State of the Colorado Judiciary
Chief Justice Joseph R. Quinn, Colorado Supreme Court
Message to the Colorado General Assembly
January 20, 1987

I welcome this opportunity to speak to you about the state of the judiciary in Colorado. I think it is a particularly appropriate topic in 1987, since this year marks the 200th anniversary of the writing of the United States Constitution. Just as the signing of the Declaration of Independence marked the end of our colonial existence in 1776, so too the drafting and ratification of the Constitution constituted the birth of our republic.

Those who drafted the United States and Colorado constitutions wisely set up a system in which power is divided among three separate but co-equal branches of government -- the legislature, the executive, and the judiciary each serving as a check on the exercise of power by the other two and each needing the assistance of the others to make government work effectively for the people.

The constitutional responsibility of the judiciary can be simply stated. It is to provide a forum in which disputes can be resolved by the neutral application of controlling legal standards to the facts. Judges are constitutionally bound to decide cases without fear or favor, whether the case be between different branches of government, between a citizen and the state or between citizen and citizen.

Courts work well to the extent that they are accessible to the people and to the degree that they resolve controversies speedily, economically and fairly. There are today, however, massive strains on our judicial ability to function effectively.

Last year, the total judicial budget constituted only 3.4 percent of the general fund budget and only 1.7 percent of the total budget inclusive of general funds, federal funds and cash funding. While our budget requests this year are modest in terms of overall dollars, they are nonetheless critical to the proper discharge of our constitutional responsibilities to Colorado citizens whose disputes come before the courts for resolution.

The burdens confronting the courts today are attributable to a marked increase in caseloads, which in turn is the result of several factors, as I will presently discuss. These burdens can be alleviated by concrete and specific measures, including the following: (1) adequate funding to make the judicial department more technologically efficient; (2) an enhanced training capacity to increase our ability to manage burgeoning caseloads; (3) the development of effective alternatives to dispute resolution by trial, such as mediation and some form of arbitration; and (4) most important of all, increased support staff for our courts.

More frequently than ever before, Colorado courts are called upon to adjudicate controversies that are intimately bound up with the complexities of modern life. Between July 1, 1985, and July 1, 1986, for example, there were over 340,000 cases filed in our sixty-three county courts, and approximately 138,000 cases filed in the district courts. 1,872 cases were filed in our water

courts, and approximately 1,800 cases were filed in our appellate courts. Only about ten percent of these cases constituted criminal matters.

Filings, of course, are not the equivalent of trials. But filings do necessitate judicial involvement if cases are to be resolved in a timely fashion. At the rate our caseload is currently increasing, nearly 20,000 more cases will be filed the present fiscal year than in the previous year. As our judicial system approaches a point where nearly one-half million cases are filed per year, it is not surprising that persons who use the courts to resolve their conflicts are encountering increasing delays. This, in turn, results in frustration to the litigants, uncertainty of result, burdensome legal fees, and ultimately a loss of public confidence in the government's ability to function effectively. In the case of commercial litigation, it can also result in a delay of economic development and expansion until such time as the case is finally resolved.

Many attempts have been made to explain the increase in litigation which we are seeing today. I would suggest to you several explanations for this phenomenon. First, I believe the increase in litigation is directly related to the great increase in legislative and administrative regulation which we have experienced over the last several years. During the last five years, for example, approximately 1,600 new bills made their way into our statutes. Much of this legislation has improved the welfare of our citizens and has clarified the rights and duties of individuals and groups in the complex relationships of modern society. The fact remains, however, that this legislative effort also means that courts are called upon with increasing frequency to interpret the laws and to resolve challenges to their validity by litigants adversely affected by them. And, even then there is no dispute as to the applicable law or what it means, there always remains the problem of resolving the facts of the case so that the law can be applied to reach a proper result.

