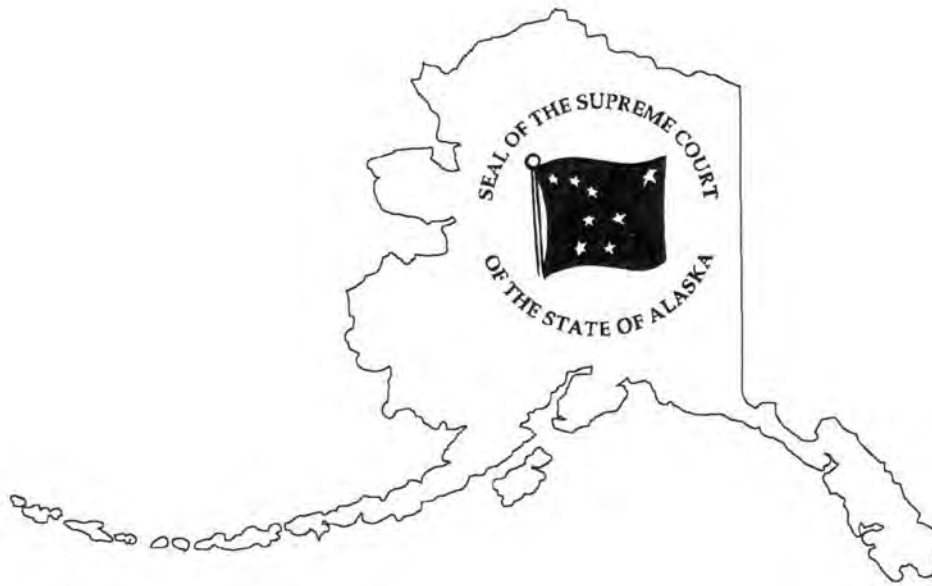


THE STATE OF THE JUDICIARY



**A MESSAGE BY
CHIEF JUSTICE JAY A. RABINOWITZ
1991**

Mr. President, Mr. Speaker, Senators and Representatives, and Fellow Alaskans.

In 1971, this body adopted a Joint Resolution inviting the Chief Justice of Alaska to deliver a State of the Judiciary address. This same resolution contained the suggestion that such an address should be given annually. Thus, today marks the twentieth occasion that the Alaska Court System has been accorded this distinct privilege.

At the outset, I will readily concede that the subject matter of my intended remarks cannot match the drama, the euphoria, and the excitement which has been generated by the Coalition's stunning military triumph over the armed forces of Iraq. Nor are the budgetary requests that I will allude to on the scale of the reported settlement amounts mentioned in connection with the Exxon Oil Spill litigation. What I do want to briefly focus on is the budgetary needs which are required to fulfill our constitutionally required adjudicatory functions.

But first, I think it appropriate to recognize another stunning triumph - and that is the awesome durability and attraction that America's political democracy has had worldwide. Although the crisis in the Gulf has changed our immediate focus, one has only to recall the breathtaking collapse of the repressive totalitarian regimes in Eastern Europe to recognize the incredible impact our system of political, economic, and legal democracy has had on a truly global scale.

In his 1989 State of the Judiciary address, Chief Justice Matthews alluded to the fact that 1989 marked the 200th anniversary of the adoption of the United States Constitution. Also of significance is the fact that this year we celebrate another 200th anniversary: the adoption of the Bill of Rights. These first ten amendments to the United States Constitution came about through the singular efforts of George Mason, a delegate to the Constitutional Convention and the author of the Virginia Declaration of Rights. Our federal Bill of Rights ensures the freedom to practice one's religion and prohibits the federal government's establishment of a religion. It further guarantees freedom of speech and the press, and prohibits unlawful searches and seizures, double jeopardy, excessive fines, and cruel and unusual punishment. The federal Bill of Rights also ensures the right to indictment by grand jury, the right to a speedy, public, jury trial, the right to confront witnesses, the right to assistance of counsel, the right to compulsory process, and the privilege against self-incrimination. Due process and the right to just compensation for any taking of property are also guaranteed.

