

State of the Judiciary
Chief Justice Edmond W. Burke, Alaska Supreme Court
Message to the Legislature
February 28, 1984

President Kerttula, Speaker Hayes, members of the House and Senate, ladies and gentlemen: I welcome this opportunity to report to you on the state of Alaska's judiciary.

With me today are my colleagues on the Alaska Supreme Court, Justices Jay A. Rabinowitz, Warren W. Matthews, and Allen T. Compton, and our newest member, Justice Daniel A. Moore. Justice Moore took office last fall, following the retirement of our former associate, Justice Roger G. Connor. I bring you greetings also from those members and employees of the judicial branch not present.

AN OVERVIEW

The state judiciary, otherwise known as the Alaska Court System, consists of four levels of courts: the Supreme Court, a five person court having final appellate jurisdiction and administrative responsibility for all courts, and original jurisdiction in matters pertaining to bar admissions and discipline; the Court of Appeals, a three person court with appellate jurisdiction limited to criminal cases; the Superior Court, a twenty-six person court with limited appellate and general trial jurisdiction; and the District Court, a trial court having limited civil and criminal jurisdiction. The District Court, in addition to fourteen district judges, is served by a number of magistrates. The latter handle a substantial part of the district court's caseload, particularly in rural areas.

At the present time, the Court System has 579 authorized positions, including judges. These individuals serve in fifty-five separate court locations throughout the state. The court system's operating budget this fiscal year represents a 1.7% share of the total general fund budget. The amount that we are requesting for next year is approximately \$39.8 million, an increase of roughly 8% made necessary by inflation and a growing caseload. Our share of the total state budget, however, will not change significantly.

JUDICIAL APPOINTMENTS

Two new District Court judges were appointed during the past year. Both sit in Anchorage. Natalie Finn and William Fuld were appointed to replace judges voted out of office at the last general election.

This month, Karen Hunt was sworn in as a judge of the Superior Court. She, too, sits in Anchorage. Judge Hunt was appointed to the position left vacant when Justice Moore became a member of the Supreme Court.

There are two positions waiting to be filled: a District Court seat in Juneau, where the incumbent recently resigned, and a Superior Court seat in Valdez. The latter position was created by this body at its last session; that legislation became effective when the District Court at Valdez was recently abolished.

CASELOAD INCREASE

In common with courts across the country, we continue to see a substantial increase in case filings at all levels. Between FY 82 and FY 83, Supreme Court filings increased 23%. In the Court of Appeals, filings increased 27%. Superior Court filings increased only about 7%, but the increase over a two year period, since FY 81, was 31%, and felony filings in the past year alone were up 22%. At the District Court level, the increase between FY 82 and FY 83 was approximately 10% overall, with a 15% increase in drunk driving cases.

The last statistic is important because it also means a considerable increase in the number of cases actually tried by the District Court. Experience has shown that defendants accused of drunk driving are far more likely to demand a trial than are other misdemeanor defendants, due to the certainty of jail time and other sanctions in the event of a conviction. Also, these defendants are more likely to insist on a jury trial, where, according to a recent study by the Judicial Council, the likelihood of an acquittal is greater than in cases tried by a judge without a jury.

In addition, it appears that the cases, in general, are becoming more complex. That, at least, is the opinion of many of our trial judges. Civil and criminal trials lasting several weeks are now routine. Thus, the amount of time and deliberation needed to dispose of individual cases is becoming greater, often requiring a degree of effort that would once have been considered extraordinary.

I would like to be able to say that these trends are temporary. One cannot, however, ignore the realities of the society in which we live. Whether we like it or not, Alaska is the fastest growing state in the nation. The motto of this state, "North to the Future," which you adopted in 1967, is not a phrase without meaning. Alaska's economy, compared to that of most other states, is booming and the freedom and opportunity that lured most of us here continues to attract others. To suppose that those people will suddenly lose interest in Alaska and all that it has to offer would be foolhardy; they are as capable of dreams as you and I. Thus, they will continue to come here, no doubt in ever increasing numbers. Their arrival means increased business for the courts.

Our caseload statistics are influenced also by the actions of this body. Legislation such as that dealing with domestic violence, guardianship, drunk driving, and presumptive sentencing in criminal cases has a direct bearing on the number of cases filed and the likelihood that a particular case will go to trial. This is not to suggest that such legislation is not needed or that it is unwise. It is simply a recognition of one reason for the increases that we have seen.

Because of these and other factors, it is clear to me that our statewide caseload will continue to grow. The challenge that confronts us is how to deal with that increase.

USE OF COMPUTERS

Beginning in 1982, the Court System began an automation project that is now nearing completion. With the use of a microcomputer system, we will eventually automate most of the record processing and case management tasks that are required of a modern court system. This, we believe, will enable us to handle the ever increasing caseload with minimum increases in personnel. We expect to have this project fully operational by the end of 1984.

