

Chief Justice John T. Broderick, Jr.
State of Judiciary Speech
delivered before a Joint Session
on March 25, 2009

Madame Speaker, Madame President, Governor Lynch, distinguished members of the House and Senate, my judicial colleagues, members of the Bar and special guests: it is a privilege to come before you this morning in this great hall and an honor to address you in joint session. I know how valuable your time is and how pressing your business, so I will try not to overstay my welcome.

These are sobering times, the most sobering in my lifetime. For the last year the economy has been the elephant in almost every room in America. This historic and painful recession has affected all aspects of American life and caused all of us in public and private life to prioritize and re-focus on core needs and responsibilities. Times like these make our budget work all the more difficult, especially yours, and tough choices all the more consequential. But we have been charged with safeguarding the public interest in challenging times and by working together openly and candidly, I have every confidence we will succeed.

The judges, masters and staff who are the face of justice in New Hampshire day in and day out are an incredible and dedicated group of people. I am proud to work with them and even prouder to lead them. I speak for them this morning and, more importantly, for the thousands upon thousands of our fellow citizens whose very lives are affected when access to justice is impeded or delayed.

At the outset of my remarks, let me assure all of you that my judicial colleagues and I believe in shared sacrifice in these difficult days. We need to do our part and we have been trying. Over the last few years we have eliminated stenographers in our courtrooms to save money and with your help have replaced them with digital audio recording systems and court monitors. As painful a decision as that was, both personally and institutionally, we made it. We now have single-source transcription and interpreter services, which have allowed us to cut costs and improve performance. It has also reduced costs for litigants.

We offered our staff and judges voluntary furloughs and some accepted and we offered early retirement for eligible members of our non-judicial staff. We lowered mileage reimbursement for judges and masters to \$.25 a mile and reduced staff reimbursement to \$.40 a mile. Those numbers are the lowest in

state government. We recently announced that we would no longer pay bar and professional dues for judges, masters and lawyer staff.

We have reduced our budget for judicial education and staff training. As you may recall, before the first six months of this current fiscal year had passed we complied with the Governor's request to return \$2,000,000 of our FY '09 appropriation to help close a looming budget deficit. The cuts were regrettable but understandable and we complied. Most recently, we have fully supported Governor Lynch's call for court consolidation to streamline costs.

In the face of declining revenues and increasing budget gaps, however, I am proud to report that your court system is doing all it can with the resources it has to serve the public. Since I last stood before you two years ago, the Judicial Branch has continued its expansion of the family division. It is now in eight of our ten counties. Most recently, a family division site opened in Goffstown. Judge Kelly and his dedicated staff have been extraordinary and they deserve much credit.

Last year we opened the first ever Office of Mediation and Arbitration under the Judicial Branch umbrella and now offer high quality mediation services in virtually all our courts. By September of this year, we expect to have mediation available in the New Hampshire Supreme Court. Under the tireless leadership of Karen Borgstrom and her staff of one, our mediation program empowers litigants to cut costs and to have a hand in crafting their own solution. It enhances public satisfaction and reduces judge and staff time. It is working particularly well in probate court and Judge King's leadership there has made a difference on this and many other issues. Mediation is widely used to resolve small claims cases and it is now required in most civil and equity cases in superior court. It works largely through the volunteer time of New Hampshire lawyers who, for my money, are the best in the United States and have always been committed to "giving back." I am also proud to report that after your one year of funding, the Office of Mediation and Arbitration is now self-funding. It is one of the best investments you ever made in the Judicial Branch and I thank you for it.

In the last legislative session, at our request, this Legislature passed and Governor Lynch signed into law a first-ever business court docket in superior court. We await the appointment of its first presiding justice. I thank all of you for making it possible, the business community for its encouragement and support and Governor Lynch for his leadership. I also want to extend a special thanks to Chief Justice Lynn for his invaluable help and for his openness to change. It will make justice more accessible and timely for the business community, as it has done in nineteen other states. It is one piece of a larger vision to make justice more accessible and affordable for all our citizens,

whether they enter the justice system with or without a lawyer. The mission remains the same: meaningful and timely access to justice.

Over the last year, through your appropriation, we hired a young man as our web coordinator. His services have proven invaluable. We have streamlined and improved our Judicial Branch website for every single division of court, which permits improved service to the public. Our self-help website has improved markedly and has won national recognition. Our web coordinator has helped us become more and more transparent—from forms, to budgets, to transcripts and many other materials the public has a right to know. He has proven a very prudent investment for the information age. He's essential to our mission.

There is so much more to do. We need to work towards electronic filing and e-noticing and a paperless court. We need to enhance our technology and vision a time when we can approximate the technology in the marketplace. We have a strategic plan to get there but we know it will take time. In the 21st century if technology is not an integral part of what you do or provide, you will become less and less relevant. Nowhere is that more true than in the state courts. Our web coordinator is a critical first step and our Odyssey case management system is a huge down payment on the future. I thank you for both. I hope this Legislature will approve HB 609, which would give the Judicial Branch its first dedicated technology money in a decade. It would also take away a further pressure on the General Fund. We would be pleased to report annually exactly how the money is spent. Without this technology money, we cannot stay current and maintain and refresh the technology we have. It will also make technology planning that much easier.

