1978 NEW HAMPSHIRE COURT SYSTEM

ANNUAL REPORT PREPARED FOR THE GENERAL COURT OF NEW HAMPSHIRE

D J. LAMPRON
SUPREME COURT

HON. CHARLES G. DOUGLAS, III
CHAIRMAN, JUDICIAL PLANNING COMMITTEE

SUPREME COURT OF NEW HAMPSHIRE

Honorable Edward J. Lampron, Chief Justice

Honorable William A. Grimes, Senior Associate Justice

Honorable Maurice P. Bois, Associate Justice

Honorable Charles G. Douglas, III, Associate Justice

Honorable David A. Brock, Associate Justice

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New Hampshire Supreme Court

Carroll F. Jones, Esquire,
Concord, New Hampshire

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

GEORGE S. PAPPAGIANIS
CLERK OF COURT AND
REPORTER OF DECISIONS
CAROL A. BELMAIN
DEPUTY CLERK

1 9 7 9

June 11

FRANK ROWE KENISON
SUPREME COURT BUILDING
CONCORD, N. H. 03301
(603) 271-2646

National Criminal Justice Reference Service
Acquisition Report Department
Box 6000
Rockville, Maryland 20850

Gentlemen:

In response to your letter of June 7, 1979, I enclose a copy of the "1978 New Hampshire Court System Annual Report."

Very truly yours,

George S Pappagianis

George S. Pappagianis /drc

GSP/drc

Enclosure

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"A Judiciary that discloses
what it is doing
and why it does it
will breed understanding.
Confidence based on understanding
is more enduring
than confidence based on awe."

U.S. Supreme Court Justice William O. Douglas

With this in mind the Supreme Court and its Judicial Planning Committee present to the legislators and public this first Annual Report. In it you will find an outline of your court system, an analysis of its problems and a plan for their solution. I hope you will find the information contained in this report to be helpful and interesting.

Edward J. Lampron
Chief Justice

SECTION I

OVERVIEW OF THE CREATION AND STRUCTURE OF THE COURT SYSTEM

CREATION OF THE COURTS

The New Hampshire Constitution says that the "judicial power of the State shall be vested in the supreme court, a trial court of general jurisdiction known as the superior court, and such lower courts as the legislature may establish under Article 4th of Part 2." Thus under Article 72-a of Part 2, the Supreme and Superior Courts are "constitutional" courts, which may only be changed by amendment to the Constitution, while the District and Municipal Courts may be changed or abolished by the Legislature. Probate Court is also a constitutional court under Article 80 of Part 2 of the Constitution.

THE WORK OF OUR COURTS

Like other court systems of our country, the New Hampshire courts were established to settle disputes between citizens and to hear cases involving crimes against the public. Consider the following: John Q. and Mabel Citizen are driving through downtown Concord. Suddenly, their vehicle is struck from behind by a drunken driver. The impact sends John into the dash. He is hospitalized for two weeks, and his spouse receives a serious back injury that doctors agree will cause her pain the rest of her life.

Fortunately for John Q. Citizen and his spouse, two sets of rules have been established that will provide them with the means of settling their problems: (1) Civil law, which will allow both John and Mabel to seek money damages from the drunken driver for the injuries they received, and (2) Criminal law, the law that gives the State the authority to prosecute the drunken driver for his wrong. Because ignorance of the law is no excuse for its violation, the drunken driver is responsible for his actions; John and Mabel will have their "day in court" and the law will have once again demonstrated its power to influence human behavior and relationships.

Our civil law has developed from the Constitution, court decisions in previous cases, and from the specific laws passed by the Legislature. In civil actions a jury generally finds the facts, unless the parties to the action decide to try the case in front of a judge only, and the resulting money awarded to the winning party is known as a verdict. In certain cases, a verdict in dollars will be inadequate to cure the damage done or continuing damage, as in the case of the smoldering dump whose smoke or smell drives a homeowner out of his home. In such circumstances, a court exercises what is known as its "equity powers" and issues a "decree" which, in the example stated, would order the manager of the dump to correct the situation.

Criminal law is almost entirely defined by statutes (laws passed by our Legislature and signed by our Governor) although court decisions interpret the statutory law. Crimes are divided into two categories: (1) Felonies, where the penalty may be a state prison sentence from one year and a day to life imprisonment; and (2) Misdemeanors, where the

possible jail sentence is less than one year and a day. Minor infractions, such as offenses against city ordinances or motor vehicle rules are called "violations," not crimes, and are punishable by a fine only.

Appeals may be made from decisions of the trial courts and governmental agencies to the New Hampshire Supreme Court. Appeals are made on issues of law, such as a challenge of a trial judge's application of law to the facts found by a jury. Criminal convictions may be appealed by the defendant but only certain rulings in criminal cases may be appealed by the prosecution. The Supreme Court of New Hampshire is in Concord and consists of five judges. Unlike the trial courts, witnesses are rarely called upon to testify at the Supreme Court. The Supreme Court may hear the attorneys for both sides and the attorneys also submit written analyses, known as "briefs," which support their arguments. Generally, the opinions of the five Justices of the Supreme Court are handed down approximately 30 to 60 days after they hear the oral arguments. These opinions may affirm, reverse, or modify the decisions of the trial court or agency. The Supreme Court may send the case back for a new trial in the lower court or for further decision in the governmental agency.

The decisions of the Supreme Court interpret the law so as to set standards that may be followed in future cases. All the Supreme Court decisions are published in a book called the New Hampshire Reports.

A newly organized Sentence Review Division of Superior Court has been established for review of sentences set by judges in criminal cases. This three-judge panel has the power to affirm, decrease or increase a criminal's sentence to our state's prison.

The ten Probate Courts in the State deal with estates, trusts, and wills as well as adoptions and related matters. The ten Probate Judges opened approximately 8,600 new files in 1977.

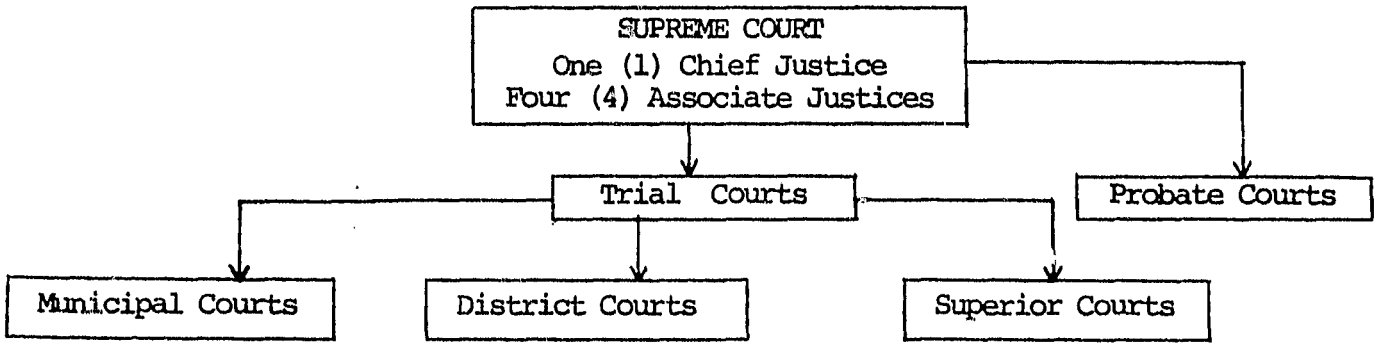
THE JUDICIARY

In New Hampshire all judges are nominated by the Governor and confirmed by the five-member Executive Council. By law, all judges must retire from the New Hampshire Court System at age seventy. All judges are subject to a code of ethics, known as the Code of Judicial Conduct, that is enforced by the State Supreme Court. The Judges of the Supreme and Superior Courts, as well as some District Court Judges, serve full time and may not maintain a law practice.

THE ADVERSARY SYSTEM

The court system in New Hampshire, like other American court systems and the system in Great Britain, utilizes the adversary system of justice. This system assumes that two lawyers arguing the opposite point of view will establish the facts and present the law involved in the case. The judge is there to maintain impartiality and to render judgment in a jury-waived trial in light of the law and the facts involved in the case.

COURT STRUCTURE FOR THE STATE OF NEW HAMPSHIRE



Municipal Courts

17 in State

Approximately 9,000 cases handled in 1977.

Jurisdiction

Civil: Small Claims ($500.00 or less and not involving title to real property), landlord and tenant, and juvenile cases.

Criminal Cases: Misdemeanors, violations, and probable cause hearings for felonies headed to the Superior Court.

Appeals

Go to Superior Court for second criminal trial. Other appeals on law questions go to the Supreme Court.

District Courts

41 in State

Approximately 179,000 cases handled in 1977.

Jurisdiction

Civil: ($3,000.00 or less and does not involve title to real property). This includes contracts, landlord and tenant, damages to person and property, and juvenile cases. If there is no Municipal Court, litigation of small claims is in the District Court.

Criminal Cases: Misdemeanors, violations, and probable cause hearings for felonies headed to the Superior Court.

Appeals

Go to Superior Court for second criminal trial. Other appeals on law questions go to the Supreme Court.

Superior Courts

Sessions held in all 10 counties with a total of 15 judges on circuit. This is the only court that has trials by jury.

Jurisdiction

Civil: (Where the dispute is more than $500.00 or involves title to real property). Handles domestic relations matters including divorce, alimony, and family support. Almost 18,000 cases disposed of in 1977.

Criminal Cases: Tries violation and misdemeanor appeals from District and Municipal Courts. The Superior Court is the only court for trial of felonies. Over 6,000 criminal cases were disposed of in the Superior Courts statewide in 1977.