The significant increase in legislation related to traffic offenses points up the correlation between new legislation and increased work loads for the courts. In 1980, a typical traffic case involved a fine and an eight dollar court cost. Today, there are over 300 traffic offenses divided into six different statutory categories, all of which are affected by seven different levels of costs, fees, fines, and penalties. All of these monetary assessments must be made by the judge, while the court clerk must account for and collect the monies due. Today it takes our courts twice as long to process a simple traffic case as it did in 1980.

Second, we have witnessed a significant increase in population in the state. Ten years ago our population was 2,600,000. At present, this number is approximately 3,300,000. Case filings over this ten year period almost doubled in our county courts, increased almost 45 percent in our district courts, increased 200 percent in the court of appeals, and 60 percent in the Supreme Court. Moreover, this population increase has been concentrated in the urban areas of our state. With urbanization and high concentration of people, relationships become complex, impersonal, and multi-faceted, and litigation is all too often viewed by people as the only effective means to redress their grievances.

Finally, as our society has become more mobile, more transient, and less cohesive, we have seen a significant shift in personal and social relationships. Less and less do people look to the traditional family, the church, or the neighborhood for support and solutions to their problems. This change in attitude is most dramatically reflected in domestic relations litigation and in

dependency and neglect cases. Legal redress is often viewed by both the governmental agencies and individuals as the only source of protection to remedy a deteriorating situation.

We in the judiciary are not insensitive to the frustrations and delays that this increase in litigation has meant to people seeking justice in our courts. Much of our effort over the last two years had been directed towards making sure that we use our very limited resources in the most efficient and productive ways possible. Let me briefly discuss with you what our judicial system has been doing. Our present efforts are important because they not only point up our needs but also indicate what our goals should be in the immediate future.

In 1985 the state Court Administrator's office, which is the nerve center for planning and management, was reorganized into six separate departments. Although this office has labored under severe funding shortages during the past year, it was able to supervise effectively a restitution program that resulted in the collection of $4,000,000 from offenders or probationers for distribution to victims of crimes. The administrator's office also administered training programs for judges and referees, conducted mediation programs in three counties, supervised the reallocation of probation services on a statewide basis, and coordinated a nine-month hiring freeze throughout the Judicial Department.

It is a recognized fact that active and firm management of our caseload requires an administrative structure capable of aggregating empirical data to evaluate our present caseloads, to devise ways of reducing backlogs, and to analyze the effect of new procedures on case flow and case management. Although automated court processes are indispensable to our large front-range courts, which handle 80 percent of the state's caseload, these courts are using an antiquated case tracking system developed over a decade ago. The system lacks the capability to enable judges, court administrators, and staff to obtain statistical and management information for planning purposes and is virtually ineffective for day-to-day docket control. Technological change is passing us by. Funding to allow development of a case management system is critical if our courts are expected to operate effectively in this day and age. We have made these funding requests in our proposed budget, and it is my hope that you will give these requests serious consideration during your budgetary deliberations.

Training is a high priority in our judicial department. Responsibilities of adjudication have been compounded not only by the many changes in the law that have occurred over the last few years but also by the increasing administrative responsibilities caused by heavy caseloads. Since only $30,000 was allocated for training programs during the last fiscal year, most of our training funds were expended on newly appointed judges and referees. Meeting the training needs of both judge and nonjudge employees is critical to ensure the efficient and effective administration of justice in Colorado.

Planning is also an indispensable component of an effective judicial system. In August 1985 I created the Judicial Advisory Council, which is composed of twenty-four members from all parts of the state, many of whom are highly capable lay persons with business backgrounds. The function of this council is to study the needs of the Judicial Department, to identify particular problems in the judicial system, and to recommend solutions. The council recently responded to its charge by recommending legislation for the creation of a statewide Colorado Commission on

Judicial Performance and district commissions in each judicial district throughout the state. The members of these bodies would be appointed by the legislative, executive, and judicial branches of government. The purpose of this proposal is to provide the voters with fair, responsible, and constructive information about judges who are on the ballot for retention. This legislative proposal has the support of judges, and I hope that you will respond favorably to it.

