

State of the Judiciary  
Chief Justice Warren W. Matthews, Alaska Supreme Court  
Message to the Legislature  
February 25, 1998

### Introduction

Speaker Phillips, President Miller, members of the 20th Alaska State Legislature, thank you for inviting me to appear before you to report on the state of the judiciary. I regret that my colleagues on the Alaska Supreme Court are unable to attend this session. As I speak, they are working their way through an oral argument calendar in Anchorage. There are two court officials in attendance who I would like to introduce. Our new Administrative Director is Stephanie Cole. Ms. Cole previously served as Deputy Administrative Director for some 15 years. Our Staff Counsel, Chris Christensen, is also present. Mr. Christensen also functions as our representative in Juneau during the legislative session.

My purpose today is to describe the state of the judiciary in a way which I hope you will find useful in discharging your responsibilities. I will start with the basics. We are, structurally, one of the three independent branches of government. However, we consume only about 1.2% of the total state operating budget. Although we are relatively small, we are widespread. We have 59 separate court locations. We employ 710 people, including 58 judges and 39 magistrates. Our courts extend from Ketchikan to Barrow, westward to Unalaska, and alphabetically from Ambler to Yakutat – the case load on Zarembo Island does not yet justify our presence. Before this widespread apparatus of justice come cases of every description, arising from the full spectrum of human experience. These cases are often tragic and sad. They can be criminal, commercial or personal injury cases; they can involve children's rights, fishing and hunting rights, civil rights, rights of every description; sometimes they involve small amounts of money, sometimes hundreds of millions of dollars; these cases may involve principles of great constitutional significance, or they may involve narrow issues of fact which interest only the parties; they range from cases which are frivolous to cases which are of great merit, and they include cases between different branches of government, cases between government and citizen, and cases between citizens. But all of these cases have three common features. First, each is important, often critically important, to the parties. Second, each case is deserving of individual attention and must be adjudged under the law by scrupulously fair judges or magistrates. And third, each case is potentially reviewable in the appellate courts.

### Trial Court Case Load

In fiscal year 1997 we had 132,000 new cases filed – using rounded figures. I don't mean to submerge you with numbers but it is necessary to use some in order to describe the work of the court and give you some idea of current trends. The 132,000 new filings have to be further described. They consist of 60,000 traffic cases, 51,000 nontraffic cases in the district courts, and 21,000 superior court cases. In order to describe trends, we can compare these three figures with statistics for the same categories in 1990. What emerges is a consistent picture of slow growth in this decade. Filings have increased in the superior courts by some 13%, by 9% in the district courts as to nontraffic cases, and by about 8% as to traffic cases.

Time to disposition statistics show a distinct improvement. In 1990 the average general civil case in Anchorage Superior Court took 598 days. In 1997 this was reduced to 387 days. Felony disposition times in the same court went from an already very good 167 days to 132 days. Similar improvements are reflected in most of our other court locations.

But statistics in gross are not the whole story. Felony filings have increased at a disproportionate rate. Statewide, felony filings have increased by 25% over the last 3 years alone. It is also significant that felonies involving violence continue to greatly outnumber other felony categories. Since a greater proportion of felonies actually go to trial than civil actions, the disproportionate growth of felony filings has had a significant effect on the workload of our superior courts. In addition, increases in the numbers of felony cases reflect not only an increase in our workload but affect all criminal justice agencies: police, prosecutors, public defenders, and corrections.

There is another significant shift that is masked by our overall statistics. We have experienced a disproportionate growth in domestic violence cases. This is another area where merely reporting numerical increases does not tell the whole story. Domestic violence cases are very demanding for courts. The parties are usually under emotional stress and usually appear without lawyers. These types of cases are among the most likely to generate violent confrontations, sometimes with tragic results. The significant increase in the domestic violence cases creates new security and personnel needs.

