

The State of the Judiciary
Chief Justice John W. King, New Hampshire Supreme Court
Message to the Legislature
March 10, 1983

This report serves a very important purpose. It affords the judicial branch of government a special and formal opportunity to thank a co-equal branch of government for their past support, and also acquaints you with our contemporary problems and plans to discharge our constitutional responsibilities to the people of New Hampshire in providing a fair, just and efficient state judicial system.

I know that few statistics can raise or sustain any Interest. Consequently, while I have examined pages of statistics, I shall refrain from boring you with them and just give you some statistical highlights.

Let us first look at what happened to our courts in the last fifteen years. Starting with the District Court, the first full-time district court was established in 1964. We now have eight district courts, with eleven full-time judges. In 1967 some sixty-five thousand cases were processed by the district and municipal courts. In 1982 over two hundred and eighty three thousand cases were processed by those courts -- a fourfold increase!

In 1967 the Superior Court was composed of the Chief Justice and seven Associate Justices. That court now consists of a chief justice and fourteen associate justices. In 1967 over 13,600 cases were processed by the Superior Court. By 1982, over 32,000 cases were processed by the Superior Court. In 1967 the Superior Court Clerk in each county also served as a master hearing cases. During 1974 to 1976 the majority of clerks of court were phased out as masters, and by 1982 there were nine marital masters and eight regular masters. The cost for masters for 1982 was \$376,000 -- a cost borne by all the counties.

Without the Master System, the Superior Court would be hopelessly bogged down, if not Inundated, by civil lawsuits. A recent report of the National Center for State Courts Indicates that 66,476 civil cases were filed in all courts In New Hampshire in 1981, an average of 70 cases per 1000 people. This makes us the tenth most litigious state in the nation on a per-capita basis, Including the District of Columbia. We are ahead of California and far ahead of New York which had only 46.1 civil cases filed per 1000 people.

Most of these civil cases will be handled by masters who are screened by the Bar Association and appointed by the Superior Court, although they are qualified and able, and acting in a judicial role as quasi-judges, they have never been notified by the Governor nor confirmed by the Executive Council. The next day after hearing a civil case they are free to walk into the same courthouse, and practice law in the same court as private attorneys. We have proposed the addition of ten superior court justices in House Bill 200 In order to eliminate the extensive use of masters. In addition, I would note that the constitutionality of the Master System is presently under challenge in cases pending before the Supreme Court. In 1967 the Supreme Court consisted of the Chief Justice and four Associate Justices, the same number the Supreme Court has presently and has had for a century or so. The Supreme Court In 1967 Issued 106 opinions,

compared to 1982 when 272 opinions were issued, almost three times as many. We now have five research law clerks, no staff attorney, and no private secretaries for any Supreme Court Justice. However, I would say that our small staff of office personnel and law clerks, who are both cooperative and diversified in their cross training, are equal to the best of their governmental or private business counterparts.

I know that the question of cost by now has risen in your minds, as well as what affirmative acts the courts can take to meet rising costs.

We have, however, tried to do our part. In December of 1981, the Supreme Court issued an administrative order establishing a uniform fee schedule for all courts. This order had the effect not only of creating entry fees in the probate courts for the first time, but also raising fees for all courts. As a result of this order, total court fees rose from \$860,000 in 1981 to approximately \$1,560,000 in 1982, an 80% increase. In issuing that administrative order, the court attempted to both update the fees and to make them more reflective of the work involved. We are troubled, however, by the fact that we should not raise fees to the point that we effectively deny the law abiding poor or middle class access to their own courts. Many others, including the President of the Senate, Vesta M. Roy, have expressed the same concern.

Following a long-range planning conference conducted by the Supreme Court in December of 1982, plus the contributions of the above-named groups and individuals, several legislative proposals have been prepared to address the goals and meet the standards agreed upon at the conference. Included in the legislative package, which is the first comprehensive and coordinated attempt by the judicial branch to effect legislative reform, are increases in district court civil jurisdiction; elimination of de novo trials in violation and juvenile cases; increases in the maximum amount of fines for violations not involving personal injury; creation of a judicial compensation commission to review and recommend changes in judicial salaries and in the methods of computing salaries; increasing the number of superior court judges to facilitate the elimination of the "Master" system; and finally and of great importance, transfer of court financing from the current hybrid system of state, county, and local funding to state financing.