In the matter of probation, the Judicial Department has made the effective supervision. Of felony offenders and juvenile delinquents its numb.er one priority. We recognize that probation and parole are matters of great concern to our citizens. We must accept the fact, however, that not all felony offenders can or necessarily should be sentenced to prison. If probation is to serve as an effective alternative to incarceration, it must be strictly and effectively administered.

Since 1980, the probation caseload has grown by 25 percent, yet staff levels increased by less than three percent. I issued a directive in 1986 requiring probation departments to marshal all existing resources in the direction of providing maximum supervision for felony offenders and delinquents. This directive requires that .an officer make several monthly contacts with offenders on probation and ensures a level of supervision consistent with both public safety and the rehabilitative needs of the offender. This effort at supervision was buttressed by the establishment of administrative standards for probation departments and the voluntary transfer of probation officers throughout the state to equalize resources.

The benefits of intensive supervision, however, were gained only at the expense of other functions required by probation officers, such as supervision of misdemeanor offenders and other responsibilities. I believe it is penny wise and pound foolish to underfund the probation function, which not only is a far less expensive sentencing alternative than incarceration but also provides the public with a significant degree of safety and offers the offender a meaningful opportunity to straighten out his life once and for all. We need funding for additional probation officers if this program is to work effectively.

Let me move briefly into the area of delay reduction. I recognize that the judiciary has the responsibility to process cases speedily and in an effective manner. I have appointed a Statewide Committee on Delay Reduction to examine our court dockets throughout the state and to determine where we are experiencing undue delay problems. This committee is also charged with the development of case processing time standards for each type of case, a statewide records management system, and a plan for implementing the delay reduction program on a statewide basis. This committee will report its findings to the Supreme Court in October 1987. Working in tandem with this effort is the Supreme Court's Standing Committee on Rules of Civil Procedure. This committee has been attempting to develop simplified procedures for processing non-complex civil cases.

We are also investigating alternatives to the traditional trial as the method for resolving disputes. In particular, we have experimented with mediation -- a process which provides the parties with a forum in which to reach their own solution with the aid of an independent facilitator or mediator. Mediation has proved particularly effective in domestic disputes involving custody, visitation, child support, property division, and maintenance. It also holds out potential for landlord-tenant disputes, employee-employer disputes, and other forms of minor controversies

that are nonetheless significant and important to the parties involved. Our experience thus far indicates that about 80 percent of referred cases were successfully mediated without a formal court hearing.

The Judicial Department has also worked closely with some of you in developing proposed legislation for some form of court-annexed arbitration. I believe that an effective program of court-annexed arbitration can contribute to the reduction of congestion, costs, and delays, as well as diminish the financial and emotional costs of protracted litigation for the parties. Although arbitration is by no means a panacea for all the litigation problems of contemporary society, it does hold out significant potential that should be fully explored. As we attempt to settle controversies more quickly and economically, however, we must avoid the risk of imposing on our citizens a form of rough justice that is more rough than just. I believe those of you working on this project are sensitive to this concern, and I am confident that you will provide our citizens with an effective alternative to the formal trial without sacrificing the quality of adjudication.

Let me turn briefly to our efforts in the juvenile area. Society faces a tremendous problem with divorced parents who fail to provide adequate child support for their children. Nearly 20,000 child support cases come before our courts each year. We have worked closely with the Department of Social Services to implement the child support guidelines which were enacted last year and to provide adequate collection methods for unpaid child support.

Society is also burdened with the unfortunate plight of abused and neglected children. The Supreme Court Task Force on Permanency Planning for Children, which was appointed in 1985, is composed of legislators, judges, social scientists, physicians, attorneys, and other members of the public interested in developing ways to improve the placement and treatment of the abused and neglected child. The primary charge of this task force is to examine existing legislation, rules, and procedures in an effort to remove some of the presently existing problems in permanency planning for children. The task force has received federal funding to continue its efforts in 1987 and will be making recommendations to you in the future.

