

## **THE STATE OF THE JUDICIARY**

February 23, 2005

Chief Justice Alex Bryner

President Stevens, Speaker Harris, Senators, Representatives, and guests.

Thank you for this opportunity to report on the state of Alaska's judiciary. Let me start with some introductions. Three members of the Supreme Court are here with me today. Justice Robert Eastaugh has served on our court since 1994. He was raised in Juneau, where his father and grandfather both practiced law and were leaders of the legal community. Justice Eastaugh heads the Supreme Court's Fairness and Access Committee, and serves on our Appellate Rules Committee. Justice Dana Fabe is here as well. Justice Fabe was appointed to the Supreme Court in 1996, becoming the first woman on Alaska's Supreme Court and, four years later, the first woman to serve as Chief Justice. She founded and continues to head the Alaska Supreme Court Outreach Commission; she also heads the Supreme Court's Civil Rules Committee and is a Board Member of the American Judicature Society. Before joining the Supreme Court, Justice Fabe served on the superior court in Anchorage since 1988. The third Supreme Court Justice with us today is Justice Walter Carpeneti, our member from Juneau. Before being appointed to the Supreme Court in 1998, Justice Carpeneti served on the superior court in Juneau from 1981. He heads the Supreme Court's Judicial Education Committee.

I'd also like to introduce the Court's Administrative Director, Stephanie Cole, and two members of our senior staff. Stephanie Cole has served in the Court System for 28 years and has been our Director since 1997. Deputy Director Chris Christensen is here today too; as is Administrative Attorney, Doug Wooliver. As many of you who have worked

with Stephanie, Chris, and Doug already know, they are talented, hard working, and dedicated members of the court system team, and we appreciate their unflagging efforts.

And I'd further like to extend greetings and regrets on behalf of Justice Warren Matthews, who is holding down the fort in Anchorage today. Justice Matthews has been a member of the Supreme Court for 27 years and has served two prior stints as Chief Justice; he is the court's longest serving current member.

Let me turn now to the issue at hand, the state of the Judiciary. This is my second chance to appear before you as Chief Justice; and my appearance marks the 33rd time that a chief justice has come before the Legislature to present this report. I'm happy to report again that the state of our judiciary is strong and sound. Alaska's trial judges rank among the best in the nation; we have an effective and efficient unified statewide system of judicial administration, an enlightened and comprehensive set of legal codes, a modern and vibrant state constitution, and a proven, uniquely effective system of judicial selection -- one that is nationally recognized as a model for nominating talented and independent judges on the basis of merit.

Much of the credit for our strong system belongs with Alaska's Legislature. As chief justice, I often see my counterparts in other states, and I know that they regard Alaska's tradition of cooperation and communication among its three branches of government as a rare strength. Our three branches of government have always reached beyond their individual interests and sought to cooperate for Alaska's common good. I want to thank the Legislature for your past help to Alaska's judiciary and urge your continued support.

Now let me give you a quick snapshot of the Alaska Court System today. The court system has offices in 44 locations throughout Alaska, ranging from our 353,000 square-foot headquarters in Anchorage to our 160 square-foot complex in Unalakleet. The constitution divides Alaska into four judicial districts; they are managed by four able and dedicated presiding superior court judges: Judge Larry Weeks has managed the first judicial district since 1992; Judge Michael Jeffery of Barrow has presided over the second judicial district since 1994; Judge Dan Hensley in Anchorage has overseen the third judicial district since 2002; and Judge Niesje Steinkruger in Fairbanks has served as presiding judge for the fourth judicial district since 2003. In addition to juggling their own judicial workloads, these judges manage caseload distribution, case calendaring and myriad day-to-day administrative concerns arising in their districts; they serve by annual appointment of the chief justice, and get no extra compensation for their efforts. I thank them all for their extraordinary dedication.