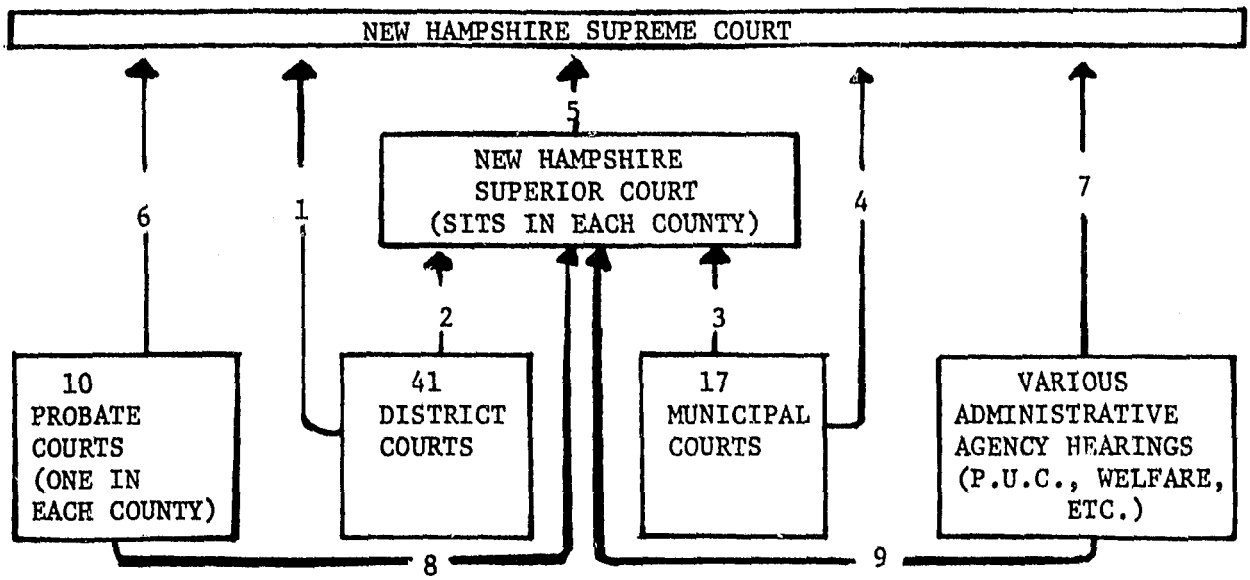
Appeals

Go to Supreme Court.

All of these courts dispose of over 220,000 cases a year.

FIGURE I

THE NEW HAMPSHIRE JUDICIAL SYSTEM



1. Cases transferred on issues of law - reserved case or bill of exceptions (appeal - facts not in dispute).

2. Trial de novo (criminal cases).

3. Trial de novo (criminal cases and some civil cases).

4. Cases transferred on issues of law - reserved case or bill of exceptions (appeal - facts not in dispute).

5. id.

6. id.

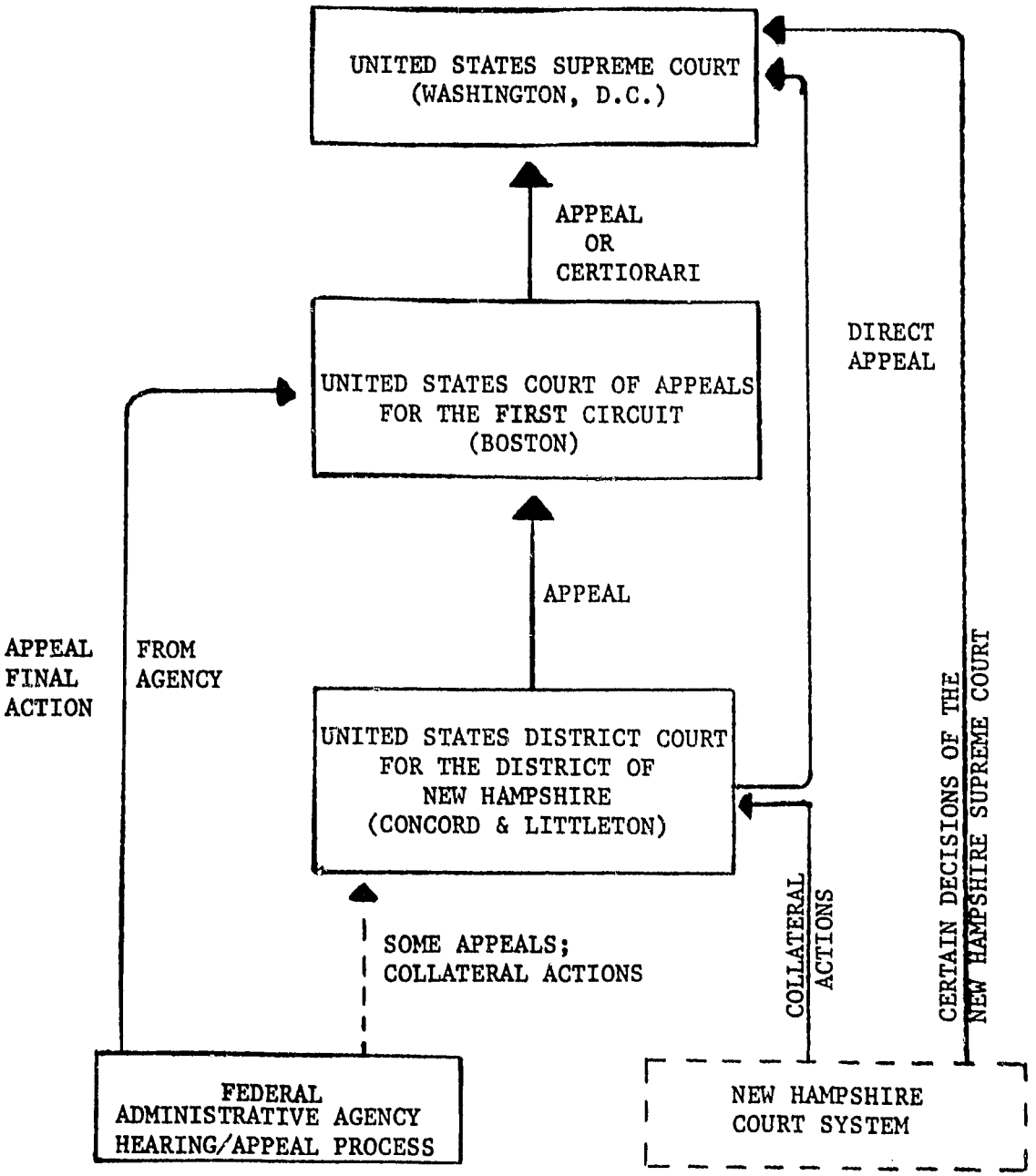
7. Appeal on issues of law (facts not in dispute).

8. Disputed facts certified for jury trial.

9. Certain administrative appeals; trial of facts.

FIGURE II

THE FEDERAL JUDICIAL SYSTEM IN NEW HAMPSHIRE



SECTION II

SUPREME COURT

I. BRIEF HISTORY

New Hampshire's Supreme Court dates back to the birth of our nation and reflects the independent spirit of our state, as well as its commitment to an unbiased and forward-looking judiciary. On January 5, 1776, the colony of New Hampshire adopted a temporary constitution, the first written constitution adopted by any of the states. Pursuant to this constitution, on June 28, 1766, an act was passed by the newly-formed legislature that abolished the colony's court of appeals, consisting of the Governor and Council, and put an end to the practice of granting appeals to the King of Great Britain in Council. The Superior Court of Judicature, the forerunner of today's Supreme Court, was established and recognized as the only appellate tribunal. This court consisted of four justices and had jurisdiction and authority throughout the colony. Although the Court's make-up was altered twice, once in 1791 and again in 1813, and its name once in 1813, the Superior Court of Judicature remained substantially unchanged until 1855.

The judiciary was remodeled by statute on August 17, 1855. Under that act the Superior Court of Judicature was replaced by the Supreme Judicial Court, consisting of a chief and four associate justices. On July 17, 1876, following a two-year period when the Superior Court of Judicature had been reinstated, an act was passed

NOTE: Words underlined are defined in an Appendix to this section.

that created the Supreme Court. New Hampshire's highest court has had this title since August 14, 1876. In 1877, the legislature expanded the Court by providing for a chief and six associate justices.

Prior to 1901 the Supreme Court held "law terms" at which questions of law brought on appeal from the courts were decided and "trial terms" during which cases were heard in each county. Originally, trial terms were held by all or at least a majority of the justices. The legislature recognized the burdens imposed by "circuit riding" and in 1813 provided for the holding of a trial term by a single justice. This act was repealed in 1816, however, and not until 1855 were trial terms again permitted to be held by a single justice.

On April 1, 1901, the legislature radically changed the structure of the judiciary. Two courts were established to take the place of the Supreme Court as it then existed. The Supreme Court, consisting of one chief and four associate justices, was given jurisdiction over matters formerly considered at the law terms. A Superior Court was given jurisdiction over matters formerly handled at the trial terms. This arrangement has continued to the present time. It has the advantage that a trial justice's ruling may come before a separate court of appeals of which the trial justice is not a member.

The only major change affecting the Supreme Court since 1901 occurred on November 16, 1966, when the state constitution was amended to establish the Supreme as well as the Superior Courts as constitutional courts. This means that these courts may only be changed or abolished by constitutional amendment, rather than by legislative enactment.

II. THE COURT'S WORK

When we speak of Appeals, by definition we refer to a phase of litigation which normally takes place after a case has been concluded in another court or in an administrative agency. An appeal presupposes that at least one of the parties is dissatisfied with the first tribunal result and wishes to continue to litigate issues of law which that party thinks have been erroneously resolved. The maintenance of an appellate system, then, rests on society's view that it is undesirable for at least some controversies to be the final responsibility of a single person.

The concept of an appeal on issues of law in New Hampshire is that another forum, the Supreme Court, will scrutinize the case; it will subject the first tribunal action to a careful examination of legal issues. Rather than deciding the facts of a raw controversy, the Supreme Court decides issues of law presented by a case record. Because the controversy has once been decided and "packaged," the dispute between the parties may have been put in a different posture. Issues which were vigorously contested as the case unfolded may have disappeared or been recast; new issues may have been born.

In the law term courts of New Hampshire's past, the Writ of Error, the ancestor of what we now call appellate review, dealt almost exclusively with correcting any errors committed by the trial court judge of this "packaged and decided" case.

In this century, with a more fully developed legal system and more sophisticated perception of its function, we see the Supreme Court serving several purposes. Though their relative importance may be assessed differently, the primary purposes are:

1. To correct errors in trial court proceedings and to insure justice under the law to all litigants.
2. To pronounce and harmonize the decisional law of all New Hampshire courts and agencies. The decisions of the Supreme Court interpret the law so as to set standards that may be followed in future cases. (This is the "law making" role in the English Common Law tradition.)
3. To supervise the courts throughout New Hampshire. This may include issuing and approving rules for the purpose of governing trial proceedings in courts throughout the state, in addition to the general supervisory responsibility to see that all cases in New Hampshire are decided in a fair, speedy, and economical manner.

