State of the Judiciary
Chief Justice Margaret H. Marshall, Massachusetts Supreme Judicial Court
Message to Massachusetts Bar Association Meeting
January 24, 2004

Thank you, President Van Nostrand, members of the Massachusetts Bar Association, and distinguished guests, for the opportunity to speak to you once again. I always look forward to this event. It is an opportunity for me to reflect on the progress we have made toward improving the delivery of justice in our courts, and to consider where we will go from here. The momentous changes that are taking place in the legal profession continue to make headline news, with a cover story in The Boston Globe Sunday Magazine just two weeks ago. There are equally momentous changes taking place in the judiciary."

Law must be stable and yet it cannot stand still."[1] The familiar words of Roscoe Pound might well apply to the Judicial Branch. For the Massachusetts court system stands at the threshold of broad and deep institutional change. With apologies to those of you who may have returned for an annual dose of John Adams, this year I would like to take stock of what our courts have done, and must do, to change, as we confront the changes that surround us.

We are past the point – well past the point – of asking whether our courts should transform the way we deliver justice. You and others have told us that we must, and we have listened. Increasingly, the courts' constituents – your clients – are diverse, multilingual, and well versed in the use of technology. We know that to meet their needs for justice, to maintain their confidence in the fairness and relevance of our system of laws, our courts must put aside any arcane, obsolete, or inefficient ways of doing business.

Similarly, we are well past the point of asking how our courts should change. The Visiting Committee on Management in the Courts, the Monan Committee, provided the Justices with a masterful blueprint for comprehensive management reform. That blueprint emerged from months of focused, intensive work by some of the most sophisticated management talent in the Commonwealth. When it was done, the Justices traveled across the Commonwealth to solicit the views of the bar, court managers and employees, judges, clerks, the business community, and others on the Committee's recommendations. The positive responses we repeatedly heard were a prime factor in the Justices' decision to adopt the major recommendations of the Monan Report. On behalf of the Justices, I once again thank Father J. Donald Monan and the members of the Visiting Committee for their dedicated public service in the interests of justice. Their work has left a profound mark on our Judicial system.

We have recognized the need for change. We have adopted an effective plan for change. Now comes the difficult task: the pragmatic challenge of getting the work done, and making sure that it is done well.

Key to effective change for any institution, public or private, is strong leadership. We have that strong leadership in the new Chief Justice for Administration and Management. The Justices appointed Chief Justice Robert A. Mulligan in large part because we know him to be eminently

qualified, by talent, temperament, experience, intellect, and energy, to fulfil the mandate we have given him. That mandate is to translate the central recommendations of the Monan Report into concrete actions. Chief Justice Mulligan assumed office on October 1, 2003, and within the first 115 days of his tenure we have already seen an escalation in the pace of change. With the unanimous support of the Justices, he has identified three recommendations of the Monan Report as high priorities.

One: we will develop a court staffing model that will enable us to allocate resources within the trial court on a fair, rational, equitable, and transparent basis.

Two: we will design and implement systems of presumptive time standards for each of the trial court departments. Those standards will set goals and promote the timely and expeditious processing of all matters, civil and criminal.

Three: we will develop performance evaluation systems to measure and assist in the improvement of the delivery of services by every unit of every trial court. We will build (as it were) on the best practices of centers of excellence, and identify those units that are not performing as well as they should.

I recognize that these are broad management objectives, stated in broad managerial terms. Implementation will require a multitude of discrete actions, without which meaningful reform of our courts will not be possible. But make no mistake: achievement of each objective will represent a major accomplishment.

The Justices and I are convinced that the challenges of court reform can be met, and will be met. We have asked Chief Justice Mulligan to establish a clear chain of command – another key recommendation of the Monan Committee – to ensure that we meet the needs of the people who come to our courts seeking justice. As this Bar Association has long recognized, it is crucial for those who work in our courts, as well as those who use them, to be clear about the lines of authority. To make sure that our work is done, and done well, we need to know who is accountable to whom. We intend to erase all ambiguity about who is responsible for what.