Statewide, our system encompasses about 750 employees; only about 62 of them are justices or judges; and about 39 more are magistrates. The vast majority are clerical and technical workers. In fact, 61% work at range 14 or below -- most of them in busy trial-court settings. These employees form the backbone of our system and deserve our recognition. They work hard for their pay, and the Legislature has recognized this by treating them equally to similarly classified executive branch employees. We thank you for this support and request that it continue.

Though our judicial system forms a separate, co-equal branch of Alaska's government, its size is tiny by comparison to Alaska's two other branches: our annual

spending accounts for less than 1% of the state's total operating budget. Yet last year the court system absorbed more than 150,000 new cases. Although these filings determine our workload, we have little control over how many new cases are filed. We are a reactive system: we must always be prepared to meet new demands, and have a constitutional duty to accept all properly filed cases. Last year we continued to see steady caseload growth. The superior court experienced a 2% statewide increase in filings, while the district court saw a 3% increase. But we had a 10% increase in felony filings, which include our most complex criminal cases. They are the most likely of all cases to proceed to trial, and they require quick handling. So this increase has had a disproportionately large impact on our operations.

The most striking and rapid growth by far has centered in the Mat-Su Valley. Last year alone, superior court filings in the Palmer court increased by 9% and district court filings by 22%. This continues a multi-year trend and makes Palmer the most overcrowded court in our system. Despite your generous past support, Palmer's rapidly growing caseload outpaces the court system's resources, as well as the resources of other related state agencies. Built in 1988 and enlarged in 1999, the Palmer courthouse has again run out of space to meet current demands; and it has little capacity to expand. Last year our Palmer court had days when there were more trials in progress than available courtrooms. So as a pilot project, Palmer is now holding court in the evenings and on weekends. The Mat-Su Valley will continue to grow rapidly. Our Palmer court will need to grow, too. And we need to start planning and building for that now. As a first step, we will be asking for your help this year in increasing Palmer staffing levels and funding additional space; and

in the next legislative session we expect we will need authorization for a new superior court judge in Palmer.

This snapshot I've just given doesn't fully capture the dynamics of our courts. Although our courts adhere to the formal traditions of the adversary process, they are also responding to the changing needs of Alaska. As we encounter increasingly serious and widespread societal problems, our courts search for new and better ways to deliver justice. Many of our efforts have received your active and enthusiastic support.

For several years, legislators have joined in helping us establish therapeutic courts, which address the crippling problems of repeated criminal behavior associated with addictions, mental disabilities, and family disintegration. Therapeutic courts do not abandon the traditional values of our justice system, but use a team approach to reach beyond the limits of traditional justice. They require extensive resources and the ongoing cooperation of all of the court's institutional partners. Any weak link in this therapeutic chain can halt the court's efforts and leave its defendants stranded. Our therapeutic court judges have had to work hard to keep everybody on track. And they have had occasional setbacks. But there can be little doubt that their hard work has been worthwhile.

When all agencies cooperate, the long term rewards of therapeutic courts are unrivaled. Our latest program evaluations demonstrate that therapeutic courts can and do work. Program graduates are becoming productive members of society, overcoming years of repeated criminal behavior. They are now supporting their families, holding down jobs, and contributing to our society. They are breaking down the revolving door of the conventional system.

We currently have eight therapeutic court programs operating or starting up; seven are in Anchorage, and the eighth is in Bethel. Four more are in the planning stages. They will be in Palmer, Fairbanks, Ketchikan and Juneau. These programs would not be possible without the active participation and financial support of agencies and organizations like Partners for Progress, the Alaska Mental Health Trust Authority, the Alaska Department of Health and Social Services, the Alaska Highway Safety Office and the National Highway Traffic Safety Administration. All of these participants deserve recognition and thanks for their steadfast support of our therapeutic courts. Many legislators have also supported our therapeutic court, and likewise deserve our thanks. We owe special thanks to Representative Norm Rokeberg, who has worked tirelessly to support our alcohol courts, and to Senator Lyda Green, who has enthusiastically supported our mental health courts in both Anchorage and Palmer.