We continue our aggressive pursuit of grant money to enhance and expand drug and mental health courts throughout New Hampshire. We are making slow but steady progress. We are also seeking a grant from federal stimulus money for audio-visual equipment to enhance long-distance learning projects and educational training for our staff. Simply stated, your court system is not standing still and we are doing all we can to remain timely and relevant in the unparalleled change of the 21st century.

I would be remiss if I did not thank the Governor for making the construction of the Hillsborough County Superior Court in Manchester a top capital budget priority. I also want to publicly thank Senator D'Allesandro who took the lead oar in moving the Hillsborough County issue to where it is today. Lastly, I want to thank Commissioner Hodgdon without whom the Hillsborough County project could not be on the brink of success. If you approve the new facility, the State's largest city will get the courthouse it deserves.

Above all else, we need your help and counsel to ensure forward progress. We live in a flat world, as Thomas Friedman would say. In this new century the status quo is a dangerous and illusory place to rest. In my view, we are either moving forward or backwards. “Standing still” no longer exists in the 21st century.

In my last few minutes this morning, I would like to give you my candid assessment of the challenges confronting the third branch of government. They are many and growing, but I remain confident that by working together we can successfully address them over time. I also know that these hard economic times will pass and, although the “new normal” may well be different, the only real mistake we can make is to diminish our resolve or shrink our vision.

Two years ago I identified four great challenges confronting the courts: the changing nature of our “customer” base, that is, the growing number of self-represented parties using the courts, our technology, our capacity to hire and retain high quality staff and our need in a more stressful and dangerous world to enhance court security. The list remains and we are making slow progress. But as a result of these challenges, the courts are not as timely as they need to be.

Our court system is currently under maximum stress. We have 59 full-time judges and seven of those judgeships have been vacant for many months. The most critical need is in the superior court where there are only 19 judges. Twenty-two are called for by statute. The superior court’s weighted caseload says it needs 25.5. The Governor has said he intends to fill the vacancies. I thank him. His leadership on this issue will improve the administration of justice by better serving our fellow citizens. The need is urgent.

As I speak to you today almost 50 of our 614 staff positions are vacant and we are not filling them. We can’t and keep the system running. Too few staff and too few judges is not the best formula for a century moving at the speed of light. In time, I am hopeful technology will make a greater and greater difference in productivity. As you know, the Judicial Branch does not have programs it can cut or delay. Respectfully, we are the program. And we are a small part of the state budget, about 1.3% of general fund revenue. We run a pretty lean branch of government considering the fact that we handle upwards of 230,000 cases each year.

Anticipating my remarks this morning and wanting a clearer picture myself, I asked the Bar a few weeks ago to send a simple, unscientific, four question e-mail survey to all its members. They were kind enough to do so and six hundred lawyers responded within four hours. They were asked to rate the courts on a scale of 1 to 10, 10 being the best, and to briefly explain whatever

number they selected. The average rating for all courts, system-wide, was 5.5. Not exactly a report card any of us would want. We have already assembled a swat team to deal with hot spots but that is not an acceptable long-term solution. The most often cited complaint in the survey was delay. Over and over timeliness was the principal concern. Not surprisingly, our staff was often complimented for their hard work. We need system change to deal with the impatience of the 21st century.

Part I, Article 14 of the New Hampshire Constitution was adopted in 1784, two hundred twenty-five years ago. It is powerful in its simplicity and clear in its mandate. It commands that justice be obtained “promptly and without delay.” Our forefathers who risked everything they had, including their lives, for independence from the Crown, understood that justice delayed was justice denied. They held that belief so dearly that they fashioned timely access to the courts as a constitutional right. Their embrace of access to justice made no exception for the vagaries of their times, or ours, be they social, political or economic. Indeed, in trying times such as these the right to timely justice is most important.

We do not have the option, as some may, of turning anyone away and I am not seeking one this morning. But I am seeking your assistance, your counsel and renewed commitment to ensure that the courts of our state can meet the needs of our citizens and the mandate of our Constitution. Timely justice is not just a good idea or a noble aspiration. It is the glue that holds our Republic together and it is guaranteed by our founding document.

This new century will demand more from us than the extraordinary century just passed and the justice system will not be an exception. It will need to be more nimble, affordable, accessible, tech savvy and user-friendly than ever before. The marketplace of the 21st century will demand it. A lesser justice system will serve none of us well.

I have loved and respected the state courts during my thirty-six years as a lawyer and judge and have always admired the people who serve them. And I have always known how important they are to the people they serve. Although the courts are not perfect or infallible, their critical mission is essential to a free society and to our Constitution which blessed its birth. America’s courts are the envy of the world and, in these unprecedented times of tension and economic turmoil they need your protection more than ever before. I am confident and grateful they will have it. Thank you for listening and for the honor of speaking with all of you this morning.