State of the Judiciary
Chief Justice Margaret H. Marshall, Massachusetts Supreme Judicial Court
Message to Massachusetts State Bar Meeting
March 5, 2005

Thank you, President O'Donnell. It always gives me great pleasure to address the members of this Association. You do so much for the people of Massachusetts, and I count many among you as my friends, mentors, and role models.

This year is a special anniversary for me. Five years ago, I became Chief Justice of the oldest court in continuous existence in the Western Hemisphere. To mark that anniversary, I decided to heed the wise counsel of George Bernard Shaw. "We should all be obliged," Shaw wrote, "to appear before a board every five years and justify our existence." Today I want to speak to you candidly about what the Judicial Branch has accomplished in those five years, and where we must go from here.

I first addressed you in 2000, when I had been Chief Justice for all of three months. I offered you then my vision of our Judiciary's future: "[W]e must be a national model of excellence in every aspect of our work throughout the judicial branch." I emphasized three areas of focus: strengthening judicial accountability, reforming the administration of justice, and broadening access to justice. How have we fared in pursuit of each goal?

First, judicial accountability. Public trust is the backbone of an independent judiciary.

Maintaining the public's trust requires that judges adhere to the highest standards of professional conduct. For me, judicial independence and judicial accountability are mirror images. Without one, we do not have the other.

In 1992, our Legislature mandated – wisely, in my view – that the Supreme Judicial Court design and implement a plan to evaluate the performance of judges. We are required by statute to administer questionnaires to those who have professional contact with our judges, to establish judicial standards, and to create a program of judicial enhancement for any individual judge whose performance falls below those standards.

We have now answered the Legislature's call. In the last five years, judicial performance evaluation has become a reality. This afternoon, I am pleased to announce two milestones in the judicial evaluation process. First, we have completed the evaluation of trial judges in every county in the Commonwealth – over 360 in all. Fifty-eight hundred attorneys in Massachusetts completed over forty eight thousand confidential judicial evaluations. Each judge was evaluated by an average of 126 attorneys. What did we find?

The results are heartening. While the judicial evaluation statute commands that specific evaluation data be confidential, I can tell you that our Judiciary’s reputation for excellence in substantive justice, long supported by anecdote alone, is confirmed by hard data gathered from thousands of respondents in confidential surveys. The overwhelming consensus of survey respondents is that our judges run their courtrooms in a fair and effective manner. They address litigants, witnesses, and jurors with respect, and allow self-represented litigants adequate time to present their cases. They are appropriately prepared, work hard, and in most cases issue their

opinions and orders in a timely manner. All this from our judges' most discerning critics: the lawyers who appear before them.

Over four thousand jurors participated in similar evaluations – and their responses were even more positive. Some jurors responding to the survey were concerned about a lack of parking spaces at our courthouses, some with infrequent coffee breaks, but almost uniformly they had surpassingly high praise for our trial judges.

But we cannot rest there. I said to you in 2000, "[Judges] share a responsibility with you to make sure that our judicial system is responsive, ethical and effective." For many years this Bar Association has placed judicial accountability near the top of its agenda. The Justices of the Supreme Judicial Court, the Chief Justice for Administration and Management, and all of the Trial Court Chief Justices will continue to work with you, as always, to foster a Judiciary without peer. We owe it to the people of Massachusetts to make sure that every judge in the Commonwealth is given every opportunity to excel in every aspect of judicial duty. But we know that the pounding pressures of daily life on the bench, aggravated by a scarcity of resources, leave some judges in need of assistance if they are to reach the high level of performance we expect of them, and they expect of themselves. This leads me to the second milestone.

I am pleased to announce today that, with the Supreme Judicial Court's approval, Chief Justice for Administration and Management Robert Mulligan has implemented a mandatory program of judicial enhancement in every Department of the Trial Court. All of the Trial Chiefs have reviewed and endorsed the plan. The program will focus on two categories of judges: those few who need help in discrete areas, and those, fewer still, whose over-all judicial performance is deficient. You recognize, I know, that a small number of judges need help in meeting the many demands of their work. Mandatory judicial enhancement will provide these judges with the tools they need to address their professional shortcomings. We will act. You will see the results. Chief Justice Charles Johnson led the committee of judges and others who developed the judicial enhancement protocol endorsed by the Supreme Judicial Court. Please join me in thanking him.