SIMPLIFIED PROCEDURES

Another project worthy of mention is one designed to simplify civil litigation in Alaska. This project, which began in 1983, is a joint effort of the Alaska Court System and the National Center for State Courts. The project is intended to determine methods whereby the procedures that we now use in civil litigation can be simplified, thereby producing reduction in both delay and cost to the litigants. The committees appointed to study this problem have now completed their work, and a final report has been submitted. The report includes specific recommendations that will now be considered by the Supreme Court. Those recommendations, I hope, will lead to the adoption of new methods and procedures that will enhance both the quality of our performance and our ability to dispose of greater numbers of cases without additional court system personnel.

NEW POSITIONS

Despite such efforts there will always be a need for qualified people. The increase in our caseload compels us to ask for a number of new positions this year, including additional judges. These judges are most needed in Anchorage, a community that continues to grow at an alarming rate.

The Anchorage District Court has operated with the same number of judges for the past several years. Its caseload during that same period has grown tremendously, particularly in the number of drunk driving cases being filed. As already noted, those cases are not only more numerous, they are more likely to result in a trial. Also, due to the serious nature of the offense and the consequences in the event of a conviction, they are vigorously prosecuted and defended, often requiring as much effort to dispose of as many felony cases.

The Anchorage District Court is at the point of becoming unable to handle its caseload. Without the addition of at least two new judges it is a near certainty that the court will soon have more work than it can be expected to do. The result will be intolerable delay in its civil calendar, and the possible loss of criminal cases for failure to provide a speedy trial. As a result, we have no choice but to ask for two additional District Court judges. So far we have been able to avoid this, by the use of acting judges and temporary assignment of judges from other courts, but those are measures that will not suffice much longer.

At a recent meeting, the Anchorage Superior Court judges urged me to seek two additional judges for their court as well. After careful study, I advised them that we would request one additional judge this year, with a clear indication to you that you can probably expect a request for another judge next year. This was done not because two judges aren't already needed, but because we recognize the difficulty that such a request presents for you and the need to minimize our demands to the extent possible.

The Anchorage Superior Court has ten judges at the present time. Four of those judges are assigned to the criminal division. The other six, one of whom is the presiding judge, are assigned to the civil division. Between FY 81 and FY 83 there was a 130% increase in the number of felony trials in Anchorage, and that trend continues. In July 1981, each full time civil division judge had an assigned caseload of approximately 580 cases. As of last December their assigned caseload averaged better than 1000 cases per judge, not including juvenile and domestic relations cases. The increase in pending civil cases is due partly to the fact that the civil division judges also handle approximately 25% of the felony cases that go to trial. The bottom line is there is an

immediate need for at least one additional judge in the Anchorage Superior Court, if not two. When provided, it is anticipated that the new judge will be assigned to the criminal division, due to the rapid increase in felony trials. This, we hope, will avoid much of the necessity of assigning civil division judges to criminal cases, leaving them free to devote their full attention to their heavy civil caseload.

ANCHORAGE COURTHOUSE

In my last two appearances before this body, I spoke about the need for a major addition to the Anchorage court facility. That need still exists and is becoming more critical as time passes.

Remodeling of the existing building has been completed and there is no space available for additional courtrooms and judges' chambers. Our clerk's office, in the trial courts, is crowded to the point of absurdity. Our administrative staff and other justice related agencies have been relocated to rented space in other buildings. In short, we are bursting at the seams.

The need for expansion is clear and deserves your immediate attention. I urge you, in the strongest terms possible, to recognize this need and deal with it during this session of the legislature. Not to do so can only mean added cost to the state, both in terms of the dollars that will eventually have to be spent and the decrease in our ability to provide badly needed judicial services.

REPRESENTATION FOR INDIGENTS

The constitutional right of all persons to the assistance of counsel in certain forms of litigation continues to be a problem. That the right exists is clear; the difficulty lies in how to provide required representation for those that cannot pay for it.

Representation in many such cases is provided by the Public Defender Agency and Alaska Legal Services, and the continued well-being of both of those agencies is vitally important. Given the amount and level of service that they provide to their clients, it would be a mistake not to do everything within our power to guarantee their continued existence and effectiveness. Duplication of those same services, by appointment from among the private bar, would be far more costly and less effective.

In many cases, however, particularly criminal cases, those agencies cannot represent a party, due to a conflict of interest. A classic example is the criminal case in which there are two defendants, both of whom claim the other defendant is the guilty party. At the present time, the court must appoint private counsel to represent one of those defendants, and pay his or her fees. The cost of doing so is considerable, even where only partial compensation is provided, which is what we are doing now.

One solution, which I proposed last year, is the creation of an Office of Public Advocacy within the Executive Branch. Such an agency, as I envisioned it, would not only provide indigent representation in criminal conflict cases, but also public guardian services, representation in child custody cases, and other related services.