With the support of the Justices, Chief Justice Mulligan and the departmental Chief Justices will make the vision of the Monan Committee a reality in every court. We will do so with the strong support of those who work in our courthouses. During my tenure as Chief Justice, I have traveled the length and breadth of this Commonwealth. I have done so during a period of extraordinary fiscal challenge. Again and again I have been impressed with – no, moved by – the dedication of the judges and staff who work in our courthouses. These public servants are our unsung heroes. They are the ones at work six and sometimes seven days a week, simply to keep abreast. They are the ones who extend a helping hand to an abused victim seeking protection even after the courthouse door has been closed. They are the ones who have taken on additional assignments because a retired colleague cannot be replaced for budget reasons. I hope you will join me in extending our thanks to them.

We will make the vision of the Monan Committee a reality by benefitting as well from the strong working relationships we have established with leaders in the Legislature and the Executive

Branch, leaders who understand that it is important that in this Commonwealth we continue to strive for a standard of excellence in all of our courts.

Let me point to one example. Since I became Chief Justice, we have faced dramatic fiscal challenges. As Chief Justice Mulligan described to your Board of Delegates on Thursday, the crisis occasioned by the loss of more than 1,200 positions since July, 2001, persists, and many courts are understaffed. The pain of fiscal austerity has been sharp. But just last week the Legislature responded by providing the Trial Court with additional funds to address some of our most urgent needs. I want to thank the Legislature for their critical support during these difficult times. I want to thank the leaders, the staff, and every member of this organization for your advocacy on our behalf. Chief Justice Mulligan and I will work together to secure adequate funding for our courts. With your help we will make the most forceful argument to the Governor and the Legislature to provide the courts with the funding we need to serve the people of the Commonwealth.

The pain of fiscal austerity has taught us to work smarter with less. It has taught us to be more assertive about the importance of courts to the health of our democracy. The fiscal crisis has also sparked a dynamic exchange of ideas among the three branches of government on the issue of court reform. Last year, consistent with another key recommendation of the Monan Committee, the Legislature authorized the establishment of a Court Management Advisory Board. We will shortly appoint the members of this Board, who will advise the Justices and Chief Justice Mulligan "on all matters of judicial reform." We look forward to working with the Board to accomplish our shared goal of improving the administration of justice. On behalf of the Justices and all in the Judiciary, I extend my thanks to Speaker Finneran, Governor Romney, and President Travaglini, and others in the Legislature and the Executive Branch for their committed and frank engagement in this conversation on the issues of court management and reform.

A key component of any courthouse of the future is technology. Implementing MassCourts, the comprehensive, integrated case management system for the trial courts, is perhaps the single most challenging issue Chief Justice Mulligan faces. MassCourts will combine multiple separate systems now in use in the trial court departments into a single central system. Since he assumed office on October 1, Chief Justice Mulligan has taken stock of where we are in the MassCourts project. Where necessary, he has made adjustments to the planning. He has, for example, recognized the critical importance of creating successful electronic interfaces with other institutions with whom we work closely, the Department of Revenue, the Registry of Motor Vehicles, law enforcement agencies, to name a few. For all of you – attorneys, litigants, clerks, and judges – making these interfaces work seamlessly will make a difference in your professional lives. Chief Justice Mulligan has taken charge, and is moving this massive project forward.

A word about our appellate courts. You no longer need to make repeated trips to the courthouse or telephone calls to a clerk's office to obtain appellate case information; it is now readily available on the courts' web sites. Information is posted daily to provide attorneys and the public alike with easy access to current case docket and calendar information regarding appellate court cases. Chief Justice Armstrong and his colleagues deserve great praise for joining with the Supreme Judicial Court to move our entire appellate system into a new age.

