The State of the Judiciary
Chief Justice David A. Brock, New Hampshire Supreme Court
Message to the Legislature
April 14, 1987

President Bartlett, Speaker Scamman, Distinguished Members of the General Court and Friends. Thank you for the opportunity to address you on the State of the New Hampshire Judiciary. As you know, this is the first occasion that I have had as chief justice to speak to you on behalf of the judiciary, and it is with considerable pleasure and pride that I do so.

As we near the bicentennial celebration of the ratification of our federal constitution' - an event in which New Hampshire played a deciding role - we are reminded of the uniqueness of the system of government created by our founding fathers. Ours is a system in which the exercise of governmental power is divided among three separate but co-equal branches, each serving as a check on the exercise of power by the other two, and each needing the cooperation and assistance of the others to serve the people effectively and to preserve the rights reserved to them under our state and federal constitutions.

Occasions such as this provide an opportunity to get to know each other better - not only as representatives of our respective branches of government, but as individuals - for only if we communicate with each other and better understand the differences in our respective roles, can we establish the mutual respect and spirit of cooperation that is so essential to a government that serves the people well.

Let me first set the stage by giving you a few facts so that you can better understand the work of the court system and the resources available to it. In 1986, the work of the judicial branch was performed in 73 court locations, by less than 600 full and part-time judges and support staff, with an appropriation that constituted only 1.7 percent of the total state budget. In 1986, more than 425,000 cases were filed in our court system. New cases in the district and municipal courts soared to a record 370,000, an increase of 25% in the five years since 1981. In 1986, the Superior Court received 27,000 new cases, disposed of 26,000 cases, and had 30,000 cases pending at year's end. Of concern to us is the fact that since 1983, criminal, civil and domestic relations cases filed in the Superior Court have increased 15%, 20% and 13%, respectively.

One of the most important roles of the judicial branch is to provide our citizens with an impartial forum for resolving their problems and disputes - a forum that is readily accessible and capable of resolving controversies in a timely, economical and fair fashion. With this in mind, I'd like to tell you what the judicial branch in New Hampshire has done, is doing, and hopes to do in fulfilling its constitutional responsibilities.

Two dramatic changes in the structure of the judicial branch - one constitutional and one legislative - took place during the past 10 years. In 1978, the voters amended the state constitution, part II, art. 73a, designating the Chief Justice of the Supreme Court as the administrative head of all the courts, giving the Supreme Court the power to promulgate rules for all courts in the state. Five years later, in 1983, after careful study and preparation, HB 200, state financing of the court system was enacted. While many doubted that it would work, just three

years after the enactment of HB 200, the wisdom of your decision is clear. The transition to state financing has occurred without major problems, and we now have a court system that is both operationally and economically more accountable and efficient. Court operations have been systematically modernized through automation of court procedures, improved records management, the application of new technology, central purchasing, and standardized financial and personnel procedures.

District courts no longer automatically become full-time when their caseload reaches a certain number nor do full-time district judges and their staff resist assignment in other district courts. While unification should not be perceived as a cure-all for administrative ills, it has resulted in a more equitable distribution and use of judicial branch resources, fostered greater operational efficiency, and facilitated more consistent levels of service among the state's 73 courts.

Another benefit of state funding of the court system that should not be overlooked is that, since 1984, it has resulted in a reduction of more than $16,000,000 in county assessments against local real estate property taxes. Similarly, towns and cities have been relieved of the burden of paying for district and municipal courts located in their communities. I suggest that this represents a very tangible example of property tax relief for which the legislative and executive branches of state government deserve credit.

Since the Legislature and the Governor committed themselves to state funding and unification of the judicial branch, the Supreme Court has taken steps to insure greater uniformity in the procedures employed in our courts. In January 1985, the court established the Supreme Court Rules Advisory Committee. Its members include representatives of the various courts, lawyers and the public.

Not only does the existence of this committee ensure greater uniformity in the rules of all our courts, but it also provides a regular schedule for the consideration of proposals for change and the evaluation of existing rules. The new rulemaking procedures assure better liaison with the executive and legislative branches and greater public input and consideration before new rules are adopted.

Nowhere is the need for continuing education more important than it is within the judicial branch. In recognition of this, in 1979, the Supreme Court adopted Rule 45, requiring all judges and clerks in the state to participate in continuing legal education programs. All full-time judges, within two years of their appointment, are required to attend the General Jurisdiction Course at the National Judicial College. All judges and clerks participate annually in in-state educational programs. Additionally, judicial benchbooks and a videotape library are maintained to insure that judges have the most current information available. A judicial system that serves the public well is predicated upon a knowledgeable judiciary. Through our continuing education efforts, New Hampshire's judiciary will continue to be knowledgeable.

