

State of the Judiciary
Chief Justice John T. Broderick, Jr., New Hampshire Supreme Court
Message to the New Hampshire Legislature
February 23, 2005

Mr. Speaker, Mr. President, Governor Lynch, distinguished members of the House and Senate, and my judicial colleagues, it is a distinct privilege to be here today in this historic chamber, the people's house, to address a joint session of the New Hampshire Legislature on the State of the Judiciary. Few citizens and few public officials are given this opportunity and I am both grateful and honored to be here. I know your schedules are busy so I will not overstay my welcome.

Through the confidence and trust of others, I am privileged to appear here today as the first Chief Justice appointed in this new century. I am very proud to lead the Judiciary in New Hampshire. I am particularly pleased to report to you today that the State of the Judiciary in New Hampshire is sound and open to real change. My colleagues and I are committed to a new day of dialogue, cooperation and openness with all of you. In fact, we look forward to it. Although we serve the people of our State in separate branches of government, we have much in common. We took the same oath. We serve the same people. We are committed to public service and our tenure, however long we serve, is only temporary. I have long admired those who sacrifice to serve in public life, and I look forward to working closely with all of you in the years ahead to ensure that justice and access to justice are a reality for all our citizens.

During this past year I have traveled over two thousand miles throughout New Hampshire visiting all 46 court locations containing 66 different courts. The overwhelming number of these facilities are first-rate and I thank you for recognizing the need for dignified courthouses. You deserve much credit and you have my sincere thanks.

Everyday throughout our State hundreds of New Hampshire citizens, and their families, have their lives affected in our courtrooms -- sometimes dramatically -- and it is important that that occur in a respectful and appropriate environment. I must confess that in my travels, I have visited a few court facilities that are not appropriate for the serious work they do and I have appreciated working with local officials, members of the House and Senate as well as Commissioner Don Hill and his assistant, Peter Goodwin, to address those needs. We are making real progress.

During my site visits I have talked one-on-one to almost all 591 members of our staff and to most of our 56 full-time judges, 56 part-time judges and 13 marital masters. I commend them for their outstanding service to the people of New Hampshire and thank them for their generosity in helping me to better understand the day-to-day challenges confronting our justice system. With their help I have gained more insight on the real world needs of the thousands and thousands of people who use our courts each year -- a population growing more diverse as each day passes.

As a result of my visits, I have come to realize in new ways that the world beyond the walls of our courthouses is changing dramatically and that the courts, with your full assistance, must also undergo change to ensure that they remain accessible, affordable and responsive. I am persuaded more than ever that the status quo is not our friend. Be assured that my colleagues and I have a vision for the future but I also know the critical importance, both practically and constitutionally, of working with all of you to craft a common vision for the courts.

The courts belong to the people of our State and you are the representative voice of those people. It is, therefore, my responsibility to listen respectfully to your concerns and ideas and to listen carefully. My colleagues and I intend to do that.

The single biggest challenge facing our courts is to accommodate the rising number of people and small businesses that cannot afford a lawyer to represent their interests or choose not to hire one. Our judicial system, which has admirably stood the test of time, is well designed for situations where all parties have counsel they can afford and ample time to await a decision. Those days are rapidly disappearing.

In the District Courts, in 85% of the civil cases, at least one party is self-represented. In the Superior Court the number is in the mid-40 percentile. In the Supreme Court in 40% of the appeals filed in the year just ended, one or both parties represented themselves.

In the years ahead we will need to redesign the way our courthouses work to accommodate the obvious needs this growing trend demands. It is my goal that we re-examine how we do business and to make our courts more user-friendly and understandable. I am looking for your help and the public's help in doing that. Next month I will announce the formation of a Citizens Committee on Justice in the 21st Century to take a comprehensive look at improving the administration of justice in New Hampshire. I have asked the Governor, the Speaker and the Senate President to appoint some of its members, and I will ask a non-lawyer citizen to serve as Chair.

The judicial system, which was masterfully designed to administer justice, needs to be restructured to reflect today's needs. I am searching for new ways to meaningfully address the needs of the self-represented. We must constantly ask how much of the procedure inside our courthouses is essential and how much just adds time and expense to the resolution of disputes. We must not make it unnecessarily difficult for people to seek justice or for lawyers to represent them. We need to make maximum use of technology and we need to drain as much unnecessary cost and expense from the litigation process as we can. The long-term viability of the court system depends upon it.

I am in search of a new design, which reflects modern needs and responds to today's concerns. As part of this new design, my colleagues and I are interested in creating alternatives to trial by combat for those who want them. We need to infuse our court system with new ways in which parties can choose to resolve disputes more efficiently, at lower cost and without having to appear before a judge.

Under the direction of Administrative Judge John Maher, the Probate Court has been a leader in the effective use of low-cost, paid mediation using professional mediators and we need to incorporate this technique for dispute resolution as an additional option for our citizens throughout the judicial system.

One of the great strengths of our court system is that we treat all cases the same; that is also one of our biggest weaknesses. People who come to our courts want someone to listen to them, they want their concerns validated and they want a thoughtful and fair resolution. All that can occur in many instances without ever appearing before a judge. Alternative dispute resolution will not only allow those who come to our courts a new alternative, it will make the system more understandable and less expensive. We are presently designing a mediation system for small claims cases in the busiest district courts. While it will require a \$5.00 increase in the filing fee, which we hope you will approve this legislative session, it will prove to be a very valuable investment. Last year alone more than 17,000 small claims cases were filed throughout New Hampshire.

