maintain the excellence of its work product. It is within this context and against this background that I urge you to evaluate the Alaska Court System's request that an intermediate Court of Appeals be established.

TRIAL COURTS

We are indeed fortunate in the quality of most of the judicial officers who have come to the bench in the twenty years of Alaska's statehood. These are the men who labor in the judicial trenches, so to speak, and the District Court judges are really in the front lines of the judicial process. It is at the District Court level. that most citizens come into contact with the Alaska Court System.

And, there is a lot of contact. Last year, over 115,000 cases were filed in the District Court alone, an increase of 4 percent over 1977. Non-traffic filings increased even more, by 12 percent over last year. Most of the substantial increases came in Barrow, Kotzebue, Wrangell, and Petersburg, though there was a substantial increase in the misdemeanor trial rate in Anchorage. Small claims filings statewide increased by one-third over what they were in 1977, probably partially as a result of the expansion of the small claims limit from $1,000 to $2,000, which you made effective last year. Still, District Court civil filings in 1978, other than small claims matters, increased 10 percent over 1977. In light of these statistics, we are requesting the addition of one District Court judge for Anchorage in order that the pending civil litigation be more expeditiously addressed.

At the Superior Court level, there were over 13,000 cases filed in 1978, a slight decrease from 1977. There was a slight increase in civil filings and in probate cases, but all other categories were down. On the criminal side, 1,066 felony prosecutions were commenced and 1,024 felony dispositions entered in 1978. I should advise at this point that we are asking for your approval of an additional Superior Court judge for Anchorage. We believe this request is warranted due to

the fact that there has been an approximate 25 percent increase in the overall workload of the Superior Court in Anchorage since 1975. Given this increased caseload, and the priority which must be given criminal trials, under constitutional and rule mandates providing for a speedy trial, it is imperative that we have this additional judicial officer in order to prevent further delays in the resolution of important civil litigation. For it cannot be denied that there is a problem of delay in the processing of civil litigation in the Superior Court at Anchorage.

We are also requesting that you approve the creation of a Superior Court judgeship in Kotzebue. This proposal has minimal budgetary consequences since, if you approve this request, it is our intent to abolish the District Court judgeship which is presently located in Nome. As we view it, the presence of two Superior Court judges in Northwestern Alaska will give both urban and rural citizens residing there improved judicial services and should result in less of a loss of judicial time than formerly resulted when the resident Superior Court judge was peremptorily disqualified from a given case.

Further, I should mention two projects which our able Administrative Director and his staff are presently studying. One is a proposal, which will be submitted to you at the outset of your next legislative session, to remove from the Alaska Court System the responsibility for the evaluation and payment of attorney's fees claims for services rendered by members of the private bar in conflict cases in those instances where the Public Defender Agency is ethically precluded from representing the indigent defendant. Under this proposal, it is further contemplated that the Court System would be relieved of similar responsibilities in those cases where it is necessary to appoint members of the private bar as guardians ad litem for indigent civil litigants. Our present thinking is that a conflicts office should be created within the Governor's Office to handle these types of cases as well as guardian ad litem appointments. The virtues of this proposal are an estimated $400,000 annual savings in legal fees, as well as a savings in administrative and judicial time which is presently being invested in the evaluation of conflict and guardian ad litem bills presented by the attorneys involved.

The second development which I think you should be apprised of is the fact that Mr. Snowden is presently negotiating with the federal government for rental of space in the soon to be vacated federal court facilities in Anchorage. The existing state courthouse facilities in Anchorage not only house court personnel but also the Public Defender's Office and portions of the Anchorage Attorney General's staff. These physical facilities are now inadequate in light of current demands. In the event a fair lease arrangement can be arrived at with the federal government, we intend to seek your fiscal support to obtain these highly suitable and needed court facilities.

JUDICIAL SALARIES

The Salary Commission has recommended pay increases of 8 percent for judges for the next fiscal year and cost-of--living increases for the following fiscal year. It is my belief that these recommendations are eminently appropriate and fully justified for the following reasons: Firstly, the Salary Commission' s proposals are within the President of the United States' voluntary wage and salary anti-inflation guidelines. Secondly, unlike other components of Alaska's state government, no judicial officer has received a salary increase since 1975. Given the extent of inflation that has taken place since 1975, passage of the Salary Commission's recommendations will not even completely remedy the diminution in effective purchasing power caused by inflation. In the event the Salary Commission's recommendations are rejected and no salary

increases are granted to the judiciary, it will mean that by January 1, 1981, there will have taken place an unremedied 42 percent increase in the cost of living since July 1975. This will result in vastly diminished salaries for all levels of judges within the Court System. For instance, a total rejection of the Salary Commission's recommendation will have the consequence of reducing a justice's effective salary to approximately $32,000 as of January 1, 1981. Thirdly, it is of the utmost importance that Alaska's judiciary continue to attract and retain the most experienced and best qualified lawyers in the state. In assessing the merits of the Salary Commission's proposal, I urge you not to lose sight of the fact that the potential source of judicial candidates comes from a limited resource, namely, duly qualified Alaskan lawyers. Given the necessary qualifications for judicial office, it should be apparent to you that existing judicial salaries are not comparable with what the experienced and skilled successful attorney can earn in Alaska today. I've previously alluded to the wide range of complex litigation that comes before Alaska's tribunals. In order to ensure that these important matters will continue to be decided by judges of outstanding legal qualifications, I urge you to adopt the Salary Commission's recommendations.