We all know that our courthouses are more than physical spaces in which we deliver justice. Each building is a statement about the promise of justice, a public statement visible to everyone. Our courthouses are the nerve centers of a community. The Commonwealth has some of the oldest and most beautiful courthouses in the nation. But many are in urgent need of repair and, yes, we do continue to use some courthouses that have surpassed their useful life. Respect for the profound role courthouses have played, and continue to play, in our great democracy must be part of any conversation about the siting and capacity of courthouses. With the clear support of the Justices, Chief Justice Mulligan is committed to resolving the multiple, complex issues concerning our courthouses in a manner that reflects our best thinking about how we will administer justice effectively – not just in 2005 and 2006 – but over the next 50 years. As he does so, we look forward to a thoughtful dialogue with the other two branches about courthouse construction and renovation, especially in this era of fiscal constraints.

These are exciting times. We have a blueprint for management reform. We have strong leaders who will implement that reform. But in truth, a revolution in the delivery of justice requires the sustained commitment of many.

A culture of excellence draws from many sources. And we have many sources from which to draw. Spend a day in any one of our courts and you will find judges, clerks, probation officers, and secretaries actively engaged in the process of improving our courts. Where can you look to see that happening? Let me give you just one example – the West Roxbury Division of the Boston Municipal Court.

The Reinventing Justice Project of that court is one of the most innovative court-community partnerships in the country. In addition to court staff, the Project members include assistant district attorneys, public defenders, representatives of our Legislature, community churches, public schools, and health centers. The core of the Project is a community advisory group that measures the performance of the court, and enhances court accountability and court access. A problem: people in the community have difficulty finding the courthouse. The solution: confer with officials from the MBTA and together develop signs in English and Spanish to post at Forest Hills station and along the roads to the courthouse. A problem: offenders who suffer from both an addiction and a mental illness present considerable challenges when they are on probation. The solution: in collaboration with the Boston Medical Center, establish a Forensic Access to Community Services Program to address those challenges. I could mention so many other solutions that have been found for problems that have been identified. Change is a living reality in the West Roxbury Division of the Boston Municipal Court. First Justice Kathleen E. Coffey is here today, and I want to recognize her, as the representative and leader of that court, for her innovative, inspiring efforts in partnering a court with its community.

Leadership. Teamwork. Commitment. Accountability. Accountability takes many forms. One component is the ongoing process of the evaluation of individual judges. We are now in the eighth round of judicial performance evaluations, involving forty judges from Worcester County. To date, 263 evaluations have been completed. You know, as I know, that the overwhelming majority of our judges are superb. But you also know, as do I, that a few, a small number of our judges, do not perform as well. Chief Justice Mulligan and I are committed to dealing

appropriately and effectively with any judge whose performance evaluation demonstrates inadequacies in substantive knowledge of the law, in demeanor or attitude. Judges who do not perform well are a source of frustration to attorneys and their clients. They also trouble judges: all of us are tainted by a few. Working with the departmental Trial Chiefs, Chief Justice Mulligan and I have already begun to address the problems that early evaluations have laid bare. We will continue to do so. Improvement for those judges is not an option. It is a requirement.

Accountability takes other forms. The timely final disposition of a case can mean as much to a victim, or a plaintiff, or a criminal defendant as does the quality of justice. Final disposition often comes after appellate review. But appellate review is dependent on accurate records of trial court proceedings. In our system, the preparation of transcripts can be delayed for months, sometimes years, as victims wait for final justice, as interest multiplies in civil cases. In this era of instant communication and advanced technology, there is no excuse for such basic systemic failures. That is the conclusion of the Supreme Judicial Court's Study Committee on Trial Transcripts, ably chaired by Appeals Court Justice Mark Green. The Committee has proposed numerous ways to resolve the transcript crisis in our courts. After consulting widely with court constituencies, the Justices have asked Chief Justice Mulligan to prepare a plan and timetable for implementing as many of the Committee's recommendations as are currently feasible. We will reform a system that for too long has been wholly inadequate to meet the needs of the courts and the litigants they serve.