We have set the highest expectations for excellence. Now we must work together resolutely to attract and retain highly qualified jurists of diverse backgrounds and exceptional abilities.

How do we attract judges of the highest caliber? There is one significant barrier to those efforts that needs to be addressed, urgently addressed. One thing has not changed since I became Chief Justice in 2000 – judicial salaries. The compensation of judges has remained flat, while the cost of everything else, from a gallon of gasoline to a year in college, has soared. No one is calling for judges to receive rock-star salaries. But something is terribly awry when Massachusetts ranks 46th among the fifty States and the District of Columbia in judicial salaries as adjusted for cost of living.

Inadequate judicial salaries have a corrosive effect on our entire system of justice. United States Chief Justice William Rehnquist analyzed the problem with typical clarity: "Inadequate judicial pay undermines the strength of our judiciary," he said, "seriously compromises the judicial independence fostered by life tenure." It creates a sense of unfairness within the Judiciary that "erodes the morale of our judges." "Many of the very best lawyers, those with a great deal of experience, are not willing to accept a [judgeship] knowing that their salary will not even keep pace with inflation . . . We cannot afford a Judiciary made up primarily of the wealthy or the inexperienced."

The time to make judicial compensation a priority is now. We are grateful for the continued support the Judiciary has received from the Legislature and the Governor. This year, as leaders of the Judicial Branch make the case for judicial pay raises, we again expect to work cooperatively with the elected branches to secure this necessary component of court reform.

Whether judicial salaries are set by a non-partisan commission, as is successfully done in some States, or established directly by statute, they must be sufficient to attract and retain our best legal talent to a life of public service in the courts. I invite you to join the effort to ensure that judges and all who work in the judicial system are adequately compensated.

Maintaining the high quality of substantive justice by evaluating, educating, and adequately compensating our judges is essential to a well-functioning Judicial Branch. But we cannot rest there. The judicial accountability of individual judges must go hand-in-hand with institutional accountability of the Judicial Branch for the expeditious and fair delivery of justice. That is the second pillar of a vibrant Judiciary.

As the 20th Century gave way to the 21st, the perception was widespread that, "[t]he impact of high-quality judicial decisions is undermined by high cost, slow action, and poor service to the community." Many saw the administration and management of the Judiciary as "uneven at best, and dysfunctional at worst," hampered by poor leadership and low employee morale. These are among the assessments of the Visiting Committee on Management and the Courts, the Monan Committee Report, from which I have just quoted. The Monan Committee Report has not been sitting on a shelf – not for a nanosecond. In the twenty-four months since it issued, the Report has guided profound and lasting changes in court management.

Gone is the pervasive leadership vacuum that the Committee Report found to have infected nearly every level of the Trial Court Department. Chief Justice Mulligan could not be more energetic, more committed, or more sure-handed in steering the Trial Court Departments toward lasting institutional reform. And I mean "re-form" in both senses of the word. Within a year of assuming his new position, and with the full support of the Justices, Chief Justice Mulligan has seen to it that all seven Trial Court Departments have instituted time standards, as the Monan Committee recommended. Criminal and civil time standards in every Trial Court Department – that is a first in our history! This massive new undertaking would not have been possible without the support and collaboration of you, the organized bar.

Last month, Chief Justice Mulligan implemented another key recommendation of the Monan Committee when he issued the Trial Court's first-ever Staffing Model Report. The Staffing Model Report was designed with the assistance of national expertise in court staffing models and draws on input from judges and staff in all seven Trial Court Departments. Its goal is to improve the administration of justice by providing the Chief Justice for Administration and Management and the Justices with objective, accurate data to assess the performance of courts throughout the Commonwealth. That data will allow us to allocate court resources in a fair, efficient, and equitable manner.

The Staffing Model Report shows what legal professionals have long suspected, but have been unable to document objectively: resources are not allocated rationally and uniformly throughout the Trial Court Departments. Some courthouses have the staff they need to handle their workload. Others are woefully understaffed. Because Chief Justice Mulligan can now pinpoint exactly where more resources are needed, he can take action to correct imbalances.