The Court is also empowered by the state constitution to issue advisory opinions at the request of either house of the legislature or of Governor and Executive Council. These opinions concern the legality of actions which are being considered, rather than actions which have already taken place; they usually involve important questions of constitutional law.

The Court also has jurisdiction over admission of attorneys to the Bar, which procedure is governed by detailed rules established by the Court. Examination of candidates for admission to the practice of law is conducted by a Board of Bar Examiners appointed by the Court.

All judges are subject to a code of ethics, known as the Code of Judicial Conduct, that is enforced by the Supreme Court's Judicial Conduct Committee established by Court Rule 28. Two laymen, two lawyers and three judges serve on the Committee.

III. THE COURT AND ITS STAFF

The Supreme Court of New Hampshire consists of five justices, each of whom is appointed by the Governor and Council for a term of office which continues during good behavior and until the age of seventy. The Court holds monthly sessions, except during August, generally beginning on the first Tuesday of each month.

In order to aid the Court in its appellate work, the Court has a staff of fully-trained law clerks, and a Clerk of Court who is supported by a trained clerical staff. The Clerk's office is truly the gate through which all appellate proceedings must pass to reach the Court. For ready reference, each appeal is entered on the docket, assigned a number and indexed by the names of all parties affected. The Clerk is responsible for preserving all court files and papers, for keeping a docket record of all questions transferred, and of all petitions, bills of exception, appeals, reserved cases or other processes presented to the Court, and for accurately recording the names of the parties and the counsel who appear on their behalf and a brief description of the nature of the proceedings.

The Clerk records the orders, opinions, and directives of the Court in each case. He is authorized to make copies of all papers on file and of the docket itself and certify them under seal. He issues such records or other processes as the Court may order and charges the fees required by the Court. He accounts for and pays to the State all fees received on behalf of the Supreme Court.

The Supreme Court is also charged with the responsibility of appointing a suitable person to be Reporter of Decisions. The Supreme Court of New Hampshire has chosen to appoint the Clerk of Court to fulfill this function also. In fulfilling this role

as Reporter of Decisions, the Clerk prepares a condensed statement of the substance of the law questions decided in each case and publishes the opinions rendered by the Supreme Court. These case reports are published and distributed in volumes entitled New Hampshire Reports.

IV. THE APPEAL PROCESS

The Court's caseload has increased dramatically in recent years. Currently the court disposes over three hundred cases per year. The standard procedure by which a case is decided begins when the case is filed with the Clerk of Court, who assigns it a docket number. The Clerk then notifies the parties of the time for the filing of briefs and the month scheduled for oral argument. After the parties have submitted briefs, which present each party's arguments and legal reference, the Clerk's office distributes a copy to each judge. At oral argument, which takes about twenty minutes a side, the attorneys highlight the key points in the briefs and answer any questions from the judges. Unlike the trial courts, witnesses are rarely called upon to testify at the Supreme Court. Following submission of the case after oral argument on the briefs or without oral argument if the parties have so chosen, the case is assigned to one judge. With the help of a law clerk, who is also an attorney, the judge studies the cases, researches the law and writes a tentative opinion, which explains the reasons behind the proposed decision. This opinion is then studied by the other judges and the entire Court confers with the objective of reaching a unanimous decision. Although in most instances a unanimous decision is reached, a dissenting judge may formally indicate disagreement and

may accompany the majority opinion with a written explanation of the dissenting vote, i.e., a dissenting opinion. Sometimes the Court issues what is called a "per curiam" opinion, one which expresses the decision of the Court but which is not attributed to any one judge. For decisions not in need of lengthy explanation, "memoranda" opinions are occasionally issued.

Opinions are normally handed down approximately sixty to ninety days following the time that the cases are submitted with or without oral argument, and all opinions are published in the New Hampshire Reports. The decisions of the Court are final except in those cases where provision is made by federal statute for review by the United States Supreme Court.

V. STATISTICS AND CASELOAD

New Hampshire Supreme Court Clerk, George S. Pappagianis, reports a dramatic increase in cases entered yet the court is disposing of them in a more expeditious manner, thereby reducing delay. For the Court's statistical year ending July 31, 1970, 139 cases were entered on the supreme court docket compared to 308 entered as of the close of the statistical year in 1978, or a better than 200% increase in appeals to our highest court. In that same nine-year period the court increased its dispositions of entered and pending cases from 137 in 1970 to 358 this year. The nine-year figures are as follows:

STATISTICAL YEARS

1970 - 1978

Ending July 31	Cases Entered	Cases Disposed	Pending Cases
1970	139	137	114
1971	186	141	159
1972	188	149	198
1973	240	196	242
1974	270	274	238
1975	288	277	249
1976	273	320	202
1977	315	348	169
1978	308	358	146

Statistical year 1978 has the highest number of cases disposed (358) leaving the court with the lowest number of cases that have been entered but not yet orally argued or decided since 1971 (146 vs. 159). In other words, despite a tremendous increase in cases entered the court's disposition rate has reduced the number of pending cases to its lowest level in seven years, with the backlog of cases actually declining in the last four years. Of the 358 cases disposed of in this reporting year, 235 were by opinion, which is an increase in the number of opinions when compared with the figure of 106 in 1970 and 192 opinions in 1974. It was accomplished during this recording year despite the fact that for five months the court was understrength by two judges and for eight months was understrength by one judge. The able assistance of several superior court judges during the months of November and December, 1977, aided the court in cutting its backlog and speeding dispositions.

The court also reported substantial progress towards meeting the goal set for appellate courts by the American Bar Association

(Standard 3.52) which recommends that the time for rendering a decision following oral argument should be 60 days with a maximum of 90 days.

In 1970 the average period of time from date of oral argument to the date of opinion was 140 days, and this was reduced in 1974 to 99 days, and is currently 81 days for 1978. While the number of judges has remained constant and the number of opinions and entries has more than doubled over the last few years the turn-around time from argument to date of opinion has decreased by almost half (140 days vs. 81 days).

There has also been substantial improvement in the period of time from the date a case is filed with the Supreme Court to the date that it is argued before the court. In 1973, it took an average of seven months of waiting before a case was argued in the Supreme Court and by 1975 that figure had been reduced by only five days. In 1977 and 1978 the supreme court tightened its continuance policy tremendously and instituted new monitoring procedures so that now the average wait from entry to oral argument is approximately three months. By instituting a new proposed rules structure for appeals, the court is confident that the turn-around time can be reduced by at least another month.

By way of comparison, the seven-judge Supreme Court of Pennsylvania handed down 337 opinions in 1976 and on an average it took 7.5 months to decide a case once it was argued.

The ratio of civil to criminal cases on the Supreme Court docket is 4 to 1 (107 v. 25). Of the total number of opinions handed down to date this calendar year, 107 or 81% have been cases from the Superior Court. Of the civil issues to court cases, 1/3 have been handled by Masters and marital Masters (27 out of 80 cases).