The work of bringing our courts – all of our courts – into the Twenty-First Century is complicated. It is difficult. It is ambitious. Change will happen. The Justices have made that clear. In my first address to this Association, I said that "I intend to translate my reverence for our Constitution into a commitment to excellence in [judicial] administration." Centers of excellence are now multiplying as we tackle – in a systematic way – the urgent priorities for reform. With the cooperation of the other branches of government; with the strong leadership of the Chief Justices, clerks, and registers; with the energy and enthusiasm of our judges and court employees; with the guidance and support of the organized bar; and with the good will of the public at large; I know we will succeed. Shaping our courts to address what my great predecessor, Chief Justice Oliver Wendell Holmes, Jr., called "the felt necessities of the time"[2] is fitting work for this Commonwealth, the birthplace of an independent, robust Judiciary.

As we embark on this journey of transformation, we will ask you for your comments, your frank comments, and for your ideas. We will give them our full and respectful consideration. Which changes seem to be working? Which do not? What should be modified? You, the organized bar, individual attorneys, judges, clerks, and court employees – you are our eyes and ears across the Commonwealth. Help us to take the measure of our progress. We in turn will ask for your help. We will ask for your help regarding funding. We will ask for your help regarding self-represented litigants. And we will ask for your help to ensure that the very best and brightest will seek to hold judicial office.

You have often heard me say – because it is true and bears repeating – that the substantive quality of justice in the Commonwealth is superb. Our judges are among the best in the nation. But they hold that position only because successive Governors have been able to recruit and retain the very best of the bar. Two years ago I told you that our judges are not adequately

compensated. Judges are still not adequately compensated. The last judicial pay raise legislation was enacted in 1998. We continue to slip backwards. We have slipped so far that we are now forty-seventh in the nation in terms of what we pay our judges. That is unacceptable. We must compensate our judges commensurate with the critical role they play in our society. We will ask for your help to make the case for why it is important to compensate judges adequately.

I have spoken about administrative excellence. I have spoken about judicial excellence. But what will these mean if the people, your clients and those who do not have a lawyer, are unable to benefit from our excellence?

"Access to justice" – what is it? Is it just a high-sounding, but amorphous phrase? Let me give you my definition. To me, access to justice means making the judicial system work for everybody – regardless of fear for one's personal safety or the ability to pay for a lawyer; regardless of the ability to speak English; regardless of the ability to walk, or hear, or see.

Equal access to justice is a priority. Why? Because equal access to justice is the core principle of our constitutional democracy. It affects the well-being of us all. We can have the most brilliant judges, the cleanest and most high-tech courthouses, a seamlessly efficient management structure – but where the people have no confidence that every person can find justice in our courts, democracy will wither on the vine. In its place will grow the poisonous notion that our legal system works only for the rich, the powerful, the strong, the well-connected.

In Massachusetts, we have made strides in improving access to justice for all. Because of the leadership of former Chief Justice for Administration and Management Barbara A. Dortch-Okara, a revamped Office of Court Interpreter Services now handles over 70,000 requests for language services every year in more than seventy different languages. Our efforts have drawn national praise: Judge Isaac Borenstein has been honored by the National Center for State Courts for his groundbreaking achievements in helping to ensure access to the courts for non-English speaking litigants.

Appeals Court Justice Cynthia Cohen and the members of the Supreme Judicial Court's Steering Committee on Self-Represented Litigants are making substantial progress translating into action the considerable work already accomplished on pro se issues both in Massachusetts and around the country. They are developing policies and training programs for judges and court staff who deal increasingly with unrepresented litigants. They are exploring ways to expand access to legal representation. They are examining court technology and considering how our courthouses might be made more "user-friendly."

Yet for all this and other good work, access to justice in this Commonwealth is not always equal. "Facts," said John Adams, "are stubborn things."[3] Consider the following stubborn facts. It has been forty-six years since the Supreme Judicial Court adopted a rule that required the appointment of counsel in all noncapital felony cases. That was 1958, five years before Gideon v. Wainwright, 372 U.S. 335 (1963), imposed this obligation on the States.[4] But our system of representation for criminal defendants is severely strained. We cannot fulfil the constitutional mandate of Gideon unless we provide adequate resources to make that possible. Consider this fact: the average loan burdening a law school graduate is more than twice the annual salary of

new prosecutors and public defenders.[5] How can we expect new lawyers to accept and remain in these critical positions when the compensation is so low?