The United States of America and the State of Alaska are about these fundamental rights and about ideals of liberty, justice, and equality. The records of our own constitutional convention demonstrate that the founders of Alaska's Constitution, in Article I, essentially tracked the federal Bill of Rights, as well as the then traditional framework of American government. Thus, governmental authority in Alaska was distributed among the

three branches of government. This tripartite form of government constitutes a recognition of the separation of powers doctrine as well as the complimentary doctrine of checks and balances (with the further concomitant recognition that the interpretation of the laws is a proper and peculiar province of the Judiciary). The obvious underlying rationale of these doctrines is the avoidance of tyranny on the part of any one branch of government.

As a practical result of what has been a long and hard fought political-legal evolutionary process, I appear before you as the head of the separate and co-equal judicial branch of Alaska's government. In doing so, I represent forty-three magistrates, seventeen district court judges, thirty superior court judges, three judges of the court of appeals, five justices of the supreme court, and 509 support employees who work at fifty-nine locations throughout the state.

In the fiscal year which ended in 1990, the Alaska Court System was the recipient of 122,000 case filings (102,000 in district court, 18,700 in superior court, 490 in the Court of Appeals, and 578 in the Supreme Court). During this same fiscal year, we witnessed a system-wide disposal of cases which far outstripped filings. Of particular significance to Alaskans is the anti-social behavior reflected in the 2,718 felony filings in superior court, of which 962 involved violent felonies and 681 involved drug offenses. Of the 24,000 misdemeanor filings in district court, some 3,665 involved violent misdemeanors and 2,626 implicated drug and/or alcohol violations.

OPERATING BUDGET

Although the Alaska Court System is a separate and co-equal branch of the government, it is obvious that we are dependent on you for adequate funding in order to fulfill our constitutional mandate to process and dispose of some 130,000 cases in the coming fiscal year. The judiciary's percentage of the total operating budget is just under two percent. Unlike the Governor's proposed budget, which would cut our budget approximately thirteen percent, we welcome adoption of the House's target budget for the judiciary of \$44,700,000 (which parallels our maintenance budget).

The Alaska Court System must accept every case that is filed. We have no existing programs that can be eliminated. Furthermore, we are unique in that 80% of our operating budget is allocated to personnel salaries. If the Executive Branch's figures carry the day, the impact on the judiciary will be decimating. In addition to significant reductions in our contractual services, commodities, and travel, some 115 to 120 hard-working and dedicated Alaskans will lose their jobs. All of this will have a deleterious impact on the disposition time for non-criminal cases and will reduce the level of judicial services to the Alaskan public.

In short, I urge you to give careful consideration to the budget data (both operating and capital) which has been furnished to you by our Administrative Director, Arthur H. Snowden, II. We have been prudent and will continue to be prudent in an effort to effectively manage our fiscal resources. Examination of your

records will reveal that our operating budget has grown only two percent over the last six years. The contrast between the growth of certain Executive branch agencies and the Alaska Court System over this same period is dramatic.

CAPITAL BUDGET

Here I am compelled to repeat Chief Justice Matthews' plea for action. New engineering studies concerning the Anchorage District courthouse have reconfirmed in no uncertain terms the potentially disastrous, life-threatening, structural defects inherent in this building should a significant seismic event occur.

In addition to proposing a solution for this potentially dangerous condition, our proposed capital budget requests funds for the absolutely necessary repairs to the Fairbanks courthouse (\$4,400,000), a modest expansion of the Kenai courthouse (\$1,800,000), a study of handicapped access to the existing fifty-nine facilities housing court personnel (\$580,000), the essential upgrading of our courtroom recording equipment (\$473,000), and the computerization of our support operations (\$850,000). Again, I note that our Administrative Director has given you detailed explanations in support of these requests.

LEGISLATION

This session the Alaska Court System has focused on two items of legislation. One proposal would give authority to the Supreme Court to introduce legislation in the rules committees.

A second proposal calls for the establishment of a seven member Salary Commission, appointed by the governor, which would have the duty and authority to periodically, in accordance with statutory criteria, set the salaries of judges, legislators, the governor, the lieutenant governor, and municipal department heads. The Commission's salary proposals would become law, unless disapproved by the Legislature, and, of course, subject to legislative funding.