Unfortunately another area of disproportionate growth in our caseload concerns children's proceedings – child in need of aid and termination of parental rights cases. Overall we have seen about a 20% increase during the 90's. The greatest percentage increase was experienced by the Bethel court. Children's case filings in Bethel climbed 121% in 1997. Preliminary statistics for fiscal year 1998 lead us to believe that we will be reporting another large increase in children's cases.

In summary, the picture presented by these statistics is one of overall slow growth during this decade with many more felonies, domestic violence cases and children's proceedings. These cases are more labor intensive than some others, but our time to disposition statistics indicate that they are being resolved with reasonable and improving promptness.

### Reports from Presiding Judges

What I have described thus far is the statistical view from my chambers in Anchorage. I asked each of the presiding judges of our four judicial districts to give me their impressions and perspectives on the state of the judiciary in their districts. I asked them to be frank in discussing problem areas and told them I might share some of their responses with you:

Presiding Judge Larry Weeks of the First Judicial District (southeastern) reports good staff and judicial morale. He notes that although filings are down this year as compared to last, Juneau had more jury trials in 1997 than at any other time in history. He reports that the juvenile detention center in Juneau has a capacity of 8, yet regularly houses over 20 juveniles. Because the Department of Corrections lacks the facilities for juveniles, this impacts the sentencing decisions of the judges.

Presiding Judge Michael Jeffery of the Second Judicial District (northern Alaska and Norton Sound) reports that the mood in his district is stressed. He cites frustrations due to an increasing caseload, court system failure to appropriately recognize the weekend work done by rural judges, and staff turnover caused by the fact that higher salaries are paid by other employers in his communities than the court system is able to pay.

Presiding Judge Elaine Andrews of the Third Judicial District (southcentral) reports that the judges in her district are enthusiastic about their work and notes two areas of special concern. The first is security. Night time judicial service in Anchorage is performed without police protection. More generally, security needs throughout the district are unmet – only Anchorage has weapons screening. Second, Judge Andrews reports that civil cases involving indigent parties who are unrepresented by attorneys are on the increase and that such cases are extraordinarily time consuming. The lack of funding for legal services for the poor has (among other things) the effect of increasing judicial work loads.

Presiding Judge Ralph Beistline of the Fourth Judicial District (interior) reports concern over an increasing workload caused by more criminal and domestic violence cases. In Fairbanks there was a 40% increase in domestic violence cases last year. Nonetheless, Judge Beistline describes the morale in his district as good and improving.

#### Appellate Court Case Load

In the appellate courts the trends are different. Supreme Court total filings are down over the decade by some 16%. In the Court of Appeals filings are down 21% since 1990. It is tempting to attempt to ascribe this decrease in the face of rising case loads at the trial level as due to increasing confidence in the correctness of the decisions of the trial courts. In truth, however, we don't know why this has occurred.

Time to disposition statistics have lengthened in both appellate courts. In 1990 the average time between submission of a case to the Supreme Court for decision and publication of the opinion was 7 months. In 1997 the time had crept up to over 10 months. In the court of appeals for felony cases in 1990 the elapsed time was 5 months and this has increased to about 8 months today. We are not proud of these statistics and we are working to reduce delays. In the Supreme Court we have taken special steps in cases involving child custody decisions. I can report success in this area as we have reduced the time from submission to disposition in these cases to just over 3 months.

#### New Judges

We welcomed several new judges to the Alaska Court System since the last State of the Judiciary address. Judge David Stewart was appointed to the Court of Appeals, taking the place of Justice Alex Bryner, who now serves on the Supreme Court. Judge Stewart has been a prosecutor, and a public defender, he has served as a District Judge, and most recently was in private practice. Joel Bolger was appointed to the Valdez District Court in July. Judge Bolger has worked for Alaska Legal Services, the Public Defender Agency and, most recently, has been in private practice in Kodiak. Suzanne Lombardi was appointed to the Palmer District Court. Her prior experience includes service as an assistant district attorney and private practice. Each of these three new judges is very well qualified. We wish them the best in their judicial careers. In addition, we had

two judicial transfers. Judge Peter Ashman transferred from the Palmer to the Anchorage District Court. And District Court Judge Charles Pengilly was appointed to the Superior Court in Fairbanks. Again, we wish Judges Ashman and Pengilly the best in their new positions.