And he has done so, using powers authorized by the Legislature to transfer resources across Departments. Let me give you some examples. The Staffing Model Report found that the Holyoke District Court, with eleven employees, was operating at only 61% of its critical staffing needs. Chief Justice Mulligan has brought the court up to 78% of its critical staffing needs.

With the addition of five positions, Springfield District Court has jumped from meeting 84% to 93% of its critical staffing needs. Additions of court personnel to District Courts in Lynn, Lowell, and Brockton have resulted in similar gains for these previously understaffed courthouses.

The Monan Committee exhorted the courts to "[e]stablish discipline in resource allocation and use." With the Staffing Model Report as a guide, and with the statutory authority to transfer resources from one Department to another, we are doing just that. There is another benefit to the Staffing Model Report. For the first time, the Justices submitted a budget request to the Governor and the Legislature based on demonstrable areas of the Trial Court's needs.

Chief Justice Mulligan and I have urged the Legislature to retain the transferability of funds in the budget for Fiscal Year 2006 so that he can continue his efforts to use every dollar where it is most needed.

Establishing the staffing model was a herculean task, as was the adoption of time standards. Those efforts will not result in lasting, effective changes, however, unless we have consistent, reliable data to inform our administrative decisions. Chief Justice Mulligan has made information technology a management priority. Building on our earlier efforts, and thanks to the tireless work of the new IT Director, Craig Burlingame, and Justice James McHugh of the Appeals Court, MassCourts is finally becoming a reality, a highly effective reality.

The internet has become a tool for information about our courts in a way that, in 2000, we could scarcely have imagined. Our Trial Court Departments are also beginning to exploit the internet's tremendous potential to bring better justice to all of the people of Massachusetts. Now a development I hope will please everyone who uses the courts. Starting we hope as early as next month, every argument heard in the Supreme Judicial Court will be broadcast in full over the internet, in real time. You will be able to hear and view oral arguments as they are happening, from the comfort of your personal computer.

Chief Justice Mulligan's strong leadership resounds in the leadership of the Trial Chiefs, and each has embraced the need for change. Under his direction the Trial Court Chiefs have created, and are beginning to implement, performance initiatives designed to improve the administration of justice.

First, the District Court. Six months after her appointment as Chief Justice of the District Court, our largest Trial Court department, Chief Justice Lynda Connolly has entirely revamped her court's administration. She has enlarged to eight the number of Regional Administrative Judges, or RAJs, to oversee the day-to-day operations of our sixty-two District Court divisions. Within these new, smaller regions, the RAJ will be able to work more closely with individual courts and individual judges on caseflow management and will be able to identify concerns before they become crises. The RAJs will advise and offer assistance to Chief Justice Connolly based on deep knowledge of their judges and their regions.

Superior Court Chief Justice Barbara Rouse has initiated separate criminal and civil performance initiatives. To discover how best to implement the new time standards for criminal cases, Chief Justice Rouse and her Criminal Steering Committee, chaired by Judge Elizabeth Donovan, canvassed every district attorney and the criminal defense bar in every county in the Commonwealth. They solicited ideas and developed county-specific action plans to address custody and inventory cases. They developed strategies for integrating time standards cases.

The result? We are already seeing sharp reductions in delays for prisoners awaiting trial. On the civil side, the Superior Court has developed a "firm, fair trial date initiative." The Civil Steering Committee, led by Judge Stephen Neel, is visiting judges, clerks, and counsel throughout the Commonwealth. With their help, the Committee will undertake the enormously complex task of ensuring that the first assigned date of civil trial becomes the actual trial date. The firm, fair trial date initiative is a major step forward in reducing the uncertainties that drive up the costs of civil trials. We will work with you to make this a reality.

Chief Justice Manuel Kyriakakis is standardizing practices throughout the Housing Courts, putting an end to the culture of local practice that so often mystified practitioners and litigants. The Housing Court website now contains some seventy forms that can be used in any Housing Court in Massachusetts. Throughout his Department, a process is about to be initiated to assure that time standards are followed and case files properly maintained. Chief Judge Kyriakakis is also reviewing the Housing Court's criminal docket to ensure that criminal violations are clearly identified, criminal cases expeditiously prosecuted, and Code Enforcement Officers are appropriately prosecuting code violators.