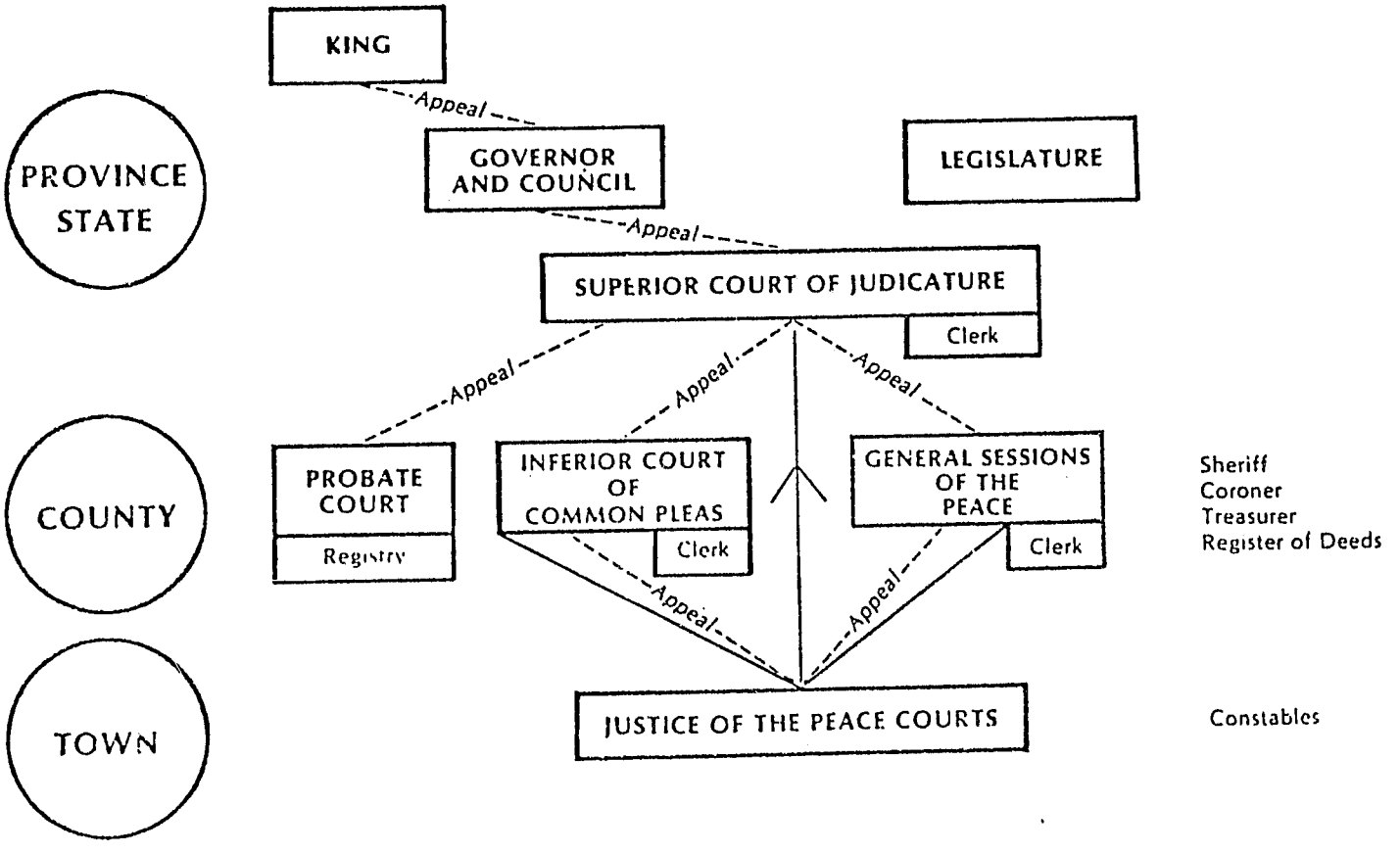
SUPREME COURT

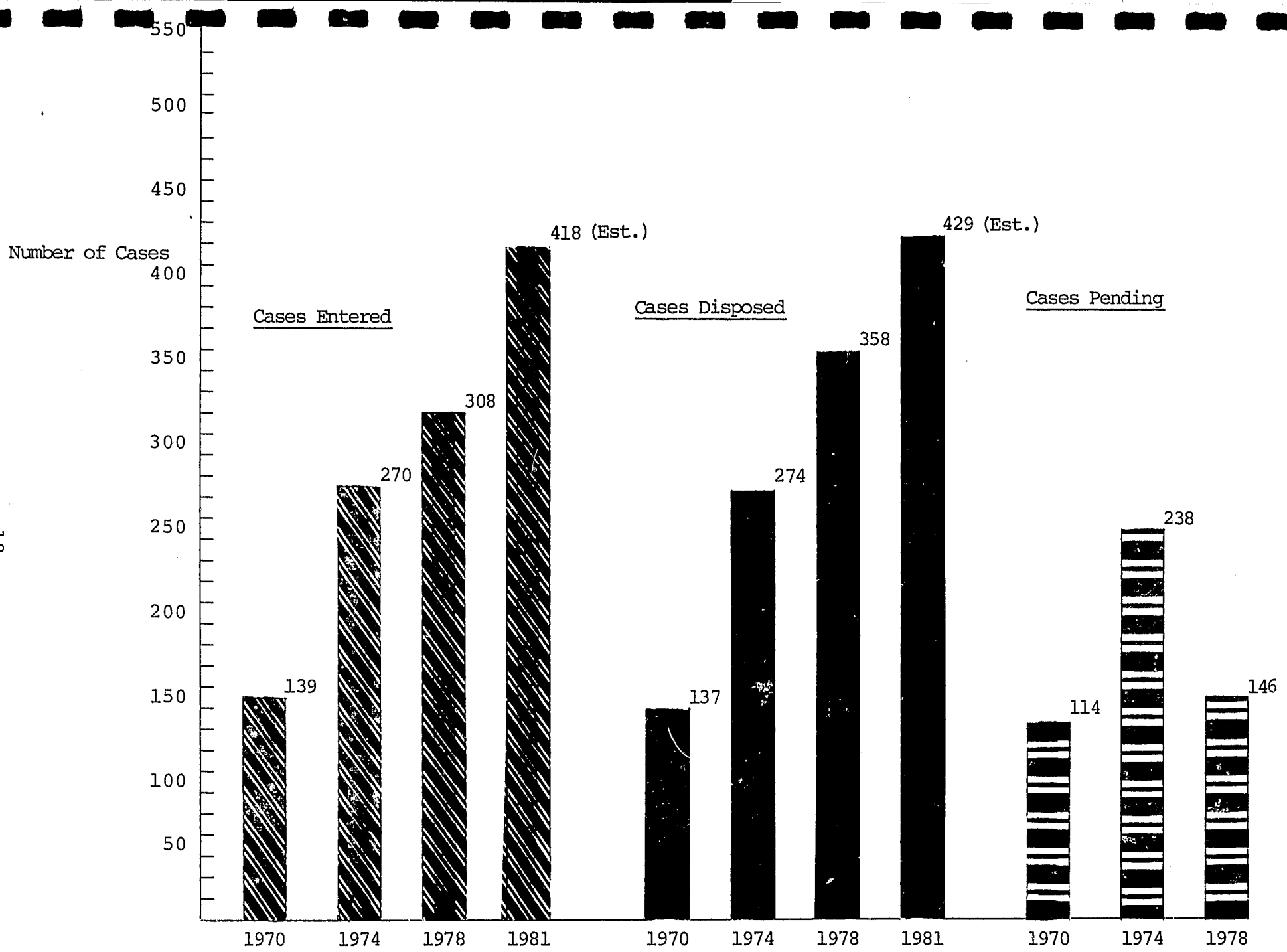
JANUARY - JULY 1978 OPINIONS

SUPERIOR COURT	CRIMINAL	CIVIL
Jury	6	5
Judge	16	53
Master	--	27
ADMINISTRATIVE AGENCIES	--	10
PROBATE COURT	--	7
DISTRICT & MUNICIPAL COURTS	3	1
ORIGINAL	--	1
OPINION OF THE JUSTICES	--	3
Subtotal:	25	107
TOTAL: 132		

THE NEW HAMPSHIRE JUDICIARY

Eighteenth Century




Number of Cases
550
500
450
400
350
300
250
200
150
100
50
Cases Entered
139
270
308
418 (Est.)
Cases Disposed
137
274
358
429 (Est.)
Cases Pending
114
238
146
1970
1974
1978
1981
1970
1974
1978
1981
1970
1974
1978

VI. The Frank Rowe Kenison Supreme Court Building

Since 1970, the Supreme Court has occupied a specially-designed building located in the state capital, Concord. The building houses a courtroom, conference rooms, offices, and the State Law Library.

The Law Library

The Law Library is part of the Division of Law and Legislative Reference Service of the New Hampshire State Library. It originated in 1716 with a collection of law books belonging to the provincial government then meeting in Portsmouth. After the State House was built in 1816, a separate room was set aside for the State Library. For a time the Secretary of State also served as the State Librarian. In 1895, a separate building to house the Library was completed in Concord. The Law Library remained there until 1970 when it was transferred, with the Supreme Court, to its present location.

As part of the State Library, the Law Library is open to the public. It has a staff of two librarians and one library assistant to oversee the more than 70,000 books that cover all aspects of law except international and patent law.

Supreme Court Library

This picture shows book stacks and "work" tables that are available for use by all our citizens.

EDWARD JOHN LAMPRON

Chief Justice

Chief Justice Lampron was born in Nashua, New Hampshire, on August 23, 1909, the son of John P. and Helene Deschenes Lampron. He received his B.A. from Assumption College in 1931 and his law degree from Harvard University in 1934. After being admitted to the New Hampshire Bar in 1935, he practiced law in Nashua until 1947. He served as solicitor for the City of Nashua from 1936 - 1946. He was appointed to the New Hampshire Superior Court in 1947 and to the New Hampshire Supreme Court in 1949. On June 9, 1978, Justice Lampron was sworn in as Chief Justice of the New Hampshire Supreme Court.

Justice Lampron is a member of the American and Nashua (past President) Bar Associations, the Advisory Board of St. Joseph's Hospital in Nashua, and a trustee of the Nashua Public Library. He is also a member of the Association Canado-Americaine (Vice-President, Director). He was awarded honorary doctoral degrees by Assumption College in 1954 and Rivier College in 1977.

Justice Lampron and his wife, the former Laurette L. Loiselle, have two children, Norman E. and J. Gerard.

WILLIAM ALVAN GRIMES

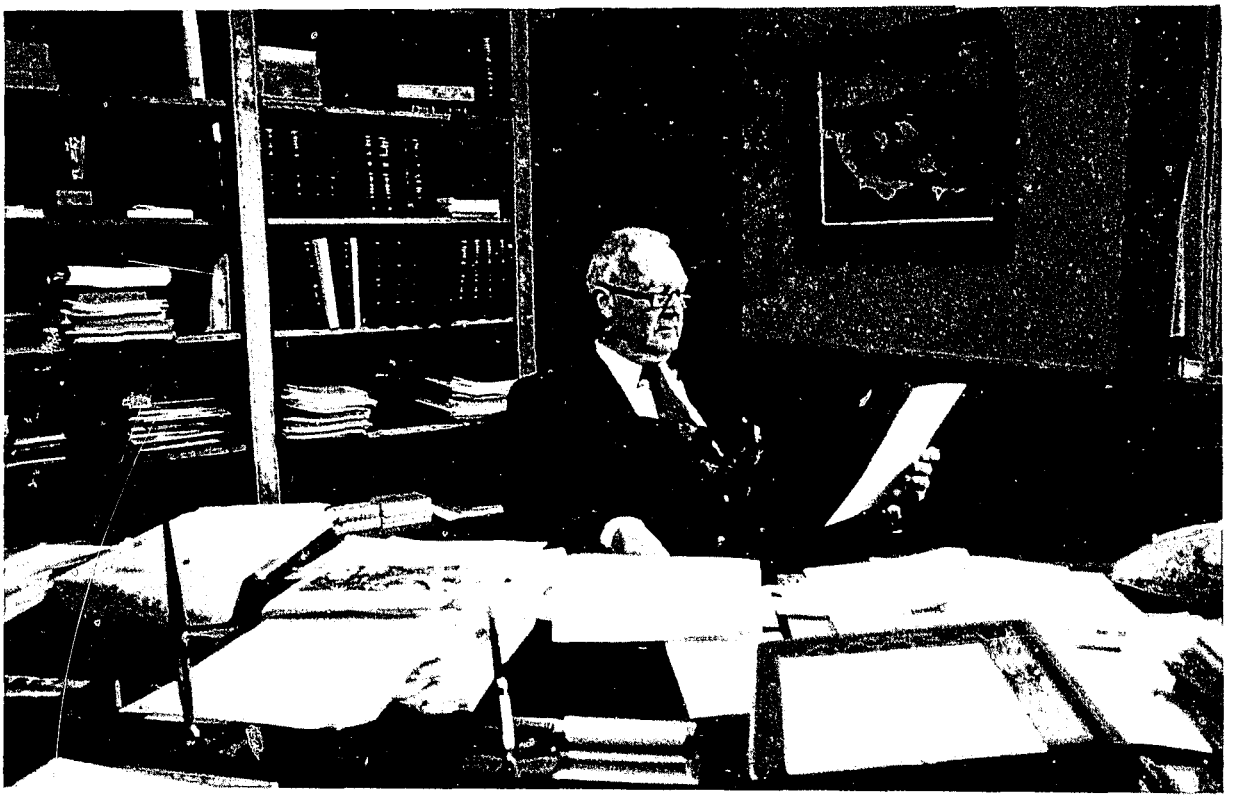
Senior Associate Justice

Justice Grimes was born in Dover, New Hampshire, on July 4, 1911, the son of Frank J. and Annie Ash Grimes. He received his B.S. degree from the University of New Hampshire in 1934 and his law degree from Boston University in 1937. After being admitted to the New Hampshire Bar in 1937, he joined the firm of Cooper & Hall in Rochester and in 1941 became a partner.