### New Facilities

Our newest court facility, the Nesbett Courthouse, is a bright focal point for downtown Anchorage. Last summer, across the street from the Nesbett Courthouse, we dedicated the renovated Snowden Administrative Building, in a ceremony at which Representative Barnes and Senator Kelly spoke. And this fall we dedicated the Court Plaza, which neighbors the Nesbett Building and is adjacent to the Boney Courthouse. Together these facilities create a highly functional justice complex. The outstanding nature of the Nesbett Courthouse has been recognized. It has received a number of architectural awards and has been praised in a national publication. Likewise, the Court Plaza has received an award for city beautification. We are proud of these facilities – proud that they function well and proud that they make a positive contribution to the downtown environment of our state's largest city.

We also look forward to the construction of a new court facility in Fairbanks. The Legislature approved lease-purchase financing of a new Fairbanks courthouse in 1986. In 1994 you ratified this approval subject to appropriation of design funds. In 1996 you appropriated design funds. The site we have selected is located in the downtown core area, and overlooks the Chena River. The design team has begun the development of bid documents. Construction is projected to begin in the Spring of 1999. Fairbanks officials expect that the new facility will revitalize the downtown area and they strongly support it.

### Partners In the Administration Of Justice

When court officials talk about the role of the courts, we often communicate a message of separation and differences, as we stress the independence of the third branch within the structure of government. However, there are many instances in which the judiciary acts in concert with the legislative and executive branches in order to promote important state goals. I will mention some of these today.

The cost of defending indigents who are accused of crime is of concern to all three branches of government. Our constitution requires the appointment of counsel at state expense. While recognizing this as a vitally important right, we share with you a concern that the provision of these services must be as cost effective as possible, and must be scrutinized to avoid abuses. When I last spoke to you in 1990 during my prior term as Chief Justice, I urged your support for a system allowing the state to recover the cost of representation if a criminal defendant became able to pay for representation costs at a later time. You responded by amending state law to allow this. The Supreme Court then promulgated amendments to Criminal Rule 39, which provided for entry of a civil judgment for public defense costs. I am pleased to report that this cooperative effort has been successful. Criminal Rule 39 judgments are generating significant funds for state and local governments. For each of the past two years the state has recovered over \$600,000. The Municipality of Anchorage reports recoveries from \$90,000 to \$200,000 per year from this program.

We are now addressing another aspect of the appointed counsel system. We are turning our attention to the first step in the process, the screening of defendants for eligibility for appointment of counsel. In a 1995 audit you recommended that we re-examine this process. A court committee has developed uniform screening guidelines. The Supreme Court has tentatively approved the guidelines. Currently the guidelines are being commented on by interested state agencies and members of the bar. We will examine the comments and expect to adopt fair and objective guidelines which will be applied statewide.

In another cooperative effort, the Court System and the Department of Revenue recently streamlined the procedure for transferring money seized by court writ from judgment debtors' Permanent Fund Dividends. Since the dividend came into existence 16 years ago, thousands of writs have been served on the Permanent Fund. This past year we developed a system for electronically transferring information about dividend seizures. This allows the courts to receive money much more quickly. In addition to saving hundreds of hours of work for both the courts and the Permanent Fund Division, the new system reduces delays in distributing money to judgment creditors. After we put this system into effect, funds were disbursed a full month earlier than previously and we expect an even faster rate of disbursement next year.