I am informed that legislation creating such an agency has now passed the senate. I hope that it will be approved by the house as well. The dangers that I see if it does not are several.

First, the responsibilities of a public guardian are quite inconsistent with those of any court. A guardian is required to protect his ward and his decisions often result in litigation. These disputes must be resolved by the courts. Under the present system, however, the public guardian is a court system employee. The potential conflict should be obvious. Second, the cost of providing legal services by appointment among the private bar is demonstrably greater than when those same services are provided by a state agency. Also, there is a serious question concerning the extent of a lawyer's obligation to provide pro bono service. While he or she may have some obligation, as an officer of the court, it is questionable whether that obligation is unlimited and extends to the state at large. Third, a lawyer who does not practice regularly in these areas may lack both the expertise and interest necessary to do an adequate job for his client.

CITY PROSECUTIONS

Another proposal that I made last year would require cities and boroughs to pay for the defense of indigents made necessary by a decision to prosecute under their own ordinances. Such legislation, as I understand it, has come under heavy fire from local government entities, particularly my own, the Municipality of Anchorage. It has even been labeled "anti-law enforcement," a view that requires considerably more imagination than I possess.

My position on the subject remains the same. It makes little sense to me to require the state to pay the cost of defending in these cases. It has about all it can handle paying for its own. If a local government wants the state to foot the bill, it should allow the matter to be prosecuted under state law, leaving prosecution in the hands of the district attorney, a state official.

OTHER AGENCIES

Two state agencies that are often viewed as part of the Alaska Court System are, in fact, not. The Judicial Council and the Judicial Conduct Commission, like our respective branches of government, are independent agencies created by the state constitution. Their work, however, is of vital importance to the courts.

The Judicial Council nominates candidates for appointment to judicial office, conducts judicial performance evaluations prior to any retention election, and conducts other studies relative to the administration of justice. The contributions that it has made in all of these areas are many and worthwhile.

The Judicial Conduct Commission, as its name implies, investigates complaints against judges, based upon allegations of misconduct or disability. An effective conduct commission can do much to promote public confidence in the integrity of the judiciary, by identifying those unfit for judicial office and exonerating those wrongly accused.

These agencies, although completely independent of the Court System, deserve our support.

CONCLUSION

At the end of September, my term as Chief Justice will expire. Since consecutive terms are prohibited by the state constitution, there will be a new Chief Justice on October 1, 1984. That person will then have the honor that has been mine for the past three years, the opportunity to address this body, in a joint session, on matters pertaining to the state judiciary. Since this is my

last appearance as Chief Justice, at least for some time, there are a few thoughts that I would like to share with you that might not otherwise be appropriate.

I have been a judge in this state since 1970, and a member of the state's highest court for nine years in April. In that period of time the demands of judicial office have changed substantially. When I started, the work of a trial judge was time consuming and challenging, but it was not the gut-wrenching ordeal that it is today. There were fewer cases, they were less complex, and the bar's approach to litigation, while vigorous and effective for the most part, was not the duel to the death that it has become.

Some of this change is the fault of the judiciary. Much of it is the fault of the bar, and some of the fault is yours. For the most part, however, it is probably only a reflection of changes that have taken place in our society. Whatever the reason, I think it does pose a serious danger.

What I fear most is burnout among our judges. I don't know what else to call it. What I mean is the loss of the excitement and personal satisfaction that comes from being able to perform well in a position of trust and responsibility. I see signs of it in myself and I see it in many of my judicial colleagues, particularly those in the trial courts.

The problem is not one of inadequate salary or other material benefits. At the present time, we are paid well, have a good retirement system, and work in surroundings equal to or better than those of judges in most other states. The problem is simply one of too many cases and not enough time to handle them properly.

At the same time, there is much that we can be proud of.

The Alaska Court System is one that is respected and admired in every state in the union, and in other lands. The benefits of a statewide, unified court system are enormous. Ours is a system far superior to the patchwork arrangement that exists in many of our sister states, where central court administration is only a dream.

Another bright spot in our judicial history was the decision to adopt a system of merit selection and retention of judges. That system, which is the goal of leaders in most states without it at the present time, represents a compromise between the popular election of judges and appointment for life, without prior screening by a nominating commission independent of the governor. Although any system has its drawbacks, it is clear to me that ours is the best of the various alternatives that have been seen in this country. I would hate to see it changed, as has been suggested by some.

It has been a great privilege to be part of the state judiciary, and a particularly great honor to be selected for the office of Chief Justice. Although there have been a few times when I wished I had chosen to do something else, I have no regrets. Working with my fellow judges and our dedicated support staff has been worthwhile and personally rewarding.

Finally, thank you for your support and your willingness to listen. I hope that you will show my successor the same courtesy that you have always extended to me. God bless you all.