

The State of the Judiciary
Chief Justice John W. King, New Hampshire Supreme Court
Message to the New Hampshire Bar Association
June 21, 1985, at The Balsams, Dixville Notch, N.H.

When your president, Walter Mitchell, asked me to address the members of the New Hampshire Bar Association and present a state of the judiciary message, I did not make a commitment immediately. Rather, it was with mixed emotion that I considered the renewed invitation. As an occasion to review the accomplishments of the judicial branch during the past year, the invitation presented a fine opportunity. The negative side of the equation, however, was my responsibility as Chief Justice and the need to shake the judicial tree in order to eliminate complacency and identify some of the less desirable attributes of the current judicial system. Fortunately, or unfortunately for those of you who are here this evening, before I could make a decision as to whether to accept the invitation, Walter insured my commitment by including my presentation on the agenda published in Law Weekly several months ago. For those of you who like my remarks this evening and for those who feel the time could have been better spent elsewhere, I refer you to Walter Mitchell.

The reasons for the title State of Judiciary are simple. It is broad enough to let me say whatever I wish, while participating in a process that I regard as essential to the improvement of our system of justice – dialogue between the bench and bar regarding the judicial system.

I would like to spend the time allotted me this evening discussing what has been accomplished since the unified court was enacted in June of 1983 and offer a view to the future as to what each justice system participant must contribute in the years ahead if the judicial branch is to continue as an effective part of our system of government. I suggest that since the passage of House Bill 200 of 1983, the Unified Court Bill, various improvements in the uniformity and the efficiency of the courts have been effected. It is neither possible nor anticipated that change as significant as court unification can occur without serious controversy. However, with the cooperation and concerted effort of all justice system participants, the issues which remain to be resolved will be accomplished. All elements of the judicial system must work together if the goal of providing for the orderly resolution of disputes in a timely and efficient manner is to be realized.

With the unification of the courts, we have increased the range of our activities. As a result of their added responsibilities, the Supreme Court, solely as a quiet retreat for five judges just writing opinions as they must do, has faded into memory. Now they must write opinions in addition to assuming important administrative responsibilities.

A major factor which has contributed to improved efficiency is computerization of the courts. The Belknap County and Merrimack County Superior Courts have been automated now for a few years. Currently, the computer system for the Hillsborough County Superior Court is being completed to include a docketing, scheduling, notice generation and jury management system. A financial management system will be added during the summer. Once the computer installation at the Hillsborough County court has been completed, the Rockingham County Superior Court will be automated. With reference to computerization at the Supreme Court, the Supreme Court's computer, a Wang VS-90, has three disk drives and is scheduled to be upgraded within the next

month to include 500 megabytes of storage space. There are four printers and approximately 30 terminals in use throughout the Supreme Court building.

The Clerk's Office uses the word processing and list processing functions for the following activities:

- Docket Listings
- Briefing Schedules
- Brief Tracking
- Indexing of Pending Cases
- Statistics for Bar and Court Cases
- Oral Argument Lists
- Bar Examination Rosters and Lists
- Opinion Index
- Drafting of Opinions (First Draft to Final)
- All Daily Correspondence and Memoranda
- Daily Log of Events
- Storage of Data in List Processing for Future Use

The data processing function is also used to monitor the processing of cases under consideration by individual judges.

The administrative office currently processes all invoices from seventy-four court locations, which are estimated at 3,000-3,500 individual bills per month. Payroll and personnel records for all court employees are maintained using the computer. Additionally, all court revenues totaling some \$14,000,000 a year are processed through the administrative office. Considering that the majority of these amounts result from entry fees and fines, a large number of individual transactions are currently being processed to reach the \$14,000,000 total. Lastly, a physical inventory system for the court system's equipment is being computerized and is monitored by the administrative office.

To further improve court efficiency, several projects are currently under way including testing the use of electronic sound recording of trials in the Merrimack County Superior Court and soon the Strafford County Superior Court. This pilot project will examine the application of sound recording equipment and the relative advantages and disadvantages of this technology to improved operational efficiency. An experiment in automating legal research will be undertaken in four superior court locations and to the Supreme Court with the installation of equipment to provide access to Westlaw. The test, (and I emphasize the word test), of automated legal research by (1) a central law clerk pool; (2) law clerks assigned to individual courts; and (3) by individual judges will be undertaken during the next year.

Small claims procedures have been entirely restructured to ensure that an understandable and efficient system of resolving minor disputes exists within the district courts. Under the direction of a committee of the district and municipal court judges working in conjunction with the administrative office staff, new rules, forms, statutes, and procedures have been developed to streamline the current procedures and to make them responsive to the residents of our state.

Rules of Evidence, worked on so arduously by the New Hampshire Bar Association and adopted by the Supreme Court, serve as undeniable proof of the merits which can be obtained by the cooperative efforts of the Bar and courts working together. Attorney Jack Middleton and the Bar Association are to be commended on the fine job which has been done in adapting the Federal Rules of Evidence for application in the state's trial courts.

