

State of the Judiciary
Warren W. Matthews, Alaska Supreme Court
Message to the Legislature
March 2, 1990

Introduction

In this report I want to give you some sense of what has happened in the judicial branch last year, what is taking place now, and what needs to be done in the future. It is a commonplace observance that the judicial, legislative, and executive branches are separate and independent branches of government. That is true with respect to each branch's core area of responsibility – adjudication in the case of the judicial branch. But there are also broad areas of interdependence. Courts require buildings and employees and equipment, and these must be paid for with legislative appropriations. I do not mean to imply that your interest is limited to that of overseers of the public purse. I know that you are sincerely interested, just as we in the judiciary are, in ensuring that Alaska is a just and caring society. And so I speak to you today not merely as interested observers, but as partners in the always challenging task which is the administration of justice.

Caseload

Nineteen eighty-nine has been another year characterized primarily by stability in case filings. Statewide, superior court filings have grown only slightly from 1988. Case filings have been essentially level in superior court for the past three years.

In the district courts, I reported a 10 percent decline in filings in my report last year. This year again there has been a decline but one of only four percent.

A preliminary look at district court filings for fiscal year 1990 indicates that the decline in district court case filings has stopped and filings seem to be slightly ahead of the 1989 rate.

In the supreme court, 1989 was the third year in a row in which we experienced no significant case filing changes.

The court of appeals experienced a six percent decline in filings. It also increased the total number of cases which it was able to decide.

Since this is the end of the 80's, I thought it would be useful and interesting to look at what has happened to the court system in the past decade.

First, there has been a very close correlation between Alaska's population increase and caseload increase. Over these ten years, the population increase was about 46 percent, while the superior court caseload increased by about 44 percent, and that of the district court by 40 percent. The court system has not expanded in personnel proportionate to the population increase -- there has been a 14 percent increase in the total number of judges, including magistrates and hearing masters, and a 28 percent increase in non-judicial personnel. Interestingly, the number of attorneys has just about kept pace with the population growth; there are now 42 percent more attorneys in Alaska than there were in 1980. There has been a disproportionately greater increase

in the number of felonies filed (72 percent), and in the number of children's cases filed (also 72 percent).

Judicial Changes

In 1989 the Honorable Gail Roy Fraties, the superior court judge in Bethel, died in office. Judge Fraties had a long and distinguished career in public service in Alaska, both as a prosecutor and as a judge.

The vacancy left by Judge Fraties was recently filled by Governor Cowper by the appointment of Dale Curda, a former prosecutor and long-time Bethel resident.

In Juneau, we have welcomed Judge Peter Froehlich to the district court bench. Judge Froehlich, a former assistant attorney general, replaced Judge Linn Asper, who has resigned.

In Anchorage, Governor Cowper appointed John Reese, a distinguished member of the private bar, to fill the superior court vacancy left by the resignation of Judge Douglas Serdahely.

Each of these three new judges is well qualified, and we wish them the best in their judicial careers.

Rules Changes

One area of shared responsibility between the legislative and judicial branches is that of court rules. In 1987 the court passed Civil Rule 90.3 setting out child support guidelines. This has been a controversial rule. We appointed a Child Support Guidelines Committee to make recommendations to the court as to changes in the guidelines. The committee solicited and considered public comment, conducted public hearings, and wrote an extensive report. The committee recommended some fine tuning of the rule but no basic changes. The supreme court has adopted the committee's recommendations. Civil Rule 90.3 remains controversial. It is an interpretative rule rather than a rule of practice and procedure, and thus may be changed by the legislature without a two-thirds vote. We invite you to review the Child Support Guidelines Rule and make such changes as you find appropriate.

This last year the court promulgated Alaska's first set of adoption rules. These rules are designed to ensure that state laws concerning adoptions are properly enforced. In addition, the rules incorporate the sometimes complex requirements of the federal Indian Child Welfare Act and should protect Native and tribal rights defined in the act.

The court's Probate Rules Committee drafted a completely revised set of probate rules in 1989. These rules have been adopted by the supreme court. They should make probate procedures easier to understand.

