

The State of the Judiciary
Chief Justice David A. Brock, New Hampshire Supreme Court
Message to the Legislature
April 2, 1996

President Delahunty, Speaker Burns, distinguished members of the General Court and friends:

There is a long history and I hasten to add that members of the judiciary were hesitant latecomers to this important development. Since I became an attorney in 1963, and during 20 years on the bench, I have seen a sea-change in the role expected of our judges' tradition of mutual respect among and between our three branches of government. The Supreme Court's appearance here today at your gracious invitation is the best evidence of that cooperative spirit.

As the Chief Justice of our unified court system, let me thank all of you at the outset for your strong and tested support of this state's judicial branch of government. Without your input and steadfast resolve, the courts of this state could not weather the vicissitudes of finances or public opinion. Although it is essential to have a strong and independent judiciary, it is equally important to work constructively to advance the growing needs of our population for access to justice.

While I come here today as the voice of a co-equal branch of government, make no mistake that I speak to you in a cooperative spirit. As representatives of the people, in conducting the business of the three branches of government, we share a common goal -- to serve our citizens and the public well. If we are to serve them faithfully, protecting those rights they have reserved to themselves in our Constitution, we must remind ourselves constantly of an important concept.

Our state Constitution directs that the legislative, executive and judicial branches should be as separate from, and independent of, each other as the survival of a free constitutional government will permit. Because of this, it is inevitable that, from time to time, each branch will assert its constitutional independence from the others and that a measure of tension will always exist.

Of equal importance to us, however, should be what our Constitution describes as ". . . that chain of connection that binds the whole fabric of the constitution in one indissoluble bond of union and amity" -- or, more directly put, the interdependence of the three branches. That we, in New Hampshire, can lay claim to a free, strong and representative government, suggests that we have discovered the delicate balance that must exist between each branch's assertion of its independence and its recognition of its interdependence. The people are served well by the level of communication and support, and by the spirit of cooperation that exists among our three branches. and courts.

The judge of thirty years ago worked in a protected, cloistered atmosphere -- one marked by judicial provincialism and formality. He, and it was always he, was reluctant to emerge from his chambers to involve himself in the family and social problems confronting the people in their daily lives. This was the norm and accepted. As time passed, society has turned to the courts to resolve many problems and issues that were once the province of the family or of moral and

ethical advisors. Chief Justice Ellen Peters of Connecticut states it well: "The reality for state courts today is that the delivery of social services has become a major part of our judicial and administrative responsibilities.

It is a common place among state court judges that we increasingly find ourselves engaged not only in adjudicating court cases but in providing ancillary social services to families, to the elderly, to victims, to all those who need structural assistance in coping with societal demands." Here, in New Hampshire, we have had to make a thorough assessment of our resources and our ability to respond to these new, frequently complex and often time-consuming, demands. As a consequence, and as a matter of necessity, judges and administrative staff have become more actively engaged in policy planning and implementation with legislators and executive branch agencies involved with the civil and criminal justice systems.

We have responded with enthusiasm to the challenges posed by what I euphemistically call the modernization of the judiciary. One example of interbranch cooperation and coordination is the Interbranch Substance Abuse Council (ISAC) established by the Governor, the President, the Speaker and myself. In 1993, the council sponsored an interdisciplinary conference, bringing together representatives of the three branches and the public to seek solutions to the problems drug-related offenders visit upon the criminal justice system. Just one of the ideas emanating from the conference was Judge Bob Morrill's Sullivan Academy, which organizes prosecutors, defenders, corrections and provider groups to form a strict probation, intermediate sanctions program for non-violent drug offenders. The success of the Sullivan County program as an effective method of addressing the sky-rocketing costs of criminal sanctions and rehabilitation has led the Department of Corrections to support implementation of similar programs statewide. The district courts, too often involved in addressing the problems created by dysfunctional family relationships, have been instrumental in domestic violence reform, initiating the central filing of domestic violence restraining orders with the Department of Safety, developing the district court's domestic violence protocol and participating in some 32 domestic violence coordinating councils established as a result of a statewide interdisciplinary conference. Indeed, representatives of all branches of government and disciplines participated in another statewide conference on family violence just last week at Waterville Valley.