In addition to focusing on the needs of the self-represented, I am anxious to re-examine how the judicial system deals with divorce and family-related issues. The needs of New Hampshire's families are growing and the courts will need to be more thoughtful, resourceful and timely in addressing them. The family docket in this State is the largest non-criminal component of the entire judicial system and it will likely grow larger.

As you know, the Legislature voted last year, with the unanimous support of the Supreme Court, to expand the Family Division, which now exists in two of our ten counties, to all ten. This will occur over the next few years, under the exceptional stewardship of Administrative Judge Edwin Kelly and with the cooperation of our staff, our judges and our masters. I also want to commend my colleague, Justice Dalianis, for her outstanding leadership in helping to design the new footprint for family cases in New Hampshire -- a design crafted with legislative input. We will, for the first time, gather family cases under one roof and bind them in a common process and a common vision to ensure that family disputes are resolved more effectively and with less acrimony so that affected families can have a better chance for a successful outcome.

The Family Division represents the single biggest change in the court system in my professional life. I want to commend the marital masters for the very important and difficult work they do and to particularly recognize Master Stephanie Nute, who is here today, for her leadership and dedication and, of course, I would be remiss if I did not acknowledge the judges of the District Court and Family Division who work tirelessly in your communities to address the most basic legal issues confronting our citizens. Finally, I want to commend all of you for the energy and perseverance you have shown in making the Family Division a reality. We will need to continue to work closely on its future and make needed adjustments as we go.

In my judgment we also need to fundamentally rethink how divorce is handled in our courts. Taking spouses and children in stress and forcing them into an adversarial system, with no other meaningful alternative, is neither economically sound nor socially

beneficial. I am committed, as are my colleagues, and as I know you are, to doing more for New Hampshire families throughout the court system. The time is now.

I am particularly concerned about the needs of children across the board and whether the courts are meeting those needs. I have proposed a Joint Commission to Study the Needs of Children in the Judicial System to the leaders of the House and Senate and to Governor Lynch and am hopeful that we will be able to make that happen. It will pay dividends for the least powerful and the most in need.

In January of last year Associate Justice Robert Lynn was appointed Chief Justice of the Superior Court. He is doing an outstanding job and I benefit each day from his counsel and cooperation. He is intent on improving the operations of the Superior Court, a court that has a long and distinguished history. He has introduced individualized docketing, which requires all new cases to be assigned to a single judge. The cases remain with the judge until they are finally concluded. This new system will enhance service, management and accountability. Chief Justice Lynn is also intent to establish uniformity of practice at all Superior Court locations. Indeed, with the introduction of a new case management system in all trial courts beginning later this year, and with the help of our phenomenal staff, uniformity and increased service will be the watchwords systemwide.

The Supreme Court has just completed a full year with its new appellate system under which we accept virtually all appeals filed. Our staff has been extraordinary in helping us make this change from a 25-year-old system in which we accepted a much smaller number of cases. The change has been worth the effort and the doors of the Supreme Court have been opened wider. I believe the public has been well served.

Foremost among my goals this past year has been to unify the judicial system in fact, not just in name. It is essential we speak with one voice wherever possible after examining different points of view. Because of the cooperation and collaboration of Judges Lynn, Maher and Kelly and the support of judges and masters throughout our system, particularly my colleagues on the Supreme Court, we have made great progress. I am confident that the Judicial Branch of government is embracing change with enthusiasm and that we will make the necessary transition, with your help, to continue to meet our responsibility to have a judicial system open enough, thoughtful enough and competent enough to deal responsibly, efficiently and fairly with the realities of a new century.

Over the past year my colleagues and I have spoken many times to the leadership of the House and Senate. These exchanges have been informal, respectful, open and productive. Governor Lynch has also extended an open hand and an open mind. My colleagues and I are committed to a new day and a new spirit of cooperation, trust and mutual respect. We are confident we can achieve it and that we have made a good beginning.

Courts are rarely popular and never perfect. But we, like you, are indispensable to our constitutional form of government. We cannot, however, continue to fulfill our duties without needed change and strong legislative support.

While the courts should never surrender or compromise their constitutional obligations to gain favor, neither should we see openness, transparency and cooperation with the other branches of government as inconsistent with our independence. I can assure you that my colleagues and I do not.

We long for a relationship with the other branches of government that transcends the perceived wisdom of our latest opinion and that allows all of you renewed confidence in the administration of justice. We will continue to work tirelessly to achieve it but we will need your help and counsel. We will readily accept both.

I sit each day at a desk occupied for many years by former Chief Justice Frank Kenison in a building rightly named in his memory. He served as Chief Justice from 1952 to 1977.

As many of you know he was a revered figure both here in New Hampshire and around the country. He possessed a dignity, an ease and a balance that served the justice system and the people of New Hampshire well. He had good and trusted friends in this chamber and in this government and his word was bond.

My colleagues and I are in search of the path he so ably cut and we will need your help and assistance to find it and tend it as we begin the 21st Century. I am confident we will have it.