Under the leadership of Chief Justice Karyn Scheier, the Land Court is undertaking a significant revision of its rules and has moved to an individual calendar system for all cases. And as the only Trial Court Department of statewide jurisdiction, the Land Court, after months of preparation, has become the successful pilot site for MassCourts.

Chief Justice Martha Grace has ordered a comprehensive review of the Juvenile Court's care and protection files to ensure file integrity and uniform practices through the Juvenile Courts, and to identify changes that must be made in the Juvenile Court Rules. Community outreach is also important. Under Chief Justice Grace's leadership, the Juvenile Court is holding a Citizens Education Night to educate the public about the work of the Juvenile Court, with other such events perhaps to follow.

By its own estimate, each year at least 100,000 litigants appear in the Probate and Family Court without counsel. As part of ongoing efforts to eliminate the practical and procedural barriers to justice for these litigants, and for all users of the Probate Court, Chief Justice Sean Dunphy recently approved two initiatives developed by the Steering Committee on Performance and Accountability, chaired by Judge David Sacks. Probate Court forms will now be published on the internet, saving time and money for both attorneys and litigants, and greatly improving access for those who cannot easily come to our courthouses. Second, within the next two months, an automated self-help program for guardianship of minors cases will be available in English and Spanish over the internet and in courthouses. The Probate Court's research shows that approximately 85% of these cases are filed by self-represented litigants. The self-help program will guide individuals through the guardianship of minors process by posing simple questions that will ensure that necessary forms are accurately completed. The Probate Court may explore

expanding the project to other areas of law in which a high percentage of litigants are self-represented.

In the Boston Municipal Court Department, Chief Justice Johnson has adopted two performance initiatives to ensure the prompt disposition of cases and to enhance the public's perception of the judicial process. The Boston Municipal Court will develop department-wide protocols to enhance the professionalism of its judges and court personnel. The Department will also monitor each division's progress in meeting the criminal and civil time standards for disposing cases. The initiative will identify best practices and flag obstacles to timely case flow so that Chief Justice Johnson can direct resources to eliminating those obstacles.

The different performance initiatives I have outlined share one important trait: they typify the thirst for administrative excellence that now runs through our Trial Court Departments, our appellate courts, and the offices of our Clerks, Registers, and Probation Officers. But – we cannot rest there. The Justices accepted the Monan Committee's recommendations for change. Each change will take time to implement, and time to settle into the institutional culture of our courts. Our progress will require constant review and adjustment. Few expect us to deliver anything like quarterly earnings reports or same-day service. But neither can we brook delay. The paramount goal of a fair, efficient, and user-friendly court system calls for a clear, consistent focus. I promised you in 2000 that I would bring that focus to my work as Chief Justice. I intend to see this mission through.

When I first addressed you as Chief Justice, I expressed "particular concern" that we faced a "challenge in the coming years. . . to ensure that all citizens have access to the civil side of our courts. We cannot afford," I said then, "to ration justice according to economic status." I said I would be frank with you today, and I will be. Regarding this third pillar of judicial excellence – access to justice -– the courts have done much, but we have made less progress than we have on other fronts. A majority of the poor in Massachusetts, and more and more of those in

the middle class, cannot afford, or do not wish to retain, legal counsel in court matters. Self-represented litigants are a large, growing, everyday, permanent part of the courts' constituency. Our constituency is growing older and more linguistically and culturally diverse. Their legal issues are becoming increasingly multi-faceted.

It is not for these litigants to make the lives of judges and court personnel and lawyers easier. It is our job – all of us in the legal profession – to find the means to work with, not against, constituencies that historically have been left standing at the courthouse door.

I am proud of what the Judicial Branch has done to broaden access to justice for disadvantaged groups. We now have a much improved system of translator services. Our courts have done a stellar job streamlining and simplifying forms and procedures. More and more basic court forms and instructions are available online. Judicial education on access-to-justice issues is strong. The Standing Committee on Self-Represented Litigants, chaired by Appeals Court Justice Cynthia Cohen, has many initiatives underway, including training for judges on judicial ethics and self-represented litigants.