In 1977, recognizing the need for judicial accountability and a forum for consideration of complaints against judges, the Supreme Court established a Judicial Conduct Committee. The seven-member committee, with judicial, public and attorney representation, presently processes

between 30 and 40 complaints a year. It is our good fortune that we can still assert that scandal has never infected the judiciary of our state.

Last November, the Supreme Court appointed a committee to explore the feasibility of adopting a judicial evaluation program. This program, involving peer review, self-improvement and input from persons who appear before a judge, would address judicial problems that do not rise to the level of misconduct but, nevertheless, affect their productivity and effectiveness in the administration of justice. I understand that this committee will be filing its recommendations with the Supreme Court in June of this year.

Our state constitution calls for the "timely" resolution of disputes, for it has long been recognized that "justice delayed is justice denied". Notwithstanding our continued attention, I regret to report that our efforts during the past few years to reduce delay in case processing, to reduce case backlog, and to implement more efficient scheduling techniques have met with only limited success. Backlog is particularly a problem in the civil area. In our larger counties, litigants may wait 2-3 years before having an opportunity for a jury trial. I assure you that this problem has our continuing attention, and we have recently approved several innovative experiments to address these problems. On January 1, 1987, rules, which we believe will encourage the early settlement of civil cases, providing for six-person summary jury trials and mandatory arbitration hearings were adopted and will be tested in Rockingham and Hillsborough Counties. Additionally, Chief Justice Dunfey of the Superior Court has developed an individual calendar project to provide improved management of the court caseload in Hillsborough County. This project involves early and continuous court control and monitoring of cases and, if successful, should result in the more efficient and timely processing of cases and, certainly, in case scheduling.

New Hampshire has long recognized that adequate court facilities are central to the effective operation of the courts. In 1973, the Legislature established the first Court Accreditation Commission in the nation. In 1983, legislation creating a Facilities Escrow Fund was adopted and, in 1985, the state assumed financial responsibility for providing court facilities, relieving counties and municipalities of that burden.

This progression in court facilities legislation over the past decade has resulted in the adoption of facility standards, space requirements, and more recently, the development of a long-range court facilities plan. We are in the process of developing a long-range court facilities capital improvement plan that we will present to you for your consideration next year.

At present, we consider Hillsborough County, the City of Concord, Coos County and Rockingham County as having the most urgent facility needs; and, as you know, we have asked for funds in this year's capital budget for construction of a new superior court facility in Nashua on land that is being given to the state by the City of Nashua.

The state currently enjoys an unprecedented rate of growth and benefits from the vigorous economic climate and low unemployment. Some less desirable and obvious consequences of this growth are increased litigation and greater demands on court services. Prior to 1984, New Hampshire paid little attention to the need for court security; however, the state's rapid growth requires a re-evaluation of the need for improved security. In 1984, the Supreme Court

established the Commission on Court Security. After considerable study and investigation, the commission issued its final report in February of 1986. The report contained nine standards relating to court security. Recently, two walk-through metal detectors were installed in Hillsborough and Rockingham County Superior Courts. In the month of February, 10 handguns, 370 knives, 3 razors and other weapons were taken from persons entering the Hillsborough County Court. Two weeks ago a courthouse had to be cleared in response to a bomb threat. Although we have been fortunate not to have had a serious security incident to date, the risk of violence in our courts militates in favor of strengthening our efforts to provide adequate security for the judiciary, court personnel and the public.

During this legislative session, we are asking that you consider two bills dealing with the subject of compensation for part-time judges. The first, HB 651, arises out of the need to change the formula now used to compute the salaries of part-time district and municipal court judges. The current formula, based largely on the number of motor vehicle violation cases filed in a particular court - more than 90% of which never require judicial attention - is simply no longer relevant in assessing the workload of part-time judges and has resulted in serious inequities in the compensation provided district and municipal judges.

The second bill, HB 345, results from a decision of the Supreme Court holding that the receipt of "special session" fees as compensation by probate judges was unconstitutional. The impact of this decision was to reduce probate judges' salaries by as much as 60%.