Mediation

In 1989 you included a legislative intent statement in our budget indicating your interest in having the court study the potential benefits of mediation. I appointed a task force for this purpose. We expect the task force to complete its work and issue a report next month.

This year you will be asked to fund a pilot project in mediation to be conducted in the courts in Anchorage and Fairbanks. The pilot project would involve the referral of some domestic relations cases to trained mediators. A comparison would then be made between the mediated cases and those going directly into the courtroom. We should be able to evaluate mediation in terms of such criteria as cost effectiveness, timeliness of resolution of disputes and satisfaction of the litigants, and determine if mediation should play a permanent role in our judicial system.

Continuing Judicial Education

Each year we hold a conference of all Alaskan judges. These are working conferences with programs designed to educate us concerning changes in the law and to improve the way that we conduct our courtrooms. Last year, for example, part of our program included a very informative session which was designed to make judges more aware of the rights and sensibilities of the victims of crime. This spring we are conducting a one and a half-day program concerning the problems of abused children in criminal and civil litigation.

Operating Budget

Our operating budget request for fiscal year 1991 is \$39,500,800. This reflects about a \$600,000 increase over this year's budget. The requested increase reflects in part a need to hire two new custody investigators, one for Anchorage and one for Fairbanks. Custody investigators assist the court in determining questions of custody and visitation in divorce cases, and their services are critical to fully informed adjudication. I am advised that both the Fairbanks and the Anchorage offices are severely overburdened at present.

The requested increase also reflects the need to hire three new employees, one each for Bethel, Juneau and Seward: a law clerk in Ketchikan: and position upgrades in Healy and Nenana.

In addition, the court's operating budget includes some additional funds for rental space. The Anchorage court outgrew the space available in the Anchorage courthouse several years ago. Our only short-term alternative is to move certain functions away from the courthouse and into rental space. We have requested \$27,000 for rental space for part of the family court section of the Anchorage superior court. The family court in Anchorage has experienced a 50 percent increase in workload as indicated by the number of filings since 1985.

Added funds are also needed because our rent has been raised in Aniak and Galena, and we need to rent an office for a magistrate in Togiak. Finally, our Bethel court is in need of remodeling, and we are asking for \$30,000 to accomplish this.

Capital Budget

This year we submitted several capital budget requests to the Governor's office.

One such request is \$865,000 as the court system's share of a 5,700 square foot building in Glennallen. This would be a combined facility which would also serve the State Troopers and the Department of Fish and Game. Apparently the structural and mechanical problems with the existing building at Glennallen are so serious that the fire marshal has ordered the building vacated by the end of this fiscal year. If the legislature will approve a new building, it appears that the fire marshal will allow us to stay in the old building during construction. If the funding

for a new building is not approved, then we will have to move by July 1, and we will have to find rental space to move to we have requested \$60,000 for rent and moving expenses to cover this contingency. If neither the capital budget nor the operating budget request is approved, court functions in Glennallen will regrettably have to be shut down and cases transferred to Palmer or Valdez. This will, of course, seriously inconvenience the people of the Glennallen area.

We have also requested some \$5,500,000 to upgrade the Anchorage district courthouse. An engineering study of this building identified a number of life-safety hazards. Apparently, the foundation and shear wall design is substandard. In the next great earthquake some experts predict that the graben which was only a few feet away in the 1964 earthquake will form under the building, creating a high risk of collapse.

The Anchorage district court building has many functional problems which this proposed budget item will not address. A full remodeling to address functional problems would probably not be cost effective as it would require an amount in excess of the 10 to 11 million dollars that the Department of Transportation and Public Facilities estimates an entirely new building would cost. We recognize that 5.5 million dollars is a lot to spend for no significant functional improvement. On the other hand, our engineers are telling us that we have a potential for disaster here – in effect a potential Nimitz Freeway. This is a building where we not only invite the public, in some cases we compel public attendance. Jurors and witnesses, and parties are required to spend time in this building. It seems right therefore, to make the building as safe as is reasonably possible.