I would be remiss if I did not add that without the cooperation and support of both the executive and legislative branches, the judicial branch would have been unable to implement many of the innovative techniques and management practices. Both the legislative and executive branches have been understanding and fair in responding to our fiscal, personnel and administrative needs. With regard to what remains to be done, clearly, there are numerous areas where operational efficiency needs to be improved. The court continues to focus on issues such as court security, continuing legal education, and public information. Case scheduling and delay reduction are of primary importance, as is improvement in the management of juries and jury instruction and better utilization of existing court personnel.

A combined committee of the bench and the bar is currently working to improve jury management, by examining jury instructions, jury orientation, and general management practices and will make its report in December at a conference in Hanover. Given that juries represent a 1.2 million dollar cost to the court system, the appropriateness of this focus cannot be overstated.

With reference to case scheduling, while significant improvements have been made, much remains to be done to eliminate unnecessary delay for both attorneys and court personnel. Clearly, some of the existing practices and informal procedures followed during the past several years must be rectified if we are going to provide the level of precision and predictability necessary to reduce the cost of litigation.

Presently, a committee of the bench and bar is continuing to work on the Rules of Civil Procedure. Over the next two years the third segment of the project will be concerned with the Rules of Criminal Procedure. Attorney Richard B. McNamara of Manchester has agreed to chair this committee and Justice David H. Souter, of our Court, has agreed to serve on it. Court facilities continue to be of major importance to the judicial branch of our state government. The Court Accreditation Commission visits approximately each year, and provides updated accreditation reports for each facility visited. The Accreditation Commission has also assisted in the design of new and renovated facilities throughout the system, including, among many, the Hillsborough District Court, the Pittsfield District Court, and the proposed Superior Court facility for Nashua. The Accreditation Commission has also been continuously and directly involved in discussions with the federal officials regarding the purchase of the former U.S. District Court in Littleton. At our request the legislature has appropriated funds under the fast track capital budget to expend up to \$1,000,000 for the purchase of this facility. In an effort to dispel any lingering rumors, there are no plans currently by me, or anybody on the Accreditation Commission, to relocate the Coos County Superior Court to the Littleton facility.

With regard to facilities, the court submitted a plan, which was embodied in House Bill 444, for state absorption of court facility costs. While the major thrust of this plan was for the state to

lease the majority of existing facilities, the plan also calls for the development of a long-range capital improvement plan, which would include the purchase of selective facilities. The status of House Bill 444 is somewhat uncertain; however, till final last step in the state absorption of all court-related costs is very desirable.

As a result of the interaction between the legislature, the public, and the judicial branch, a new procedure has been established for the consideration and promulgation of court rules. This process, which formally adopts public review and input, responds to the concern voiced last year on the lack of public input into the rule-making process of the courts. Justice David A. Brock, who serves as chairman of the Courts' Rule Committee, has already begun to establish the procedures which incorporate public review.

In appraising the state of the judiciary, there is one dimension that is new and serious and important. That is the relationship of the courts to the news media. While most of the news media has been fair and reasonable, there is a segment of the newspaper and magazines and television and radio that has made distorted and strident attacks on the judicial branch of government coupled with uninformed reporting.

The courts and the public need to receive criticism from the news media. We expect and would and should get it anyway. It is indispensable in a free society. Without a free and Independent press, there would not be a free judiciary: and without an independent and free judiciary, there would not be a free press. But too frequently, the inaccuracies and the tendentious reasoning and the illogical rhetoric go without challenge or correction.

During the past year, representatives of the judiciary have met with members of the news media to discuss mutual problems in a constructive dialogue. Many of these problems are not resolved, but we, of the judiciary, shall continue our efforts to minimize them.

While I may have transgressed on your time and do not want the state of the judiciary talk to develop into a state of the rebellion, let me add two final notes of reminder, lest their omission, suggest that they are of minor significance.

Our Code of Professional Responsibility recognizes that lawyers have an ethical obligation to make legal services available to those unable to pay, and to work toward improving our system of justice.

Every lawyer, regardless of professional prominence or professional workload should find the time to participate in serving the disadvantaged. From the early days of American history lawyers have engaged in pro-bono legal services.

I also feel that to protect and preserve the administration of justice, to reaffirm our open and strong respect for law and for justice, each lawyer should at some period in his life participate in public service at a national, state or local level for such time as he or she can honestly afford. Some participation should be given to meet the lawyer's responsibility to render public service. I talk of lawyers and I do not indulge in comparisons with other true professions. If we regard the law as a unique profession and recognize that the powers that accompany a license to practice

law are equally unique, such a commitment to some public service should be a commitment from each and every member of the bar.

I want to thank you for your consideration and while I have given you a summarization of the state of the judiciary, I can assure you that our court system is making progress and is intensively striving to improve itself.

Thank you.