In another move to bring greater efficiency to the administration of justice, we have recently changed the court rules to eliminate bench warrants as the primary enforcement tool in cases where people do not respond to traffic citations or citations for minor offenses which do not involve potential jail time. Under current practice, bench warrants are issued when defendants who have received a citation do not respond. Bench warrants have not proven to be an efficient mechanism for handling the problem of failing to respond to citations. In many locations there are, unfortunately, quite a volume of bench warrants. In Anchorage alone in 1997, over 16,000 bench warrants were issued. One of our court technicians calculated that each bench warrant issued and served costs the public about \$180. So many bench warrants are currently outstanding that many are never actually served. This, in turn, encourages scofflaw behavior. In response to this problem, the Supreme Court amended District Court Criminal Rule 8. Under the amended rule a judgment of conviction for the offense charged will be automatically entered against defendants who fail to respond. The judgment will be in the amount of the scheduled bail for the offense plus court and collection costs. It is expected that the judgments in these cases will be collected primarily, but not exclusively, through execution on Permanent Fund Dividends. A number of state agencies and municipalities have expressed strong support for the new system. It is our hope that the new system will not only be more efficient but will encourage those who receive citations to respond to them in a timely fashion.

In 1997 you enacted legislation designed to encourage broader use of mediation. The Alaska Court System agrees that mediation should be much more widely used. The following steps have been taken:

- We are designing an appellate case settlement program which is intended to save litigants money by prompting early settlement of cases on appeal.
- In the Third Judicial District a child custody mediation pilot project supported by federal grant funds is about to begin.

- Also in the Third District a pilot project providing mediation services to families whose children are in state custody is about to begin. These services will address both plans for family reunification and for permanent placement of children.
- The Alaska Bar Association is developing a probate mediation project.
- We have amended the bar rules to provide for mandatory mediation of a broad category of grievances filed against lawyers.
- We have approved changes to the civil rules which encourage greater use of mediation.
- We have requested federal and state funds to conduct an educational program which would train Alaska's judges on how better to use alternative dispute resolution methods and resources.

These examples of inter-branch efforts illustrate that the Alaska Court System is not an aloof or a static organization. While the principle of judicial decisional independence must always be protected, in the broader areas of the administration of justice we recognize that we must be responsive to changing conditions and the needs of the legislative and executive branches.

### Budget

With regard to our budget request this year, I will limit my comments to two areas: our request for money for court security contained in our operating budget, and our capital budget technology requests.

This is the second year that we have requested money to improve security in courthouses statewide. The amount of \$1,417,000 is requested and has been included in our budget at the request of the Governor's Office of Management and Budget. Our request was formulated by the Department of Public Safety. Upon receipt, if these funds are appropriated, they will be transferred to the Department of Public Safety and used to hire an additional 22 court service officers. This request is strongly supported by the Department of Public Safety which has the statutory responsibility for court security.

Although we did have a hostage taking in one of our courts in the late 80's, we have not experienced a truly tragic incident of violence in our courts. Unfortunately, such occurrences are becoming more and more common nationwide. We are not insulated from this trend. I urge you therefore to fund our request in order to protect the physical safety of all who must be present in our courts.

In our capital budget request, there are two core components of the court's technology plan. We are requesting funds to continue our four-year plan to replace the court's electronic recording and sound amplification equipment. We propose to replace the recording devices in our busiest courts. At the time of statehood the decision was made to use electronic recording rather than court reporters. This decision has saved millions of dollars. However, much of our equipment is over 10 years old. We are starting to experience critical equipment failures. In a few cases rehearings have been required because of equipment failures. Your funding of this request will allow us to upgrade our failing equipment and to ensure that an adequate record is produced in all court proceedings.

We have also submitted a capital request to fund the replacement of essential computer hardware and operating systems. Our information system consists of 35 separate computers in 28 different locations. These computers are used by judges and court staff to create, maintain and distribute case information. Evidently the hardware and the operating systems of these computers will fail in the year 2000. In addition, our current computers are obsolete in the sense that parts for them are no longer made. Where rebuilt parts are available they cost much more than the cost of modern equivalents. These obsolete computers interfere with our ability to function as we should. This has become particularly critical since we have a growing number of information requests from state agencies which need our data in order to perform their functions. Your funding of our request for additional computer equipment will allow us to upgrade our systems to address the year 2000 issue, to increase efficiency in court operations, and to provide other agencies with accurate and timely information.