And last week, the Justices established by judicial order the Massachusetts Access to Justice Commission. This Commission developed from the recommendations of the Massachusetts State Planning Board for Civil Legal Services, chaired by my distinguished predecessor, Chief Justice

Herbert P. Wilkins. The twenty-one member Access to Justice Commission, comprised of stakeholders across the Commonwealth, will consider the many issues involved in the delivery of civil legal services.

The Judiciary has much more to do to broaden access to justice. Yet much is beyond our control. The Judicial Branch does not control the harsh economics of the legal profession that spurs the hot pursuit of billable hours. We do not set the attorney pay scale that seems at times almost punitive toward those who would serve the disadvantaged or the public at large. We cannot lift the mountain of student debt that weighs down our most recently admitted colleagues, or slow down the fever-pace of modern life. But with the help of the organized bar, the Judicial Branch can call attention to these problems, suggest solutions, work with others to educate lawmakers and the public about the significance of our foundational promise of equal justice for all. We can work together to make our profession stronger, healthier, for those it serves and those who serve within it.

I have given you a synopsis of what I think of as the three pillars of justice: substantive adjudication, the delivery of justice, and access to justice. My five-year anniversary as Chief Justice prompts other reflections as well. Five years ago, the Supreme Judicial Court was undergoing what I termed a "seismic shift" in the court's makeup. With the retirement of five Justices within eighteen months of each other, the Court lost over eighty years of judicial experience. Many speculated then about how well the new, young Court would shoulder its profound responsibilities. Now we know. Since 2000, our four most recent Justices – Justices Spina, Cowin, Sosman, and Cordy – have authored among them over 400 opinions of the court. Like the highly respected work of Justices Greaney and Ireland, these decisions have added clarity and balance to every aspect of our civil and criminal jurisprudence.

And, yes, more dissenting and concurring opinions have issued in recent years. Some have speculated about the significance of this trend. In my view, concurrences and dissents are reassuring. They reassure the public, and the legal community, that each Justice is considering every case with the utmost care, is subjecting every argument to exacting scrutiny. They reassure us that our decisional law is doing what it should be doing: evolving with the evolving needs of our community for fuller justice. Supreme Court Justice Robert Jackson once wrote that, "Compulsory unification of opinion achieves only the unanimity of the graveyard." Our law moves ever forward, and engaged legal minds may differ collegially about its direction.

Last, how can I end my remarks to this wonderful Association without mentioning my great hero, John Adams? The Supreme Judicial Court, the Appeals Court, and the Social Law Library are now all located in the John Adams Courthouse. Named for the Commonwealth's most influential native son, the Adams Courthouse is a fitting testament to the enduring place of the rule of law in the life of our Commonwealth, and a permanent historic home for the third branch of government. The Adams Courthouse will be a center of justice, education, and community. It will host exhibits, lectures, displays, tours, and conferences that address the importance of law and an independent judiciary to a free society. Its doors will be open to litigants, lawyers, teachers, scholars, students – anyone who seeks a better understanding of the rule of law in our social and economic life.

I urge all of you to take advantage of this wonderful public space. Bring your family and friends. You will all come away with a deeper appreciation of the many contributions of John and Abigail Adams to our Commonwealth and our nation, and of the pivotal role of the Massachusetts Constitution in the march of human freedom.

One-third of my tenure as Chief Justice has passed. To the extent the past five years have seen improvements in our justice system, the credit belongs to the members of the organized bar (our strongest allies), to the judges and to hundreds of court personnel who make our Judiciary great. It belongs to the elected branches of government, who support the drive for management reform just as they support our efforts to improve every aspect of the quality of justice in Massachusetts. I have no crystal ball to predict the future of our courts. I do, however, have an educated guess, reinforced by half a decade's experience. Together, we will take to new heights the performance of our judges, the delivery of justice, and the availability of justice for all who seek it in our courts. In 2000, when I became Chief Justice, I was hopeful, as I said at the time, that "together we can build a system of justice that is a national model of excellence." Now I am more than hopeful we will succeed. I am confident we will.

Thank you.