Justice Grimes was a member of the New Hampshire House of Representatives from 1933 - 1935 and from 1937 - 1939, and served in the United States Naval Reserve during World War II. He served as Solicitor for the City of Dover from 1946 - 1947. He served on the Superior Court of New Hampshire from 1947 - 1966, when he was appointed to the Supreme Court.

Justice Grimes is the Chairman of the Judicial Administration Division, a member of the Task Force on Appellate Procedures, and a member of the Committee to Investigate Federal Law Enforcement Agencies of the American Bar Association. He is a member of the Strafford County Bar Association, the New Hampshire Bar Association, the American Judicature Society, the Advisory Council of the National Center for State Courts, the Council of Judges of the National Council on Crime and Delinquency, and is a charter member of the faculty of the National College for the State Judiciary. He was Chairman of the New Hampshire Vocational Rehabilitation Planning Commission, the Governor's Commission on Crime and Delinquency, and the Appellate Judges Conference of the American Bar Association Judicial Administration Division.

Justice Grimes received the Centennial Award and the Silver Shingle Award from Boston University Law School and an honorary Doctor of Law degree from the University of New Hampshire.



MAURICE PAUL BOIS

Associate Justice

Judge Bois, born in Manchester, graduated from St. Anselm's College in 1939. He began his law studies by attending Fordham University Law School at night while working as a full-time insurance adjuster in New York City. He received his law degree from Boston University after having served in the United States Army during World War II. He was admitted to the New Hampshire Bar in November, 1946, and joined the law firm of his father, Thomas J. Bois, with whom he practiced until 1954. He served as United States Attorney for New Hampshire from 1954 - 1961, at which time he opened his own law office in partnership with W. J. La Flamme. He was appointed to the Superior Court in July, 1973, and to the Supreme Court in October, 1976, replacing retiring Justice Laurence I. Duncan of Concord.

Justice Bois is a Director of the American Judicature Society and served as Chairman of the Governor's Commission On Court System Improvement in 1973 - 1974.

Justice Bois is married to the former Yeteve Vezina of Manchester where they presently reside.

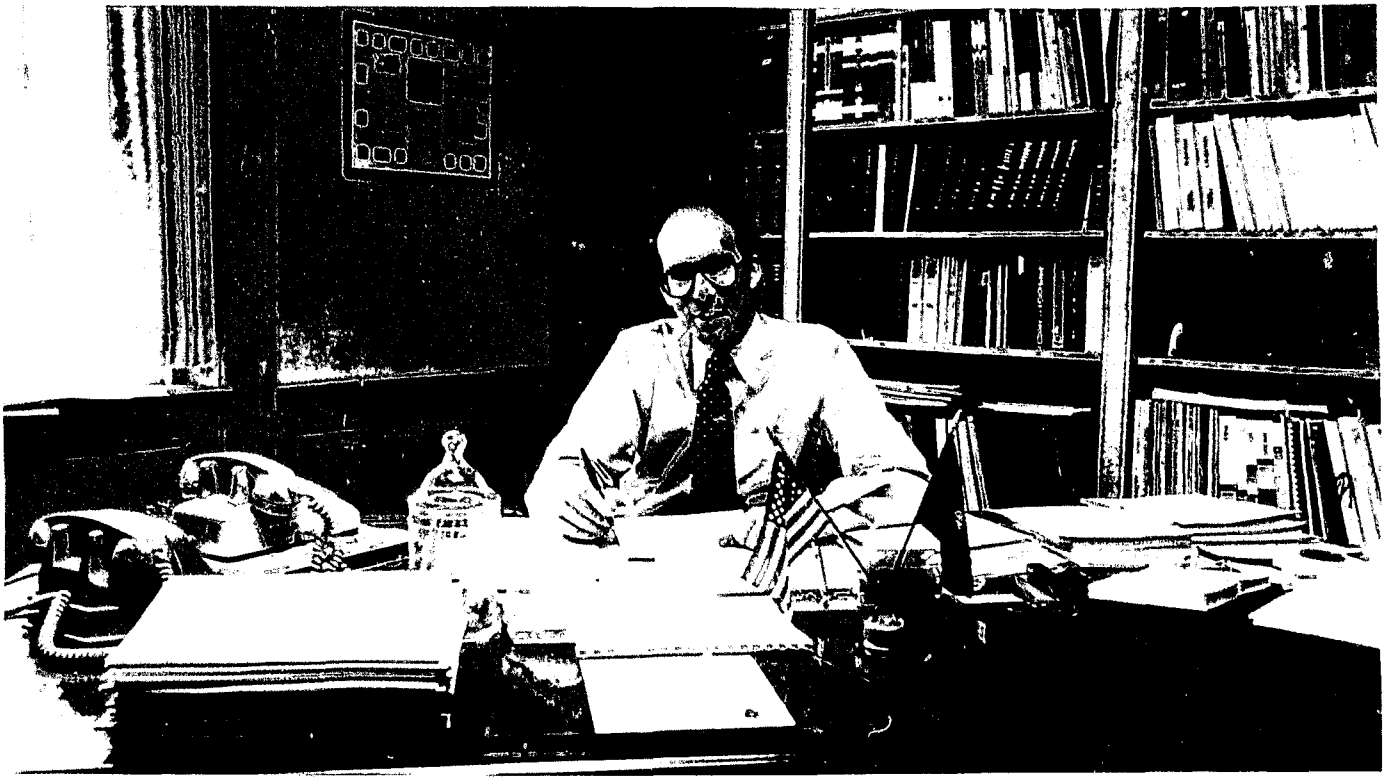
CHARLES GWYNNE DOUGLAS, III

Associate Justice

Justice Douglas, born in Abington, Pennsylvania, attended Wesleyan University from 1960 - 1962 and graduated with honors from the University of New Hampshire in 1965. After serving as administrative assistant to the New Hampshire House Majority Leader in 1965, he entered the Boston University Law School, from which he received his law degree with honors in 1968. While at Boston University, he served as assistant lead article editor of the Boston University Law Review. After being admitted to the New Hampshire Bar in 1968, he entered private practice in Manchester and Concord. From 1973 - 1974, he served as Legal Counsel to the Governor and in 1974 he was appointed to the New Hampshire Superior Court. During his tenure as Superior Court Judge, he represented New England on the Executive Committee of the National Conference of State Trial Judges and served on the Conference's State-Federal Courts Committee.

Justice Douglas was appointed to the Supreme Court on January 1, 1977, replacing retiring Justice Robert F. Griffith of Nashua. He is currently Chairman of the Supreme Court Judicial Planning Committee and President of the New Hampshire Task Force on Child Abuse and Neglect. He is a member of the American and New Hampshire Bar Associations and Phi Beta Kappa honorary society. He is a captain in the New Hampshire National Guard.

Justice Douglas is a frequent contributor to legal publications with articles having been published on various topics in the American Bar Association Journal, St. Louis University Law Review, Case and Comment, and other publications.



DAVID ALLEN BROCK

Associate Justice

Justice Brock was born in Stoneham, Massachusetts, on July 6, 1936, the son of Herbert Jay and Margaret Morris Brock. He graduated from Manchester Central High School in 1953 and Holderness School, Plymouth, New Hampshire, in 1954. He received his B.A. degree from Dartmouth College in 1958 and served as a lieutenant in the U. S. Marine Corps between 1958 and 1961.

In 1961, Justice Brock entered the University of Michigan Law School, receiving his law degree in 1963. Upon being admitted to the New Hampshire Bar in 1963, he entered private practice in Manchester. In 1969, Justice Brock was named United States Attorney for New Hampshire. In 1972, he resumed private practice in Concord, New Hampshire, where he remained until his appointment to the New Hampshire Superior Court in 1976.

Justice Brock was appointed to the Supreme Court on June 9, 1978, filling a vacancy created by the retirement of Chief Justice Frank R. Kenison. He is a member of the American and New Hampshire Bar Associations.

Justice Brock and his wife, the former Sandra Ford, have six children - Kimberly, Deborah, Tammy, Margaret Ann, Frederick and William. The Brocks currently reside in Hopkinton.

Appendix A

Definition of Court-Related Terms

Act: A written law passed by the State Legislature which deals with the interest and the welfare of the public. It may impose regulations, prohibit certain conduct, organize the government or define policy.

Appellant: The party appealing a decision or judgment to the Supreme Court.

Appellee: The party against whom an appeal is taken.

Bar: The official association of attorneys (judges, and other members of the legal profession) who are eligible to practice law before the courts of the state.

Brief: Written document prepared by the lawyers on each side of a dispute and submitted to the Supreme Court in support of their arguments. A brief includes the points of law which the lawyer wishes to establish, the arguments he uses, and the legal authorities on which he rests his contentions.

Case: A legal proceeding for the settling of a dispute or controversy between parties wherein the rights of those parties are enforced or protected; or wrongs are prevented or redressed. The proceeding can include hearing witnesses, viewing evidence, and listening to arguments by both sides.

Constitutional Law: The area of law which deals with the interpretation of the constitution. The constitution prescribes generally the plan and method according to which the affairs of the state are to be administered and the fundamental principles which determine the relations of the government and people. A constitutional law or action is one which agrees with the plan or fundamental principles laid out in the constitution.

Counsel: An attorney or lawyer who assists a person with advice and pleads for him in court.

Decisional Law: Or common law, or judge-made law. The body of law which is comprised of case decisions, as distinguished from statutes passed by legislative enactment. The concept underlying decisional law is described by the Latin phrase "stare decisis," meaning "let the decision stand." Because our legal system is based on the premise that "like cases" should be treated alike, each case decision serves as precedent for future cases. In deciding any particular case, a judge is bound to look to the decisions of past cases, and although it is possible for him to deviate from precedent, he will do so only when overwhelming reasons are presented. The advantage of a system of law based on adherence to precedent is that each citizen can plan his daily affairs confident that the law will remain consistent - that he will be treated as every other citizen with whom he is similarly situated.