I also need to thank the many judges who volunteer so much of their own time and talents to these efforts. Two in particular deserve special recognition. Anchorage District Court Judge Stephanie Rhoades oversees the Anchorage Mental Health Court, which diverts chronic misdemeanor offenders with mental disabilities from jail into less costly and much more effective treatment programs. Judge Rhoades has long been recognized for her innovative efforts and her dedication to cultivating therapeutic justice principles throughout the Alaska Court System. Last year Judge Rhoades received a national award from the Foundation for the Improvement of Justice for her pioneering work with mental health courts in Alaska. This prize included a cash award of \$10,000, which

Judge Rhoades generously donated to a fund for the emergency needs of her mental health court's participants.

Another pioneer in our therapeutic court efforts, Anchorage District Court Judge James Wanamaker, retired from the bench just last month, after almost 12 years of service. He's turning 70, and the Alaska Constitution requires judges to retire at that age. Jim Wanamaker was the first judge in Alaska to propose a therapeutic court program. He went on to establish and run the Anchorage Municipal Wellness Court, which has had unique success and serves as a model for new programs, both in Alaska and nationwide. Judge Wanamaker deserves our lasting recognition and thanks for his gifts to our therapeutic court program. His loss is a hard blow to our system, but I'm glad to report that he will continue helping the system as a member of the Supreme Court's Advisory Committee on Therapeutic Courts.

A different example of how new approaches can make a big difference is our Family Law Self-Help Center. Our traditional system assumes that people will have lawyers, so it's no surprise that traditional courtrooms abound with formal rules and technical requirements. But the assumption that most litigants have lawyers no longer holds true. As our society has grown and become more complex, more people have relied on our courts. At the same time, the costs of legal representation -- like medical costs and most other kinds of professional services -- have skyrocketed. So we now find a tremendous -- and constantly growing -- number of people coming to court without lawyers.

This tide of self-represented litigants imposes great costs on our system. Court clerks have to spend time away from their regular jobs to deal with incomplete or

defective paperwork, try to answer technical questions, and explain court procedures. Many self-represented litigants come to trial unprepared and confused, causing their cases to be rescheduled or their trials to consume hours of unnecessary courtroom time. Meanwhile, parties with lawyers in larger and more complicated cases have to wait in the wings because there's not enough judge time available to hear their trials.

These problems loom especially large in family law cases. And that's where our Family Law Self-Help Center fits into the picture. Center Director Katherine Alteneder and her staff make it their job to guide self-represented litigants through the intricate web of the system. They are not legal advocates and do not give legal advice or involve themselves in the merits of these cases. The Center's staff focuses instead on providing the written forms and information parties will need to present their cases in a way that complies with procedural rules, so that their cases can be decided on the merits. Although the Center is located in Anchorage, its staff helps people statewide through an innovative combination of direct, telephonic, and Internet services. About 250 people receive direct services from the Center each month, and countless others obtain information and forms on line. The Center's work has proved especially valuable in rural areas, where lawyers are scarce and people often have no choice but to go it alone. Last year, the Self-Help Center received national acclaim for the excellence of its service and the number of people it helps statewide.

On another front, the court system is continuing to identify areas of dispute that can be resolved outside the courtroom. We support several small mediation projects, funded through federal grants or run by volunteers. The Child Custody and Mediation



Project, for example, operates in many locations, helping families with child custody or visitation problems who cannot afford the services of private mediators. This project received 117 referrals last year; and 68% of the cases it mediated reached agreement on some or all issues. Similarly, the Child In Need of Aid Mediation and Family Group Conferencing Program offers mediation and family group conferencing throughout the state in Child-In-Need-of-Aid cases. Eighty-eight percent of the cases it handled resulted in agreement on some or all issues.