As many of you know, the Supreme Court, in late 1989, established a long range planning taskforce, consisting of 75 volunteers from all walks of life. Its purpose was to provide a process for evaluative self-criticism. Its charge was visionary -- to see where the court system was, where it should be and how it can get there. At no expense to the state, the task force, over an 18-month period, took a serious and objective look at the long range planning task force recommendations -- are underway. Among them:

-- the processing of uncontested motor vehicle violations in the Department of Safety, rather than in the 41 clerk's offices of the District Courts.

-- development of record retention policies that allow destruction of old judicial branch and made specific recommendations for improving its operational efficiency.

Almost all of its recommendations have been implemented. A number were implemented by court order or rule. For example, responding to the task force recommendation that an internal governance mechanism be established to provide administrative linkage, accountability and effective communication among the courts, the Supreme Court by order and rule created the Judicial Branch Administrative Council, the positions of Administrative Judge and policy formulation committees in each of the courts. Many of the recommendations, however, required legislative action for implementation.

You will be pleased to know that the Omnibus Court Improvement Bill which you passed in 1992, incorporating numerous task force recommendations, has resulted in remarkable economies and efficiencies within the court system, including:

-- the reclassification of misdemeanors as Class A or B, resulting in savings of more than \$1,000,000 a year for the indigent defense fund.

-- a pilot program in Rockingham County has led to regional district court jury trial authority for Class A misdemeanors which eliminates de novo trials in the Superior Court. This authority has been implemented in Rockingham and Merrimack counties. These cases now go to final judgment within 3 to 4 months, rather than 2 to 3 years under the old process.

-- increased concurrent jurisdiction in the District Court and elimination of landlord/tenant appeals to the Superior Court.

-- consolidation of probate related claims in the Probate Court.

Because of changes such as these and aggressive case management measures, including early pre-trial structuring conferences and mandatory arbitration or mediation by volunteer panels of attorneys, backlog in the Superior Court has been drastically reduced. Our Superior Court received national recognition for placing first in the country in civil and criminal case-clearing rates for three consecutive years. Other administrative initiatives

-- in many instances responding to the records after scanning information onto compact discs, thereby reducing space requirements and storage costs.

--establishment of the Judicial Educational Services Committee which coordinates the delivery of continuing professional education to judges and staff. Professional education, with legislative and state justice institute support, has been greatly expanded and is designed to encourage development and growth as well as uniformity and professionalism.

-- video arraignments in criminal cases, eliminating the security risks and costs attending transportation of prisoners to court. With available federal funding and help from the Attorney General's Office, sheriff's departments and local police, we expect that video arraignments, now a practice in Hillsborough County, will soon be expanded to Rockingham and Grafton counties. In addition, bail hearings, motions to suppress and discovery motions will soon be conducted by video.

-- in the area of technological improvements, we have expanded the electronic bench warrant program, providing for more effective apprehension of criminal fugitives; implemented an upgraded system to select jurors and track their attendance and mileage for reimbursement; and entered into an agreement with the State Library to use their internet server to make Supreme Court opinions and other docket information available on the world wide web.

The technological development which promises the most significant impact on our service to the public is a cooperative effort among the Department of Justice, the state police and the judicial branch. Our plan is to electronically connect local law enforcement agencies, prosecutors, some executive branch agencies and all New Hampshire courts. This will enable us quickly and accurately to transmit data from one participant in the criminal justice system to another. Just as important, it will also connect all New Hampshire courts to each other. This will be an important step in our efforts to provide the public with electronic access to court information and dockets. To address a growing Supreme Court case backlog, using legislation which makes retired judges with ten years experience on the bench judicial referees, we established judicial referee panels consisting of three retired judges, to provide for speedier resolution of appellate cases. The panels have already heard more than thirty cases and the process appears to be working well.

This is a good place for me to express my thanks to the retired judges who have willingly taken up what amounts to full-time responsibilities in assisting the courts' efforts for improvement, without compensation. Counterpointing General Douglas MacArthur's famous line, old judges never retire, nor do they fade away. In addition to those who sit on our referee panels, I would like to thank another of our retired judges, Judge Bob Temple of Dover, for the many hours of assistance he has given the court in monitoring the 90 or more legislative proposals affecting the judicial branch this session and serving as liaison with the legislature.