Directive: A statement by the Supreme Court which serves to direct or guide the future action of parties in regard to a particular objective.

Docket: The official list of cases which are entered in a court.

Executive Council: A body of five elected officials which acts in unison with the governor in implementing the laws of the state and carrying on the affairs of the executive branch of the government.

Fees: Prescribed charges for services of a court as established by law.

Fiat Justitia: Let Justice Be Done.

Issues of Fact: An example of an issue of fact is: "Did John Smith commit the robbery?" Such an issue is resolved by the jury (or by the judge in a "bench trial"); an appellate court may not make a contrary finding if there is any evidence supporting the fact found by the jury or the judge in a bench trial.

Issues of Law: An example of an issue of law is: "Is it permissible for Mrs. Jones to testify that she had heard from Miss What that John Smith had committed the robbery?" Such a question of law is decided by the trial court, but may be reviewed and reversed by an appellate court.

Jurisdiction: The power or authority to hear and determine legal disputes. This power may be limited to certain areas of the law, certain stages of legal disputes, or certain geographic boundaries, depending on the court and from whence its grant of power comes.

Litigation: The process of taking one's disputes through the legal system to find a solution.

Opinion: The written statement by the Supreme Court of the decision reached in a case before it. It details the law which was applied to the case and the reasons upon which the decision was based.

Oral Argument: After each side has submitted its brief on an appeal to the Supreme Court, the attorneys are given the opportunity to argue directly to the justices. The justices, in turn, will ask questions of the attorney in order to clear up any vagueness or omission in the briefs. The objective of the lawyer in the presentation of oral argument and the preparation of a written brief is to persuade the court that his position is, or should be, the correct one.

Order: A mandate or command by the Supreme Court to the parties in a case, or other affected parties, calling for the performance or non-performance of a particular action.

Petition: A request for a decision by the Supreme Court on a question of law which has come directly to the Supreme Court.

Question of Law: A question involving primarily the application of principles of law to a dispute or case; in other words, in light of the actual facts of a case, how should the law be applied.

Reserved Case: A request to the Supreme Court to consider questions of law which arose in a trial court and make a final decision on them.

Statute: Same as Act.

Trial de Novo: A new trial or retrial held in a higher court in which the whole case is gone into as if no trial had been held in a lower court.

Tribunal: A court or forum made up of persons (usually judges) who have authority to hear and decide disputes so as to bind the disputants.

Writ of Error: A formal request to the appellate court to review the decision of the trial court in a case and to change the decision in the requester's favor. This form is no longer used in New Hampshire.

Appendix B

Justices of the Supreme Court of the State of New Hampshire

Chief Justices

Meshech Weare	1776 - 1782
Samuel Livermore	1782 - 1790
Josiah Bartlett	1790
John Pickering	1790 - 1795
Simeon Olcott	1795 - 1802
Jeremiah Smith	1802 - 1809
Arthur Livermore	1809 - 1813
Jeremiah Smith	1813 - 1816
Wm. Merchant Richardson	1816 - 1838
Joel Parker	1838 - 1848
John James Gilchrist	1848 - 1855
Andrew Salter Woods	1855
Ira Perley	1855 - 1859
Samuel Dana Bell	1859 - 1864
Ira Perley	1864 - 1869
Henry Adams Bellows	1869 - 1873
Jonathan Everett Sargent	1873 - 1874
Edmund Lambert Cushing	1874 - 1876
Charles Doe	1876 - 1896
Alonzo Philetus Carpenter	1896 - 1898
Lewis Whitehouse Clark	1898
Isaac Newton Blodgett	1898 - 1902
Frank Nesmith Parsons	1902 - 1924
Robert James Peaslee	1924 - 1934
John Eliot Allen	1934 - 1943
Thomas Littlefield Marble	1943 - 1946
Oliver Winslow Branch	1946 - 1949
Francis Wayland Johnston	1949 - 1952
Frank Rowe Kenison	1952 - 1977
Edward John Lampron	1978 -

Justices

Leverett Hubbard	1776 - 1785
Matthew Thornton	1776 - 1782
John Wentworth	1776 - 1781
Woodbury Langdon	1782 - 1783
Josiah Bartlett	1782 - 1790
William Whipple	1783 - 1785
John Dudley	1784 - 1797
Woodbury Langdon	1786 - 1791

Justices of the Supreme Court (cont'd)

Simeon Olcott	1790 - 1795
Timothy Farrar	1791 - 1803
Ebenezer Thompson	1795 - 1796
Daniel Newcomb	1796 - 1798
Edward St. Loe Livermore	1797 - 1799
Paine Wingate	1798 - 1809
Arthur Livermore	1799 - 1809
William King Atkinson	1803 - 1805
Richard Evans	1809 - 1813
Jonathan Steele	1810 - 1812
Clifton Claggett	1812 - 1813
Caleb Ellis	1813 - 1816
Arthur Livermore	1813 - 1816
Samuel Bell	1816 - 1819
Levi Woodbury	1816 - 1823
Sameul Green	1819 - 1840
John Harris	1823 - 1833
Joel Parker	1833 - 1838
Nathaniel Gookin Upham	1833 - 1842
Leonard Wilcox	1838 - 1840
John James Gilchrist	1840 - 1848
Andrew Salter Woods	1840 - 1855
Leonard Wilcox	1848 - 1850
Ira Allen Eastman	1849 - 1859
Samuel Dana Bell	1849 - 1859
Ira Perley	1850 - 1852
George Yeaton Sawyer	1855 - 1859
Asa Fowler	1855 - 1861
Jonathan Everett Sargent	1859 - 1873
Henry Adams Bellows	1859 - 1869
Charles Doe	1859 - 1874
George Washington Nesmith	1859 - 1870
William Henry Bartlett	1861 - 1867
Jeremiah Smith	1867 - 1874
William Lawrence Foster	1869 - 1874
William Spencer Ladd	1870 - 1876
Ellery Albee Hibbard	1873 - 1874
Isaac William Smith	1874 - 1876
William Lawrence Foster	1876 - 1881
Clinton Warrington Stanley	1876 - 1884
Aaron Worcester Sawyer	1876 - 1877
George Azro Bingham	1876 - 1880
William Henry Harrison Allen	1876 - 1893
Isaac William Smith	1877 - 1895
Lewis Whitehouse Clark	1877 - 1898
Isaac Newton Blodgett	1880 - 1898

Justices of the Supreme Court (Continued)

Alonzo Philetus Carpenter	1881 - 1896
George Azro Bingham	1884 - 1891
William Martin Chase	1891 - 1907
Robert Moore Wallace	1893 - 1901
Frank Nesmith Parsons	1895 - 1902
Robert Gordon Pike	1896 - 1901
Robert James Peaslee	1898 - 1901
John Edwin Young	1898 - 1901
Reuben Eugene Walker	1901 - 1921
James Waldron Remick	1901 - 1904
George Hutchins Bingham	1902 - 1913
John Edwin Young	1904 - 1925
Robert James Peaslee	1908 - 1924
William Alberto Plummer	1913 - 1925
Leslie Perkins Snow	1921 - 1932
John Eliot Allen	1924 - 1934
Thomas Littlefield Marble	1925 - 1946
Oliver Winslow Branch	1926 - 1946
Peter Woodbury	1933 - 1941
Elwin Lawrence Page	1934 - 1946
Henri Alphonse Burque	1941 - 1947
Francis Wayland Johnston	1943 - 1949
Frank Rowe Kenison	1946 - 1952
Laurence Ilsley Duncan	1946 - 1976
Amos Noyes Blandin, Jr.	1947 - 1966
Edward John Lampron	1949 - 1978
John Richard Goodnow	1952 - 1957
Stephen Morse Wheeler	1957 - 1967
William Alvan Grimes	1966 -
Robert Frederick Griffith	1967 - 1976
Maurice Paul Bois	1976 -
Charles Gwynne Douglas, III	1977 -
David Allen Brock	1978 -

SECTION III

SUPERIOR COURT

I. AUTHORITY OF SUPERIOR COURT

The Superior Courts of the State were created by the state constitution Part II, Art. 72-a as trial courts of general jurisdiction. The Legislature has more specifically outlined the Superior Court's powers and duties in Chapter 491 of the New Hampshire Statutes.

As a trial court of general jurisdiction the Court sits on a wide range of cases both criminal and civil. The Court also acts as an appellate court, in that most cases heard by a District or Municipal Court may be appealed to the Superior Court, which will then conduct new (or de novo) proceedings on all of the issues raised in the local court. This is unlike an appeal to the Supreme Court, which will hear only those appeals which deal with a question of law and will not re-decide issues of fact which were resolved in a prior proceeding. The Superior Court also conducts new proceedings in cases where an appeal has been taken from the decision of certain administrative agencies. In most cases, when the Superior Court is acting as an appeals court it will hear the same testimony and legal arguments which the first judge or hearing board listened to and based their decision upon during the initial trial or hearing.

The Superior Court is the only state court which can provide a person with a jury trial in civil or criminal matters.

II. HOW A CIVIL CASE COMES TO THE COURT

Civil cases are those in which an individual, business or agency of government seeks damages or relief from another individual, business or agency of government; these constitute the great bulk of cases in the courts. (The most common example is the suit for

damages arising from an automobile accident.)

One type of civil case arises out of a wrong done by one individual against another which violates the general duty we are all under to take sufficient care in our activities so that others are not injured. When that duty is violated the wrong done is called a "tort." Another common civil case is that which arises when a person refuses to fulfill a duty he agreed to perform under a contract. The third general type of civil case, one in equity, is described below. These are contrasted with a criminal case in which the individual has committed a wrong against society, because the Legislature has defined certain acts to be unlawful.

In the early days of the law, courts and lawyers were inclined to restrict the scope of legal actions. Thus, if a set of facts did not fit into an established legal "pigeon hole," the client was without remedy even though he had suffered a wrong to his person or property. As a consequence, a new system--equity--evolved which provides a remedy which previously was not available. Equity covers such matters as preventing the continuance of a wrong (injunction), and compelling the performance of a contract to sell real estate or unique personal property (specific performance). Ordinarily a jury trial cannot be obtained in proceedings in equity.