One area in which many of our court facilities are deficient is in handicapped access. Court services, like all public services, should be accessible to handicapped Alaskans. To this end, we have requested \$550,000 to start a two-phase project to determine and remedy handicapped access problems at each of the 58 court facilities statewide. The amount requested to fund the first phase of the project would include assessment of access problems, development of cost estimates for correcting these problems, and funds for correction -of the known serious access deficiencies in some courts. Once cost estimates are developed, we would present a future capital budget for completion of the second phase.

We have also made two court technology capital requests. We have requested \$473,000 for renovating the equipment which we use to record trials. This money is also proposed to be used to build shielding so that the problem of radio-wave interference can be eliminated.

Our second request in the technology area is for funds for upgraded computer equipment. Our administrative director tells us that we lag behind other state agencies in record keeping by computers and this would enable us to serve the public more efficiently and more readily gather statistics about Alaska's justice system.

We have also requested once again \$2,200,000 to remodel our seriously overcrowded Kenai facility.

Finally, we have made a request which signals what is at least a temporary quietus in the effort to build a new courthouse in Anchorage. We have requested \$135,000 to pave and landscape the gravel parking lot between H and I Streets on Fourth Avenue, which the court system owns.

Currently the area is something of an eyesore and we feel an obligation to upgrade it aesthetically so that it is consistent with the rest of the downtown beautification project.

Judicial Council and Judicial Conduct Commission

I will address briefly some of the work of the Judicial Council and the Judicial Conduct Commission. Both bodies are constitutional entities which are separate from the court system and the work of each is critically important.

The Judicial Council must nominate prospective judges for selection by the governor. These nominations are made only after a process that includes a detailed poll of the bar, solicitation and consideration of public comments, and individual interviews with each applicant. The council will be filling eight to ten vacancies this year.

Another function of the Judicial Council is to evaluate judges who are standing in retention elections. There will be 19 judges on the ballot this fall – an unusually high number. The evaluation process includes consideration of a poll of the bar and of more than 1,000 peace and probation officers, and solicitation and consideration of public comments. The council has also established on an experimental basis a citizens' advisory committee in Anchorage to aid in the evaluation process. The committee will do court watching, survey jurors, hold public hearings, interview the judges up for retention, and send its recommendations to the Judicial Council. The council in turn will make public recommendations as to whether each judge or justice should be retained and intends to broadly advertise these recommendations. Another change from the last general election is that the council will give a statement of reasons in the event that it makes a recommendation that a judge not be retained.

The Commission on Judicial Conduct has the responsibility of hearing and acting upon complaints concerning Alaska's judges. It has been operating with a full-time staff since July in an effort to give a thorough and timely response to all complaints. The commission is currently seeking legislation which will open its formal hearing process to the public. The supreme court supports this legislation.

Judicial Salaries

Last year I spoke to you about the inadequacy of current levels of judicial salaries. I stressed that the Alaska public expects and has a right to be served by an intelligent, energetic and stable judiciary. I said that because of the non-competitive salaries now paid there was a danger that we would see a decline in the quality of our judges. I also noted that because most judges find their jobs to be challenging and interesting, they do not expect to make the same salary that they might make in private practice. However, when the gap between private practice salaries for experienced lawyers and judicial salaries becomes too wide, an unhealthy situation develops. For the most part, experienced, successful lawyers in private practice simply cannot afford to become judges. This has the effect of limiting the qualified applicant pool primarily to lawyers who work for government agencies.

There are two changes this year. The first is obvious. The compensation gap has widened with another year of inflation. Let me give you an example of the compensation gap. I got a letter a few weeks ago from a young lawyer who last year served as a clerk for one of our justices. This

year, which is only his second year out of law school, he is working for a large firm in Los Angeles. His salary is that of a superior court judge in Anchorage.

I mentioned two changes. The other change is that an unusual number of judicial vacancies will occur and must be filled within the next year. As I indicated, there will be a minimum of eight and more likely ten vacancies. This is an extraordinary turnover. Just under 20 percent of the judiciary will be selected next year. It is vital to attract the best qualified lawyers available for these positions. The applicant pool should include those who have succeeded in private as well as in public practice.