The efficient processing and timely disposition of court cases is only half the task the judicial branch faces in fulfilling its mandate to serve the public. We must afford litigants a meaningful opportunity to participate in the process and do all that is judicially possible to resolve their disputes and problems in a fair and equitable manner. Our biggest current challenge in this respect is the development and implementation of the legislatively mandated Family Division Pilot Program in Rockingham and Grafton counties. The Family Division is intended to better serve citizens who seek judicial resolution of such family matters as divorce, child custody and visitation, child support, legal separation, paternity, domestic violence, juvenile delinquency, child abuse and neglect, chins, guardianship of minors, termination of parental rights and adoption. The hope underlying this bold experiment is that families will have easier access to the court system and more coordination and meaningful resolution of their problems. To the extent possible, all family matters of a single family will be assigned to one family division judge located in a court facility that is geographically accessible to the family. I am pleased to report that this endeavor will begin on July 1, as scheduled. The Supreme Court has already approved the judicial and administrative structures of the new division and expects to appoint the Superior, District and Probate Judges, Marital Masters and staff who will serve in the division by April 15. Justice Batchelder, who I don't believe has taken more than a week off since his retirement, in order to assure the successful implementation of the family division, deserves special praise.

On another subject, the New Hampshire judicial branch welcomes public interest, scrutiny and even criticism. True, there are occasions when we wish the criticism was constructive, rather than in the nature of personal diatribe. It is, however, a fact to which we have become reconciled that rarely is there celebration when justice is done. Above all, we understand that the public must be able to trust its court system and that trust can be developed only through understanding and a sense of openness. It is in this context that we recently considered public concern with the level of confidentiality that has traditionally attended judge and lawyer discipline proceedings. In January, we adopted new rules providing that whenever the Judicial Conduct Committee issues formal charges against a judge, the hearings before the committee and disciplinary action it takes shall be public.

Last month, we approved similar rules providing that once the Professional Conduct Committee issues a notice of charges alleging a lawyer has violated the rules of professional conduct, all proceedings before the committee and all disciplinary action it takes shall be public. Operationally, 1995 was a superb year for the judicial branch.

Our 63 court locations, 53 full-time, 77 part-time judges, and 542 non-judicial employees processed 226,251 new filings and disposed of 221,423 cases. In terms of case processing, we have almost reached the point at which we can say that the tub is draining as fast as it's filling up. All this with a budget that is fairly described as a small twig on the state's budget tree -- less than 1.7% of the entire state budget.

A startling development throughout our court system is the huge increase in the number of pro se litigants. As the federal government cuts funding for the Legal Services Corporation, more and more citizens will be using our courts without the assistance of a lawyer. At the Supreme Court, already, approximately 30% of the appeals are filed by persons representing themselves. Approximately 40% of the estates filed in the Rockingham County Probate Court are handled by prose petitioners. This presents enormous challenges, not only to court staff who must give guidance to people attempting to use the courts, but to judges hearing these cases.

In response to this looming crisis, we have been working with the Bar Association, New Hampshire Legal Assistance and others to put in place mechanisms for providing assistance to those who need it in order to have meaningful access to the courts. In 1996, we will expand upon these efforts and it is not out of the question that the legislature should consider this problem at its next session.

Although it is not my purpose to address the needs of the judicial branch today, I would be remiss if I left the impression that no such needs exist. While I recognize that time and financial constraints make consideration of even limited needs unlikely during this legislative session, I look forward to the opportunity to explore them at a later date in an appropriate forum. In passing, then, let me make you aware of the real technology needs of the judicial branch and the genuine space constraints of our Administrative Office of the Courts. In recent sessions of the legislature, a new facility to house administrative personnel in a professional and efficient manner has received broad approval. Fiscal constraints have delayed its construction but I am hopeful that a capital outlay will be possible in the not-too-distant future. The need is very real.

As I close my remarks today, let me assure you that the judicial branch recognizes that we are all in this together. There is much we can do collectively to advance the real needs of our citizens. While we will not always agree on how best to serve the public interests or because our own unique responsibilities will not always allow us to do what is popular, be assured that the judicial branch will continue to listen, to discuss and to reach out to our constitutional partners and to the public generally to insure a judicial branch founded on law, integrity and above all, equality. I am confident you will join us in that enterprise.