JUDICIAL COUNCIL

Recently this constitutionally created body, composed of three nonattorney members and three attorney members, completed an extensive three year study on the effects of the Attorney General's ban on plea bargaining. This study found that Alaska's ban on plea bargaining is still being followed to some extent, but that charge bargaining is common in some areas. This study also found that sentences have become substantially more severe since the mid-70's. The Judicial Council currently is working with the Alaska Sentencing Commission on a review of Alaska's sentencing policies. I should also mention that the Judicial Council is administering a pilot project, authorized by the Legislature, employing mediation in the resolution of child visitation disputes.

Since this body received the last State of the Judiciary Address, the Judicial Council has been active in carrying out its constitutionally mandated merit selection and merit retention obligations. In this last year, Judge Bosshard (Valdez), Judge Carlson (Anchorage), Judge Craske (Sitka), Judge Jones (Kotzebue),

Judge Madson (Kodiak), Judge Pegues (Juneau), Judge Singleton (Anchorage), Judge Stemp (Anchorage), and Judge David Stewart (Anchorage) have retired from active full-time judicial service.

New appointments have been made: Donald Hopwood (Superior Court, Kodiak), Jonathan Link (Superior Court, Kenai), David Mannheimer (Court of Appeals, Anchorage), Francis Neville (District Court, Homer), Charles Pengilly (District Court, Fairbanks), Larry Weeks (Superior Court, Juneau), and Larry Zervos (Superior Court, Sitka). Appointments are expected to be made in the very near future by Governor Hickel to Superior Court vacancies in Anchorage and Kotzebue, as well as a District Court vacancy in Anchorage.

Also of significance is the fact that all fifteen judges who appeared on last November's general election ballot were retained by the public. These judges were evaluated on the basis of their professional competence, integrity, fairness, judicial temperament, and overall professional performance, and the results of the Judicial Council's evaluations were made known to the public in the official election pamphlet. The Council's evaluation is based on numerous sources of information including peace and correction officer surveys, attorney surveys, information from public and private files, as well as public hearings.

COMMISSION ON JUDICIAL CONDUCT

This body of nine members, created under Article IV of Alaska's Constitution, processed fifty-three complaints against

judges. In 1991, the Commission expects to become current in its complaint processing. Last year, the Commission successfully requested legislation that will open its formal hearings to the public. The Commission has recently revised its rules of procedure and is studying the changes which the American Bar Association made to the Code of Judicial Conduct. On this point, I should note that a special advisory committee of the Supreme Court just recently was appointed to study these proposed revisions to the Code of Judicial Conduct. The Commission is also working with the Court System to conduct, in June of this year, an educational ethics program for our judges.

THE ALASKA BAR ASSOCIATION

I think it appropriate to thank the much maligned Alaska Bar Association and Alaska lawyers. The 2,033 practicing lawyers resident in Alaska donated approximately 5,900 hours of legal services in 1990 to the poor and needy throughout Alaska. This Alaska Pro Bono program is administered by the Alaska Legal Services Corporation. I'm pleased to note that Alaska has the highest percentage of lawyers participating in this type of program in the United States.

Secondly, in October, at the start of my term as Chief Justice, I called for volunteers to staff our various standing and special committees which assist the Supreme Court in carrying out its rule-making functions pursuant to Article IV of the Alaska Constitution. The response was truly remarkable. These lawyer

committee members have my thanks for assisting us, and for contributing an extraordinary amount of time and talent to these committees.

I also can advise you that Bar President, Daniel Cooper, and the Board of Governors of the Alaska Bar Association are continuing their efforts to streamline disciplinary procedures in an effort to shorten both the investigative and adjudicative phases of the disciplinary process. In this connection, the Supreme Court of Alaska is actively studying and considering extensive changes to the Code of Professional Responsibility proposed by the American Bar Association, a code which governs the ethical practices of the attorneys in Alaska.

CONCLUSION

We are truly appreciative of this opportunity to address both houses of the Legislature. You have my pledge that the Alaska Court System will continue its prudent management of its fiscal resources. In turn, I again urge you to give us the necessary operating funds with which to meet our constitutional obligation to render justice for all. Further, I can assure you that whether the matter is a small claims dispute, a complex commercial dispute, a case involving constitutional interpretation regarding the individual against the state, or a dispute between the separate branches of government, all Alaskans will continue to receive timely and principled decisions from Alaska's judiciary.