Historically, the salaries of superior court judges have tracked the salaries of federal district court judges. This is logical since the duties and responsibilities of these positions are parallel. However, since 1987 the salaries of federal district court judges have risen significantly due to national recognition that competent district judges were leaving the federal bench because of inadequate salaries. Currently, a state superior court judge earns \$77,304. A federal district court judge now earns \$96,600 and next year at this time will be earning \$120,800.

In February of last year, the state officers' compensation commission issued a report recommending salary raises for judges. These recommended increases would only have the effect of putting judicial salaries about where they were in 1975 in terms of earning power. In fact, even the commission's recommendations would not have pulled us back to 1975 levels because they did not factor in current inflation. Alaska's judges last received a pay raise in 1985. Since then each of the other 49 states has raised judicial salaries, some of them more than once.

There is now a bill, Senate Bill 230, which would provide for a judicial salary increase. This was introduced in the Senate during the 1989 session and now is before the Senate Finance Committee. I urge you to consider and update the recommendation of the compensation commission, and I urge you to carefully consider the provisions of Senate Bill 230. The quality of your judiciary is at stake, and this year should not be allowed to be a turning point.

Rural Justice

Over half of our 58 court locations are staffed with a magistrate as the only resident judicial officer. In fact, in some villages the magistrate is the only state official who resides in the village. The magistrates' duties are numerous and varied. They handle civil and criminal cases, they act as coroners in death investigations, and they perform vital statistics functions. Recently we have experienced considerable turnover in magistrate positions – 16 magistrate terminations in the last 13 months. Fortunately, we continue to attract many outstanding citizens to fill these posts, usually from the local community which they serve. Sometimes I think that they get more than they bargained for. For example, our new magistrate in St. Mary's was on the job only a few days when she was called upon to act as a coroner, hold a pre-arraignment hearing in a murder case, and conduct a wedding, all in the same day. We have volunteer judges in each district who conduct magistrate training services on a regular basis. They are also on call to advise magistrates when special problems arise. Alaska's magistrate system is unique, and our magistrates work under often difficult conditions to provide a justice system accessible to all Alaskans.

Jury Management

As a result of legislation which you passed last year, we now use only the permanent fund dividend list as a source list for summoning jurors. This has simplified our efforts and has eliminated the problem of summoning individuals more than once when their names appeared in slightly different forms on the various lists previously utilized. We have also attempted to minimize the burden of service by excusing from state jury service those persons who have served on any federal jury during the year and by reducing the term of grand jury service.

Repayment of Costs for Appointed Counsel

I want to comment briefly on one proposed statutory change in the area of criminal procedures which will be before you this year. The state, of course, must pay to provide a defense to those accused of crime who cannot afford to hire a lawyer. Under current law, the state cannot recover these defense costs even if the defendant at some later time becomes able to pay them. You will be considering a proposed statutory change which would allow the court to enter the costs of an appointment as a civil judgment against a defendant. Collection procedures on this judgment could then be brought as warranted. This amendment has been endorsed by the criminal justice working group, which includes the Attorney General, the Public Defender and the Public Advocate. I urge your serious consideration of this change which may allow the state to save some of its criminal defense costs.

Conclusion

During the two and a half years that I have been privileged to serve as chief justice, I have had occasion to meet with the chief justices of our sister states in various conferences. Apart from the question of judicial salaries, where we have fallen behind, I have always come away from these meetings convinced that Alaska is blessed with fundamentally sound institutions and traditions. For example, at the last meeting of the Conference of Chief Justices, one of the chief justices whom I have gotten to know could not be present because he was too busy raising the some [sic] 2.5 million dollars in campaign funds that he will need for the next election. In other states, relations between the judiciary and the legislature are so uncordial that the legislature will not invite the chief justice to make an annual report. Alaska has the best method, in my opinion, for selecting judges, and the Judicial Council is striving to improve the retention process. The Alaska legislature has always supported the judiciary. When the supreme court was overwhelmed with work ten years ago, the legislature created the intermediate court of appeals. The present legislature responded to the high caseload in Kenai by creating a much needed second superior court judgeship.

The Alaska judicial system is not a system in crisis. For the most part our courts are current. Our judges are competent and hardworking. We have an excellent system, and with your help and cooperation, we hope to make it better.

Thank you again for inviting me here and I wish you well in your difficult deliberations.