A person who believes that he has been injured or damaged by another person or business firm consults his lawyer and tells him the facts and circumstances which he believes constitute a cause of legal action. The attorney takes the client's statement, interviews possible witnesses, examines applicable statutes and court decisions, and tries to determine whether the client has a case.

If the attorney concludes the client does have a cause of

action, he prepares and files a writ or equity petition in the proper court. His client is the plaintiff and the person or firm against whom the case is filed is the defendant. The writ or petition states the facts of the plaintiff's suit against the defendant and sets forth the damages, judgment or other relief sought. However, the mere filing of a suit is not proof that the plaintiff has a cause of action. Later events may demonstrate that his claim is without merit.

Service of Process. To begin a lawsuit the attorney for the plaintiff prepares and delivers the original writ and service copies to the sheriff who completes service on the defendant. When the service copies have been served, the sheriff notes his "return" on the original writ and sends it back to the plaintiff's attorney who later files it with the clerk of court. When filed, the original writ is said to be "entered," it is assigned a docket number, and it becomes a case pending in the court. The procedure is different for a bill or petition in equity or a libel for divorce. In those situations the original and copies prepared by the attorney for the plaintiff are first filed with the clerk of court, the original remains with the clerk, and then the sheriff serves the copies pursuant to the "orders of notice" filled out by the clerk. After service, the "return" copy is filed with the court. A bill is said to be "entered" when the original is filed with the clerk, even through the sheriff has not yet served copies of the bill and has not yet made his "return."

The body of a writ contains one or more "counts" in the "declaration." A bill in equity contains separately numbered factual paragraphs ending with a "prayer" for relief other than money.

The writ ends with the amount of money sought or an "ad damnum."

After service, the defendant is entitled to a certain period of time within which to file his answer to the plaintiff's petition or writ.

Jurisdiction and Venue. The attorney must select the proper county or district in which to file the case. A court has no authority to render a judgment in any case unless it has jurisdiction over the person or property involved. This means that the court must be able to exercise control over the defendant, or that the property involved must be located in the county or district under the court's control. There is no equity jurisdiction in district or municipal courts in New Hampshire.

Certain actions are said to be local--that is, they may be brought only in the county where the subject matter of the litigation is located.

Other actions are said to be transitory--that is, they may be brought in any county in the state where the defendant may be found and served with summons. An action for personal injuries in an example of a transitory action.

Venue means the county or district where the action is to be tried. Venue may be changed to another county or district upon application or by agreement. Where wide prejudicial publicity has been given to a case before trial, a change of venue is sometimes sought in an effort to secure jurors who have not formed an opinion or to provide a neutral forum not charged with local bias. Venue also may be changed to serve the convenience of witnesses.

III. PREPARATION FOR TRIAL

The plaintiff and defendant, through their respective attorneys, attempt to gather all of the pertinent facts bearing upon the case. The defendant may begin his defense by filing certain pleadings, which may include one or more of the following:

Motion to Quash Service. This motion allows the defendant to question whether he has been served as provided by law.

Motion to Strike. Asks the court to rule whether the plaintiff's petition contains irrelevant, prejudicial or other improper matter. If it does, the court may order such matter deleted.

Motion for Specifications. This motion asks the court to require the plaintiff to set out the facts of his pleading more specifically, or to describe his injury or damages in greater detail, so that the defendant can answer more precisely.

Motion to Dismiss. This asks the court to determine if the plaintiff's petition or writ states a legally sound cause of action against the defendant, even admitting for the purpose of the pleading that all of the facts set out by the plaintiff in his petition are true.

Answer. This statement by the defendant denies the allegations in the plaintiff's petition, or admits some and denies others, or admits all and pleads an excuse. The defendant may usually just file an "appearance card" which serves as a general denial of the allegations in a writ.

Cross-petition. May be filed by the defendant either separately or as part of his answer. It asks for relief or damages on the part of the defendant against the original plaintiff, and perhaps

others. When a cross-petition is filed, the plaintiff may then file any of the previously-mentioned motions to the cross-petition.

Note: A "pleading" refers to an answer or other formal document filed in the action. The words should not be used to describe an argument made in court by a lawyer.

Taking of Depositions. A deposition is an out-of-court statement of a witness under oath, intended for use in court or in preparation for trial. Under prevailing statutes and rules either of the parties in a civil action may take the deposition of the other party, or of any witness.

Depositions frequently are necessary to preserve the testimony of important witnesses who cannot appear in court or who reside in another state or jurisdiction. This might be the testimony of a friendly witness--one whose evidence is considered helpful to the plaintiff or defendant, as the case may be. Or it might involve an adverse witness whose statements are taken, by one side or the other, to determine the nature of the evidence he would give if summoned as a witness in the trial.

The deposition takes the form of oral anwers to oral questions followed by cross-examination.

If a witness is absent from the jurisdiction or is unable to attend the trial in person, his deposition may be read in evidence. If a person who has given a deposition also appears as a witness at the trial, his deposition may be used to attack his credibility, if his oral testimony at the trial is inconsistent with that contained in the deposition ("impeachment").

Interrogatories. In addition to taking depositions in an attempt to ascertain the facts upon which another party relies, either party may submit written questions, called interrogatories, to the other party and require them to be answered in writing under oath.

Other methods of discovery are: Requiring adverse parties to produce books, records and documents for inspection, to submit to a physical examination, or to admit or deny the genuineness of documents.

Pretrial Conference. After all the pleadings of both parties have been filed with the clerk's office and the case is ready to be heard by one of the Superior Court justices, a pretrial conference is scheduled. At this conference the attorneys appear, generally without their clients, and in the presence of the judge seek to agree on undisputed facts, called stipulations. These may include such matters as time and place in the case of an accident, the use of pictures, maps or sketches, and other matters, including points of law.

The objective of the pretrial hearing is to shorten the actual trial time without infringing upon the rights of either party.

Pretrial procedure frequently results in the settlement of the case without trial. If it does not, the court assigns a specific trial date for the case, following the pretrial hearing.

IV. HOW A CRIMINAL CASE COMES TO THE COURT

Criminal charges are instituted against an individual in one of two ways:

(a) Through an "indictment," or true bill, (for felonies)

voted by a grand jury, or

(b) Through the filing of a "complaint" in court by the prosecuting attorney or county attorney, alleging the commission of a crime that is a misdemeanor and, if the defendant waives indictment, through the filing of an "information" alleging commission of a crime that is a felony. In New Hampshire a complaint is predominantly used to begin a misdemeanor case (such as driving while intoxicated) or a violation (such as speeding). An information begins a misdemeanor case in superior court and because it is not a felony does not require indictment by the grand jury.

In either case, the charge must set forth the time, date and place of the alleged criminal act as well as the nature of the charge.

Crimes of a serious nature, such as murder or robbery may be charged by indictment only.

The grand jury is a body of citizens (usually 23) summoned by the court to inquire into crimes committed in the county or, in the case of federal grand juries, in the federal court district. Grand jury proceedings are private and secret. Prospective defendants are not entitled to be present at the proceedings, and no one appears to cross-examine witnesses on the defendants' behalf. The grand jury is convened at regular intervals (at least once per term of court) or it may be impaneled at special times by the court to consider important cases. The grand jury has broad investigative powers: it may compel the attendance of witnesses; require the taking of oaths, and compel answers to questions and the submission or records. Ordinarily, however, the grand jury hears only such witnesses as the

prosecutor calls before it and considers only the cases presented to it by the prosecutor. Nevertheless, a grand jury may undertake inquiries of its own, in effect taking the initiative away from the prosecutor. In common parlance, this is known as a "runaway" grand jury.

The grand jury's traditional function is to determine whether information elicited by the prosecutor, or by its own inquiries, is adequate to warrant the return of an indictment or true bill charging a person or persons with a particular crime. If the grand jury concludes that the evidence does not warrant a formal charge, it may return a no bill. A defendant may voluntarily waive indictment by the grand jury.

When an indictment is returned by a grand jury, or an information or complaint is filed by the prosecuting attorney, the clerk of the court issues a warrant for the arrest of the person charged, if he has not already been arrested and taken into custody.

The law usually requires in a felony case (a crime for which a person may receive a sentence of more than a year and be confined in the state prison in Concord) that the defendant must promptly be brought before a judge and be permitted to post bond, in order to secure release from custody, and to request or waive a probable cause hearing. When the grand jury indicts, there is no preliminary hearing. Persons charged with murder are not usually eligible for release on a bail bond.

Law enforcement officials may hold a person without formal charge up to four hours for the purpose of investigation. But he may not be held for an unreasonable time unless a criminal charge is filed.

In addition, the defendant formally charged with a crime (but not a violation) is entitled to an attorney at all times. If he is unable to procure an attorney and if he requests counsel, the court will appoint an attorney to represent him, at public expense and without cost to him.

Unless the individual charged with a crime waives a probable cause hearing, the district or municipal court will set a hearing within a reasonably short time. At the hearing, the state must present sufficient evidence to convince the judge that there is reason to believe the defendant has committed the crime with which he is charged. The defendant must be present at this hearing, and may present evidence on his own behalf, but he is not obligated to do so.

If the judge believes the evidence justifies it, he will order the defendant bound over for trial in the superior court (to first await indictment) that is, placed under bond for appearance at trial, or held in the county jail if the charge involved is not a bailable offense or if the defendant is unable to post bond. The judge also may decide that even without bond the accused will most likely appear in court for his trial and therefore will release him on his own recognizance, that is, on his own promise to appear. If he concludes the state has failed to produce sufficient evidence in the preliminary hearing, the judge may dismiss the charge and order the defendant released.

Arraignment. In most instances, a criminal case is placed on the court's calendar for arraignment. On the date fixed, the accused

appears, the indictment or information is read to him, his rights are explained by the judge, and he is asked whether he pleads guilty or not guilty to the charge.

If he pleads not guilty, his case will be set later for trial; if he pleads guilty, his case ordinarily will be set later for sentencing. In cases of minor offenses, sentences may be imposed immediately. A report about the defendant and his past life is often prepared by the probation department. As in civil cases, very careful preparation on the part of the state and the defense precedes the trial. However, the defense may first enter a motion challenging the jurisdiction of the court over the particular offense involved, or over the particular defendant. The defense attorney also may file a motion for dismissal, as in a civil suit.