Revising the current methods of compensation for part-time district, municipal, and probate judges is essential. As each legislative body considers the specific proposals, we hope that you will conclude:

(1) that salaries for part-time judges should be proportionate to those paid full-time judges;
(2) that compensation for part-time judges should be based on a "weighted" caseload method, reflective of the actual time worked, rather than the number of cases;
(3) that the concept of establishing a maximum compensation ceiling should be retained for part-time judges, and the Supreme Court continue to be authorized to create full-time courts as criteria dictate; and lastly;
(4) that any system of compensation for part-time judges be tied to cost-of-living increases provided other members of the judiciary, to insure that compensation plans do not become outdated within a few years.

We are pleased that the House has passed HB 651 and HB 345, both of which embody these factors, and we hope that these bills will enjoy your continued support.

Four years ago, while the Legislature was considering the passage of HB 200, Chief Justice King, on behalf of the judiciary, pledged to eliminate the use of masters to hear marital cases if ten additional judgeships were created. Although the number of masters assigned to hear marital cases has been reduced from 15 to 5 since that pledge was made, we have been unable to completely fulfill our promise. Our inability to achieve this goal results from a number of factors, most significant of which appear to be burgeoning caseloads, delays incident to the appointment process of new judges and perhaps our own misgivings as to the most appropriate

method of resolving domestic disputes. In retrospect, the court's pledge to eliminate marital masters may have been premature; in part, because our projections as to the number of additional judgeships needed may have been incorrect, but, as importantly, because a more fundamental question should be answered before we dismantle the marital master system.

Central to the issues which need to be resolved in this regard is the question of whether some forum other than the Superior Court is more appropriate for resolving disputes that arise out of the marital and family relationship. The court system is inundated with a new generation of domestic relations cases that includes not only the traditional petitions for temporary relief, support, alimony and custody, but frequent petitions for modification of decrees, domestic violence complaints, child abuse and neglect petitions, petitions for termination of parental rights and other juvenile matters. It seems increasingly clear that the adversary system upon which our judicial system is predicated does not lend itself to the ready, efficient, and fair resolution of all disputes arising out of the family relationship, but to the contrary, often serves only to prolong and exacerbate the disputes.

As with any institution, the judiciary must regularly assess its performance to insure that it continues to provide the quality of service expected and deserved by the public. Just as the organization of family law jurisdiction should be examined, so too should the operation of the courts in general. Without periodic re-examination, we become complacent and often lose sight of the mission at hand. While I strongly believe that it is important for the judiciary to consolidate the gains achieved during the past decade, I am also reminded of Thomas Jefferson's caution that "Institutions must advance to keep pace with the times".

In 1974, then Chief Justice, Frank R. Kenison, directed that a comprehensive study of the court system be undertaken. Three years later a report containing over 120 standards and goals for the improvement of the court system, was released. That report provided a blueprint for court change. In an effort to continue the legacy of Chief Justice Kenison and to develop a clear focus for the judicial branch into the 21st century, I will soon recommend that a new planning effort be undertaken and that we seek the advice of representatives of the justice system, legislators, public officials and members of the public as to what direction the courts should take as we move into the 21st century.

I would like to conclude my remarks by observing that the legislation providing for a formal oral or written address to each session of the General Court by the Chief Justice of New Hampshire took effect on August 29, 1971.

As a reminder that time does not stand still, you may consider that on that date, Walter Peterson was Governor; there were 10, not 24 superior court justices; Norris Cotton and Tom McIntyre were our U.S. Senators; the state population was 739,000; the Dow Jones Industrial Average closed at 906; and, yes, Bernie Streeter was the Executive Councilor for District 4.

A lot of water has gone over the dam in the meantime. The function of the judiciary and the demands upon it have not escaped change. The relationships between the individual citizen and the government, as well as the relationships between the individual citizen and his or her neighbors, have seemingly become more sophisticated and complex, leading society to seek

resolution of more and more of its problems by the machinery of the judicial branch of government. Whether this is good or bad remains to be seen. It is a fact nevertheless. Cases involving such issues as toxic waste, slow growth ordinances, complicated utilities financing reviews and the visitation rights to Baby M were not readily foreseeable in the recent past.

We heartily accept these challenges; but if society is going to give us more and more of its problems to resolve, we must call upon our co-equal branches to give us the resources to meet the challenge. We need to attract and retain good judges – able and experienced - who command respect and trust, as well as adequate funding for the judicial branch. Working together, we will strive to give our citizens the justice which is theirs by constitutional right.

Thank you for your support.