One of the more serious shortcomings in the area of juvenile justice is the lack of adequate funding to pay attorneys who are appointed by the court, pursuant to statutory mandate, to represent children or their parents in dependency and neglect cases and the juvenile in delinquency cases. The attorneys taking these cases perform a vital service to the state, but frequently cannot recoup even their overhead costs due to inadequate funding in this area. We request that you look into this situation.

I would be remiss if I did not publicly acknowledge the many sacrifices made by judges and other judicial employees in order to achieve this level of service to the public. The fact of the matter remains, however, at shortages in staff have required district and county courts to restrict filing hours, to limit information given over the telephone about pending cases, and to reduce many other vital services previously performed.

It is no overstatement to tell you that our judicial system may soon be reaching the point where it can no longer maintain adequate service to the public unless it receives the funds necessary to carry out its constitutional responsibilities. Over the last four years, for example, the district

court caseload has increased 20 percent in filings and 16 percent in terminations. Over the same period, however, trial court staff has increased only 1.4 percent. Last year, our judicial system operated with over one hundred vacancies due to a hiring freeze. We cannot impose an additional cut-back this year without rendering our courts inoperable. We have a demonstrated need, made known to the joint budget committee, for additional court clerks throughout the state.

Now let me briefly review with you two legislative proposals which I believe deserve your urgent attention. I preface these remarks by telling you that we are not asking for any additional judges in the trial courts of our state. We believe with a modest increase in support staff and the development of technological efficiency, we can handle the present massive caseloads in our courts.

We are, however, requesting six additional judges for the court of appeals, or two more panels of three judges each. Civil cases appealed to that court now take from two and one-half years to five years to resolve. This court has been operating with ten judges for the past thirteen years, but during this period of time the number of cases filed has increased 213 percent, and the court is now faced with a pending backlog of 2,151 cases.

Full collegial consideration of a case is the essence of appellate review. The present caseload of the court of appeals exceeds all limits for proper appellate consideration. The quality of justice available to Colorado citizens will be substantially reduced if this court is not provided the resources necessary to fulfill its judicial responsibilities. Such a result would be unfair to the hardworking judges of that court, unfair to litigants, and most of all unfair to the public for whom the judicial process exists.

Another matter of concern is judicial salaries. The last salary increase occurred in 1984, and now the salaries of our v district court judges rank forty-first in the nation. The salaries of our court of appeals judges rank thirty-third, and the salaries of supreme court justices rank thirty-seventh nationally. No national ranking is available for county courts. The judicial department is requesting a $9,000 salary increase for all levels of courts. Your favorable response to this request will reduce some of the economic attrition that has occurred in judges' salaries over the years and will remove some of the economic disincentive which comes with a judicial career. We have been fortunate in being able to attract highly qualified candidates to judicial vacancies, but lately we have witnessed a significant decrease in the number of applicants.

What I have attempted to convey to you is a true and accurate picture of our condition, without exaggerating our accomplishments or downgrading our problems. Let me state that I believe we have a judicial system that has worked well primarily because of the efforts of hard-working judges, probation officers, administrators, and clerical staff. I recognize that yours is a formidable task, in that you are expected to be all things to all people. Nonetheless, I have no doubts that the problems confronting the judicial system today can be dealt with effectively if that system is adequately funded.

Justice is not a limited resource that should be rationed on a first come-first served basis. The people of Colorado are entitled to a judicial system that serves the community at large, that owes allegiance to the rule of law, and that engages the difficult legal issues that are brought before it

with fairness and impartiality. We need your assistance if we are to maintain these cherished values.

I thank you for this opportunity to address you and I wish you well in your important deliberations in the weeks and months ahead.