House Bill 200 is one of the most important bills on the Judiciary that has ever been introduced in the Legislature. It provides for a major restructuring of your judicial branch of government. Its ultimate purpose is to place the full responsibility of operating the courts on the state -- where it belongs -- instead of perpetuating the hodge-podge system in existence today. We must remember that all courts are part of the Judicial Branch of State Government. House Bill 200 would reduce 80 different court budgets into one integrated budget. It provides uniform health care and retirement benefits for all judicial branch personnel and for the first time, implements a uniform judicial personnel system.

The bill provides for a new plea-by-mail system for routine minor traffic offenses, not of course including DWI cases, with a uniform standard fine schedule. It thereby eliminates different fines in different courts for the same uncontested offense.

It will take ten new Superior Court Justices to phase out the present master system and stay current with rising caseloads. As I mentioned earlier, last year the masters cost the counties

\$376,000. Like all financing bills, the task is not pleasant, but if the courts are to perform as courts and judges are to hear significant civil cases and perform judicial functions, civil as well as criminal, then this number of justices is required.

House Bill 200 provides funding and makes the statutory changes to create a state-funded court system in a two-step process. On January 1, 1984, most court revenues would be transferred to the State, and the State would assume all costs for all court personnel. Later that year, on July 1, 1984, the State would assume all operating costs for the courts, except for court facilities, i.e., buildings. Money to develop facilities plan will be sought in the capital budget.

The burden of our counties and the local property taxpayer will decline from the 1982 level of \$6,300,000 to roughly half that figure by the end of fiscal year 1986. Initially, this will provide property tax relief of about 2.6 million dollars. It is hoped that by the next biennium local court expense, exclusive of facility costs, will be reduced to zero as complete state absorption occurs. In the meantime, the ten counties would be assessed based upon population in fiscal year 1985 an amount not to exceed \$2,750,000. It is estimated that \$12,000,000 in fines and fees will be collected in fiscal year 1985 by the courts statewide against total expenses of approximately \$18,000,000. After deducting the \$2,750,000 county assessment for fiscal 1985, a shortfall of 3.3 million dollars would have to be made up by the State.

Assuming that no other funding source is available, we propose using highway funds to bridge the gap between fine and fee income on the one hand, and court expense on the other. This is currently done for that percentage of superior court time to highway-related cases. At the District Court level 69% of all cases are highway related. The work of these courts is a necessary element in having our state continue to qualify for federal highway aid.

New Hampshire will receive increasing amounts of federal highway funds in the next few years. In fiscal 1983, the amount is an estimated \$41,000,000; in 1984, \$57,000,000 and in fiscal 1985 it is \$60,000,000. Also significant is the fact that President Reagan recently and commendably signed legislation to help curb drunken driving (DWI) by allocating \$125,000,000 to persuade the states to stiffen their DWI laws. This law will transfer money in the next two years from the Federal Highway Trust Fund to states that meet a rigid four-part plan for reducing alcohol-related deaths.

I submit to you that the protection and improvement of a viable New Hampshire judicial system, before any emergency or crisis occurs, meets the same level of importance as our resolution to get drunks off the road or of the necessity of providing adequate penal facilities for convicted felons. New Hampshire now spends less than half of one percent of its budget on the judicial branch of government. I read last week that the proposed judicial budget in Massachusetts amounts to 2.8% of its total revenue and the total appropriations for the courts in Maine about 1% of the state budget, an astonishing differential between our neighboring states.

And now as I say the important and almost unanimously abused two words, "in conclusion," I know that to balance the budget, to pay for the costs of progressively increasing demands for welfare and education and corrections, to meet emergencies and prepare for the future, and to allocate these priorities among the different areas of government, puts the utmost strain upon

your legislative functions in providing for the resources and determining the priorities. With such awareness we nevertheless feel that the time has come when the judiciary should present you with the scope of our problems and let you know what monumental issues we face with both inadequate staffing and an insufficient number of judges.

We cannot do it ourselves. We can provide the figures and outline the financing and planning beforehand, but we cannot meet the serious and awesome problems that the Judicial Branch of Government will face in the next few years without your help.