RACIAL BIAS, THE ALASKA JUDICIAL COUNCIL, AND THE ALASKA COURT SYSTEM

For approximately the last three years the Alaska Judicial Council has been studying the effects of the Attorney General's ban on both charge and sentence bargaining in felony prosecutions. At a meeting of the Governor's Commission on the Administration of Justice in July 1978, the Judicial Council released a preliminary study. This study analyzed felony sentences imposed between 1974 and 1976 by the Superior Courts in Juneau, Fairbanks, and Anchorage. For the crimes of burglary, fraud (and related bad check-crimes), and drug cases, the study indicated that the sentences imposed upon Blacks and Alaska Natives were substantially longer than those meted out to Caucasians with similar backgrounds and for similar crimes. The Alaska Court System's own review of the Judicial Council's statistical data indicated that for certain categories of crimes Blacks did receive lengthier sentences, and that Alaska Natives are less likely to receive probation. At this time I can advise you of the steps we have taken in light of the Judicial Council's study.

Firstly, the Supreme Court has agreed to posit the existence of racial bias, either overt or unintentional, at every discretionary stage in the judicial process. Given this fundamental premise, the Supreme Court has requested that the Judicial Council monitor, on an annual basis, all sentences imposed both at the superior court and district court levels. We have further requested that this monitoring not be limited to Juneau, Fairbanks, and Anchorage but that it be expanded to include all other urban centers as well as significant rural locations such as Bethel, Barrow, Kotzebue, and Dillingham. An expanded annual review of sentences will enable all concerned to have an accurate and current record of what is happening through the state in our criminal courts. It will also assist the Sentencing Guidelines Committee in formulating appropriate criteria to be used in sentencing and will present it with a broader statistical base from which it will be possible to evaluate the sentencing patterns of individual judges.

Secondly, in conjunction with your recently enacted comprehensive Criminal Code, the Supreme Court of Alaska appointed a Sentencing Guidelines Committee. The Committee's task is to articulate relevant and racially neutral factors which are to be taken into consideration by the sentencing courts in conjunction with your previous determination to adopt a presumptive sentencing system for the imposition of criminal sanctions. To this Sentencing Guidelines

Committee, which is composed of judges and lawyers, the Supreme Court has appointed representatives from the Anchorage Native Caucus, NAACP, and the Alaska Federation of Natives. For it is our belief that strong minority representation is necessary on the Sentencing Guidelines Committee to ensure that relevant and unbiased sentencing standards are developed.

Thirdly, the Alaska Court system, through its representatives on the Governor's Commission on the Administration of Justice, is actively supporting the request of the Anchorage Native Caucus for a system-wide study of the criminal justice system. The goal of such a study would be to determine at what points, if any, racial discrimination exists, in order that appropriate remedial measures can be fashioned.

Fourthly, aside from the diagnostic efforts of the research and analysis that I have described, the Alaska Court System is attempting to take steps in other areas. We continue to open all of our administrative support positions at all levels to equal employment opportunity and to expose personnel to seminars on related problems, and we have allocated a major portion of our annual Judicial Conference, which is scheduled to be held in June at Sitka, to the subject of racial bias.

To that end, we have been working closely with the Community Relations Service of the. United States Department of Justice and the Alaska Human Rights Commission. We are also in contact with national experts, who, with the involvement of Alaska Natives and Blacks, will present a program to the June Judicial Conference designed to increase the cultural and sociological awareness of the judges and justices of the Alaska Court System.

The foregoing is a summary of the actions the Alaska Supreme Court has taken in response to the Judicial Council's findings. I would be less than candid if I failed to discuss additional facets of the problem of racial bias. The Judicial Council's study has had the effect, in the minds of many, of indicting and convicting every Superior Court judge of racial bias. This is so despite the fact that the Council's own study shows that for certain crime categories, such as homicides or rapes, no racial biases could be detected in the sentencing patterns of the Superior Courts for the years involved in the study. The same data also disclose that for some categories of crimes minorities do, in fact, receive lighter sentences than their Caucasian counterparts. I think it of further significance that the Judicial Council has advised that, because of the insufficient number of cases involved in the study, it is unable to particularize which judges are racially biased.

On the other hand, we must consider the members of the minority groups who have allegedly been discriminated against in sentencing. As to these defendants, the Public Defender Agency and various civil liberty groups are aware that the Judicial Council's findings and research materials are all matters of public record, and that there are existing legal avenues through which judicial relief may be obtained for those individuals who demonstrate that they are serving sentences which are reflective of racial bias.

Racism is an insidious phenomenon. It is a subject that does not lend itself to detached discussion. I can well appreciate the concern, if not rage, of affected minorities who have suffered from the various ways in which racial bias can manifest itself. Thus, I wish to assure all Alaskans that the Alaska Court System is and will continue to undertake efforts and devise procedures to insure that all litigants in the courts of Alaska do in fact receive equality of treatment under the law. Further, I have full confidence in the integrity, honesty, and sincerity of my colleagues in Alaska's Judiciary, and pledge that we will continue our efforts to fulfill

Alaska's constitutional mandate that all persons are equal and entitled to equal rights, opportunities, and protection under the law.

CONCLUSION

Just two months ago, on January 3rd, Alaska celebrated the twentieth anniversary of its admission into the Union. I think it is an accurate assessment that we have come of age during this period and that Alaska's judiciary has played a vital role in that maturation process.

Although the emphasis of this address has been focused upon the warts and wens of the Alaska Court System and the need for reforms and safeguards, it remains a reality that many of our sister states and bar organizations view Alaska's judiciary as a model judiciary. What is of enduring significance is that our democratic form of government in Alaska has the capacity for self criticism and to undertake ongoing reforms in response to the felt and demonstrated needs of its citizens. This is what truly distinguishes life in the United States and in Alaska from most other political societies on this planet. For the end of Alaska's government is justice for all its citizens, and we in the judiciary shall constantly strive towards making this goal a reality.