At a different level, but in a similar vein, the Alaska Supreme Court's appellate settlement program promotes early settlements in appeals. In June 2003 retired Superior Court Judge Elaine Andrews agreed to head our appellate settlement program. Together with retired federal Bankruptcy Judge Herb Ross, Judge Andrews screens new appeals for likely settlement prospects. In the first year of the program, they selected 49 cases for settlement efforts, and 25 of them settled -- a success rate of about 51%. These are cases that would ordinarily have required a lengthy and expensive briefing process and a formal written decision by all five of the Supreme Court's justices. We are very grateful to Judges Andrews and Ross.

The various projects I have just described point to many areas where efficient and effective alternatives exist to our traditional model of formal adjudication. We intend to keep moving in these directions whenever they can improve our system of justice.

Now I'd like to report on some work in progress and some future changes. First, we are continuing to deploy our new Courtview case management system, an ambitious, multi-year project that will integrate our court system's separate locations into

a statewide information network. This system has been generously funded by the Legislature through two capital appropriations, in 2001 and 2002; we greatly appreciate your support. Our implementation of the project is being ably guided by Deputy Administrative Director Christine Johnson and Technology Director Debbie Cook. I'd like to thank them both for their efforts. So far, we have installed Courtview in Palmer, Anchorage and Fairbanks. When fully implemented, Courtview will serve as a statewide collection point and crossroads for justice information.

The coming year also promises to bring continuing changes to the membership of our judiciary. In recent years we have seen unprecedented changes. Four judges retired last year: Superior Court Judge John Reese in Anchorage; District Court Judge Francis Neville in Homer; District Court Judge Peter Froehlich in Juneau, and District Court Judge James Wanamaker of Anchorage. We were also saddened by the death last September of District Court Judge Samuel Adams of Anchorage. With these departures, our bench loses nearly 60 years of accumulated experience. And in Fairbanks, Superior Court Judge Richard Savell has announced that he is retiring later this Spring.

At the same time, we have welcomed the many new judges appointed to our bench by Governor Murkowski: Craig Stowers to the Superior Court in Anchorage, John Wolfe to the District Court in Palmer, David Landry to the District Court in Kenai, Pat Hanley to the District Court in Anchorage, Dan Schally to the District Court in Valdez, and Keith Levy to the District Court in Juneau. Additionally, we are awaiting a new round of Council nominations for open seats in Homer, Fairbanks, and Anchorage.

The trend signaled by these changes deserves careful reflection. Over Alaska's first forty-three years after statehood, we filled an average of four judicial vacancies per year. Yet during the past three years, we have seen vacancies double to eight per year. In the nine months between August 2004 and March of this year, we will have nominated judges for nine vacancies -- a rate of one per month.

This growing number of judicial appointments had its most immediate impact on the Alaska Judicial Council, the body charged by our constitution with screening prospective judges and nominating the most qualified applicants for appointment by the Governor. The Council has six unpaid members, who volunteer the time they spend on their duties; they are headed by the Alaska Supreme Court's Chief Justice, who votes only to break a tie. In keeping with our Constitution, the Council operates independently of the court system and other branches of government, relying on a small budget and staff of its own. The sudden and unexpected growth of judicial openings has stretched the Council's financial resources, and individual Council members have also felt the strain. In the seven months ending this March, Council members will have spent fourteen full days interviewing judicial applicants in seven different locations.

Alaska's constitutionally prescribed system of nominating judges according to merit is recognized nationally as a model for judicial selection and enjoys wide support from the citizens of Alaska. The Judicial Council is committed to excellence and is doing a fine job. But the growing number of judicial openings means that the Council needs the Legislature's support more than ever. Because an experienced and independent judiciary is indispensable to Alaska, I urge you to recognize the importance of continuing to support

the work of the Council.