### Proposed Legislation

I want to take this opportunity to mention one bill that was introduced in the Senate Rules Committee at the request of the Supreme Court. This bill addresses an area of concern for all public officials. Senate Bill 195 would make recording a false lien a misdemeanor and it would simplify the process for removing false liens. This bill responds to a developing problem. Certain groups have begun recording false liens against the property of public officials. Last year in Anchorage alone over 40 such liens were filed. These liens can cloud the title to private property for many years and they are costly to clear. Your passage of this legislation will help protect public officials from this type of harassment.

### Judicial Independence

1998 marks the 100th anniversary of the great Gold Rush which played such a significant role in the settlement of our state. That remarkable license plate depicting the miners trudging up Chiikoot Pass reminds us of the fortitude and strength of the 98'ers. Each one of them had to take at least 1000 pounds of gear up that headwall. And, if you will permit me an example from my own family history, it was 100 years ago this month that my great grandfather and grandfather disembarked at Resurrection Bay. Having no dogs, they pushed and pulled their heavy sled through the snow to the gold fields of the Kenai Peninsula. They, like the other 98'ers, did physical tasks routinely and without complaint that those of us who, in 1998, are accustomed only to office work can only regard with awe.

But I want to observe that judging has its arduous aspects as well. I am speaking here not of our daily work, which is rigorous and demanding, but of the occasional need to make an unpopular decision. Our great constitutional freedoms of which we are so proud in the abstract are often not popular when applied in actual cases. Yet it is the duty of all judges to apply them. Sometimes searches and arrests and interrogations violate constitutional rights. In such cases judges are bound by the law and by their oaths of office to apply the widely unpopular exclusionary rule. Sometimes government officials abuse their power. When legal or constitutional rights are infringed, judges must so rule. Likewise, occasionally laws will be passed which are inconsistent with constitutional rights. Again, it is the duty of a judge to issue an appropriate decree when this occurs. Alexander Hamilton, in the 78th Federalist Paper, described the duty of a judge to make an unpopular decision as "an arduous and requiring "an uncommon portion of fortitude."

Hamilton recognized, as we all should recognize, that having judges who are willing to make unpopular decisions is an essential element of our system of constitutional government.

Currently, we in Alaska do have such judges, although I know of no judge who welcomes the duty of making an unpopular decision. Under the Alaska Constitution, judges are appointed under a merit selection system and they are publicly accountable in retention elections. In terms of accountability, our system is thus very different from the federal system, in which judges receive lifetime appointments. Yet, even though we have retention elections, our judges do have the fortitude to make unpopular decisions as required by our system of government. In this, I believe, our merit selection system plays an important role. The Judicial Council, following a prescribed process, sends a list consisting of only the best qualified candidates to the Governor for appointment. This system has produced judges with the character to do what the law requires, even when it is unpopular.

There is in the Alaska constitutional system what I see as a delicate equilibrium between judicial independence and popular accountability. The balance which was struck by our constitutional framers has stood the test of time. I suggest that changing the balance by changing the merit selection system would threaten judicial independence, and therefore, to some degree, the constitutional freedoms which independent judges must protect.

### Conclusion

Finally, let me make clear that I do not think that the third branch of government has a monopoly on hard work or courage. We appreciate the difficulty of your work and the difficulty of the issues presented in this legislative session. We know that you must sometimes make decisions in the face of great pressure. We know that in your work, as well as ours, both fortitude and good judgment are necessary qualities.

The Alaska Legislature has always supported the judiciary and we are grateful for your support. Structurally we have an excellent system. We think we are doing a good job. With your help and cooperation we can do it better.

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