And on the civil side, the picture is just as stark. The 2002 Massachusetts Legal Needs Survey reports that "[m]ore than half of low-income residents (53%) reported experiencing an unmet legal need during the previous 12-month period, with many people saying they don't think anyone can help, they don't know where to go for assistance or they are afraid to seek help."[6] It is a fact, pointed out by Justice Ruth Bader Ginsburg, that in civil cases less than twenty per cent of the legal needs of our poor citizens, "and not two-thirds of the needs of [our] middle class" are met.[7] A mother facing bankruptcy because a divorced spouse is delinquent with child support payments, a son seeking to be appointed a guardian for a parent with progressing dementia, an injured worker who cannot obtain the compensation benefits he rightly deserves, each should have the assistance of a lawyer to transverse our increasingly complex society. We know that we are far from reaching that goal — lawyers are beyond the reach of far too many Massachusetts residents.

These are facts, facts of great concern to me. I know they are of concern to you. These are the facts that directly affect both substantive justice, and the delivery of justice. I have elsewhere described what I call "three pillars of justice": substantive justice, judicial administration, and access to our courts. Together these three pillars hold up the temple of justice. We need to, we must, make sure that all three pillars are strong, lest the temple crumble.

Long before he became a great Justice of the United States Supreme Court, Louis D. Brandeis was a provocative and brilliant member of this bar. In 1905, he issued this challenge: "[A]ble lawyers have, to a large extent, allowed themselves to become adjuncts of great corporations and have neglected their obligation to use their powers for the protection of the people . . . . The great opportunity of the American bar is and will be to stand again as it did in the past, ready to protect also the interests of the people."[8] For ninety-four years, the Massachusetts Bar Association has broadened the halls of justice to accommodate the evolving needs of the people. You have been tireless in your efforts to dismantle the barriers to equal justice. For all you have done, and for all you will do, I thank you on behalf of the people of this Commonwealth.

Justice. You cannot hold it in your hand. And, traditional symbolism notwithstanding, you cannot weigh it on a scale. But you and I know justice, if you will forgive me, when we see it. We can sense it when we enter a clean courthouse. We can hear it when we ask at a counter for help. We can see it when a door swings inward to accommodate a wheelchair. We can see it when every person who enters a courthouse is treated with dignity and respect.

Justice may not be tangible, but it is real. It is built little by little, piece by piece, detail by detail, each part affecting the whole. With the help of this Association, we can, and we will, build a system of justice that is worthy in every measure of our enduring Constitutions. Thank you.

1. Roscoe Pound, Interpretations of Legal History 1 (1923).
2. Oliver Wendell Holmes, Jr., The Common Law 1 (1881).
3. Argument in Defense of the [British] Soldiers in the Boston Massacre Trials [December 1770], in Bartlett's Familiar Quotations 337 (ed. Justin Kaplan, 16th ed. 1992).

4. Commonwealth v. Rainwater, 425 Mass. 540, 554 (1997)
5. The starting salary of Massachusetts assistant district attorneys and counsel at the Committee for Public Counsel Services is $35,000 a year. According to the American Bar Association, the average loan borrowed for law school was $77,300 in 1999-2000. ABA Commission on Loan Repayment and Forgiveness, Lifting the Burden: Law Student Debt as a Barrier to Public Service 17 (2003)
6. Massachusetts Legal Needs Study Advisory Committee, Policy Implications of the Massachusetts Legal Needs Survey 3 (May 2003).
7. Honorable Ruth Ginsburg, Access to Justice: The Social Responsibility of Lawyers 7 Wash. U.J.L.& Pol'y, 1, 10 (2001).
8. Louis D. Brandeis, The Opportunity in the Law, 39 Am. L. Rev. 555, 559 (1905).