The fast pace of judicial appointments highlights another changing feature of Alaska's judiciary: When Alaska first attained statehood, it was common for attorneys to be appointed to all levels of the bench at a very early age. Chief Justice Jay Rabinowitz was appointed to the Supreme Court at age 38, after having served on the superior court since he was 33; Chief Justice George Boney was also appointed to the Supreme Court at the age of 38. But Alaska is no longer a new state. The men and women applying to become judges are generally older and considerably more experienced as lawyers. So far, we have been fortunate in attracting judicial applicants from this select pool of proven and experienced lawyers. There can be no doubt that Alaska's judicial system has traditionally been strong; this tradition continues to attract strong applicants. Yet we cannot bank on tradition alone for the future. If we want to draw tomorrow's judges from the leaders of our legal profession -- especially from those practicing in the private sector -- we cannot realistically offer them salaries that may soon rank among the last in the nation.

Historically, the salaries of our state superior court judges were set to approximate those of their federal counterparts, United States District Court judges. In fact, for a time our federal judges looked to Alaska's superior court as a benchmark. In 1982 Alaska's superior court salaries placed Alaska first in the nation. But federal salaries began a steady rise in the 1980s; so did judicial pay in most other states. Alaska now ranks near the bottom of the national average. When adjusted for cost of living, Alaska's judicial salaries place our state 49<sup>th</sup>. And today Federal District Court judges earn almost fifty percent more than our superior court judges. In fact no member of Alaska's judiciary

earns nearly as much as federal magistrates -- the lowest positions among federal judicial officers.

This may not be a popular issue; but it needs to be raised before Alaska slips even further. My overriding concern is for the future of our institution. If we blind ourselves to the problem, we may ultimately deprive our state of a balanced bench -- one that includes judges drawn from the top sectors of legal practice, where many attorneys are undoubtedly eager to serve the public as judges, but few could afford the economic penalty of being appointed. Our government is built on respect for the law. But we can't expect the public to respect the law unless we treat our institutions of justice -- our judges -- as worthy of the public trust inherent in their duties. So I respectfully ask you to consider realigning Alaska's judicial salaries to keep pace with the norm prevailing in federal and state courts around the nation.

This brings me to the last points I'd like to cover in my report: our ongoing efforts to enhance community participation in Alaska's system of justice. For some time now, the court system has focused on the need to treat Alaska jurors more humanely. We expect to continue our efforts to improve the way we treat and recognize jurors. After all, citizens who respond for jury duty play a core role in our justice system -- and often at tremendous sacrifice: time away from a job, from family and normal routines, as well as many other serious inconveniences. In the past, our government sometimes took this service for granted. As a result, jury duty is now too often seen as an unwelcome demand. To restore vitality to our system, we need to acknowledge the importance of jury service and make sure that we recognize jurors for their valuable contributions. To this end, the

court system is striving to lighten the burden of jury service by reducing the time that jurors are subject to being called, allowing greater scheduling flexibility, avoiding unnecessary delays, and addressing growing concerns relating to juror privacy and safety. I'd like to take this opportunity to recognize all Alaskans who have responded to a jury summons, and to thank each of you personally for your valuable contributions.

Another recent court system project illustrates further benefits to be gained by involving Alaska's communities in issues of justice. Last year the Alaska Court System conducted five regional forums called "Children in Alaska's Courts" in Barrow, Anchorage, Juneau, Fairbanks and Bethel. A Supreme Court Justice attended at each location. Aided by a grant from the State Justice Institute, these forums invited professional and public feedback to tell us what works and what doesn't in our efforts to deal with the thousands of cases affecting Alaska's children that we hear every year in our courts. More than 300 concerned Alaskans participated in these forums. And I would like to thank Senator Gary Wilken, who personally took part in the Fairbanks forum. By holding these forums, we identified many new issues, heard many specific suggestions for improving our system in each community, and gained valuable ideas for reviewing and upgrading our statewide practices to ensure that our justice system meets the highest attainable standards.

In the final analysis our experience with the "Children in Alaska's Courts" forums captures my vision of the Alaska Court System in the future: a strong, fair, and accessible system that brings equal justice to all Alaskans, always stands ready to listen, and constantly strives to do better.

That completes my report. Thank you for your attention.