In preparing for trial, attorneys for both sides will interview prospective witnesses and, if deemed necessary, secure expert evidence, and gather testimony concerning ballistics, chemical tests and other scientific evidence.

V. JURY TRIALS IN SUPERIOR COURT

While in detail there are minor differences in trial procedure between civil and criminal cases, the basic pattern in the courtroom is the same. Consequently, this section treats the trial steps collectively. The court officials who participate in a trial by jury are briefly described below.

The Judge is the official who presides over the trial. He is often referred to as "the court." If the case is tried before a judge

and a trial (or petit) jury, the judge rules upon points of law dealing with trial procedure, presentation of the evidence, and the law of the case, and the jury decides the facts. If the case is tried before the judge alone, he will determine the facts in addition to performing the aforementioned duties.

The court clerk is an officer of the court, who at the beginning of the trial, upon the judge's instruction, gives the entire panel of prospective jurors (veniremen) an oath. By this oath, each venireman promises that, if called, he will truly answer any question concerning his qualifications to sit as a juror in the case.

Any venireman who is disqualified by law, or has a valid reason to be excused under the law, ordinarily is excused by the judge at this time. A person may be disqualified from jury duty because he is not a resident, because of age, hearing defects, or because he has served recently on a jury.

Then the court clerk will draw names of the remaining veniremen from a box, and they will take seats in the jury box. After twelve veniremen have been approved as jurors by the judge and the attorneys, the court clerk will administer an oath to the persons so chosen "to well and truly try the cause."

The bailiff is an officer of the court (a deputy sheriff) whose duties are to keep order in the courtroom, to call witnesses, and to take charge of the jury as instructed by the court at such times as the jury may not be in the courtroom, and particularly when, having received the case, the jury is deliberating upon its decision. It is the duty of the bailiff to see that no one talks with or attempts to influence the jurors in any manner.

The court reporter or stenographer has the duty of recording all proceedings in the courtroom, including testimony of the witnesses, objections made to evidence by the attorneys and the rulings of the court thereon, and listing and marking for identification any exhibits offered or introduced into evidence.

The attorneys are officers of the court whose duties are to represent their respective clients and present the evidence on their behalf, so that the jury or the judge may reach a just verdict or decision.

The jury consists of twelve persons for most jury trials but in criminal cases where the defendant is only charged with a misdemeanor a jury of six may render a decision.

Once a jury has been chosen and found to be qualified by the judge and the attorneys, the trial may be started by the delivery of opening statements by the attorneys. Their statements are intended to advise the jury what the plaintiff in a civil case, or the state in a criminal case, intends to prove during the trial. The statement must be confined to facts intended to be proved by evidence and cannot be argumentative. The attorney for the defendant also may make an opening statement at the end of the plaintiff's or state's case. At the completion of the opening statement or statements the presentation of evidence for the jury's consideration begins.

The plaintiff in a civil case, or the state in a criminal case, will begin the presentation of evidence with their witnesses. These usually will include the plaintiff in a civil case or complaining witness in a criminal case, although they are not required to testify.

A witness may testify to a matter of fact. He can tell what

he saw, heard (unless it is hearsay as explained below), felt, smelled or touched through the use of his physical senses. A witness also may be used to identify documents, pictures or other physical exhibits in the trial. Generally, he cannot state his opinion or give his conclusion unless he is an expert or especially qualified to do so. In some instances, a witness may be permitted to express an opinion, for example, as to the speed an auto was traveling or whether a person was intoxicated.

A witness who has been qualified in a particular field as an expert may give his opinion based upon the facts in evidence and may state the reasons for that opinion. Sometimes the facts in evidence are put to the expert in a question called a hypothetical question. The question assumes the truth of the facts contained in it. Other times, an expert is asked to state an opinion based on personal knowledge of the facts through his own examination or investigation.

Generally, a witness cannot testify to hearsay, that is, what someone else has told him outside the presence of the parties to the action. Also, a witness is not permitted to testify about matters that are too remote to have any bearing on the decision of the case, or matters that are irrelevant or immaterial.

Usually, an attorney may not ask leading questions of his own witness, although an attorney is sometimes allowed to elicit routine, noncontroversial information by asking such questions. A leading question is one which suggests the answer desired.

Objections may be made by the opposing counsel to leading questions, or to questions that call for an opinion or conclusion on the part of the witness, or require an answer based on hearsay. There are many other reasons for objections under the rules of evidence.

Objections are often made in the following form: "I object to that question on the ground that it is irrelevant and immaterial and for the further reason that it calls for an opinion and conclusion of the witness." The judge will thereupon sustain or deny the objection. If sustained, another question must then be asked, or the same question be rephrased in proper form.

If an objection to a question is sustained on either direct or cross-examination, the attorney asking the question may make an offer of proof. This offer is dictated to the court reporter away from the hearing of the jury. In it, the attorney states the answer which the witness would have given if permitted. The offer forms part of the record if the case is appealed.

If the objection is overruled, the witness may then answer. The attorney who made the objection may thereupon take an exception, which simply means that he is preserving a record so that, if the case is appealed, he may argue that the court made a mistake in overruling the objection.

When plaintiff's attorney or the state's attorney has finished his direct examination of the witness, the defendant's attorney or opposing counsel may then cross-examine the witness on any matter about which the witness has been questioned initially in direct examination. The cross-examining attorney may ask leading questions for the purpose of inducing the witness to testify about matters which he may otherwise have chosen to ignore.

On cross-examination, the attorney may try to bring out prejudice or bias of the witness, such as his relationship or friend-

ship to the party, or other interest in the case. The witness can usually be asked if he has been convicted of a felony or crime involving moral turpitude, since this bears upon his credibility.

The plaintiff's attorney may object to certain questions asked on cross-examination on previously mentioned grounds or because they deal with facts not touched upon in direct examination. New Hampshire allows broader cross-examination than many other states.

At the conclusion of plaintiff's or state's evidence, the attorney will announce that the plaintiff or state rests. Then, away from the presence of the jury, the defendant's counsel may move to dismiss the plaintiff's or state's case on the ground that a cause of action or that the commission of a crime has not been proven.

The judge will either sustain or overrule the motion. If it is sustained, the case is concluded. If it is overruled, the defendant then is given the opportunity to present his evidence.

In a criminal case, the defendant need not take the stand unless he wishes to do so. The defendant has constitutional protection against self-incrimination. He is not required to prove his innocence. The plaintiff or the state has the burden of proof.

In a civil case, the plaintiff must prove his case by a preponderance of the evidence. This means the greater weight of the evidence.

In a criminal case, the evidence of guilt must be beyond a reasonable doubt, meaning that the state's case as put into evidence must remove any reasonable doubts in the mind of jurors.

The defendant is presumed to be not negligent or liable in a civil case, and not guilty in a criminal case until the evidence

proves the contrary.

The defense attorney may feel that the burden of proof has not been sustained, or that presentation of the defendant's witnesses might strengthen the plaintiff's case. If the defendant does present evidence, he does so in the same manner as the plaintiff or the state, as described above, and the plaintiff or state will cross-examine the defendant's witnesses.

Once the defendant has finished presenting his evidence and has rested the case is ready to be submitted to the jury for its decision. The first step in this process is the giving of closing arguments by the attorneys, during which time they ask the jury to recall those parts of the testimony most favorable to their case and urge jurors to render a decision favorable to their clients. At the conclusion of these arguments the judge instructs the jury on the law or laws that are to be applied to the facts they have heard.

Only the judge may determine what the law is. In giving the instructions, the judge will state the issues in the case and define any terms or words necessary. He will tell the jury what it must decide on the issues, if it is to find for the plaintiff or state, or for the defendant. He will advise the jury that it is the sole judge of the facts and of the credibility of witnesses and that upon leaving the courtroom to reach a verdict, it must reach a decision based upon the judgment of each individual juror.

After the instructions, the bailiff will take the jury to the jury room to begin deliberations. The bailiff will sit outside and not permit anyone to enter or leave the jury room. No one may attempt

to tamper with the jury in any way while it is deliberating.

In a civil case the court furnishes the jury with written forms of all possible verdicts so that when a decision is reached, the jury can choose the proper verdict form.

The decision will be signed by the foreman of the jury and be returned to the courtroom.

In all cases the decision must be unanimous. If the jurors cannot agree on a verdict, the jury is called a hung jury, and the case may be retried before a new jury at a later date.

The jury may take the exhibits introduced in evidence to the jury room. If necessary, the jury may return to the courtroom in the presence of counsel to ask a question of the judge about his instructions. In such instances, the judge may reread all or certain of the instructions previously given, or supplement or clarify them by further instructions.

If the jury is out overnight, the members may be housed in a hotel at county expense and be secluded from all contacts with other persons. In most cases, the jury will be excused to go home at night.

Upon reaching a verdict in a criminal case, the jury returns to the courtroom with the bailiff and, in the presence of the judge, the parties and their respective attorneys, the verdict is announced aloud in open court.

Attorneys for either party, but usually the losing party, may ask that the jury be polled, in which case each individual juror will be asked if the verdict is his verdict. It is rare for a juror

to say that it is not his verdict.

When the verdict is read and accepted by the court, the jury is dismissed, and the trial is concluded.

VI. APPEALS FROM SUPERIOR COURT

In a civil case, either party may appeal to the Supreme Court. But in a criminal case this right is limited to the defendant. Appeals in either civil or criminal cases may be on such grounds as errors in trial procedure and errors in substantive law--that is, in the interpretation of the law by the trial judge. These are the most common grounds for the appeals, although there are others.

The right of appeal does not extend to the prosecution in a criminal case, even if the prosecutor should discover new evidence of the defendant's guilt after his acquittal. Moreover, the state is powerless to bring the defendant to trial again on the same charge. The United States and the New Hampshire constitutions prevent re-trial under provisions known as double jeopardy clauses.

Criminal defendants have a further appellate safeguard. Those convicted in state courts may appeal to the federal courts on grounds of violation of constitutional rights, if such grounds exist. This privilege serves to impose the powerful check of the federal judicial system upon abuses that may occur in state criminal procedures.

CIVIL CASES IN SUPERIOR COURT

Civil cases account for a greater percentage of the total caseload in Superior Court than do criminal cases. This table provides statistics on the total number of civil cases entered, disposed and pending in the Superior Court in the period 1965-1977.

CIVIL CASELOADS IN SUPERIOR COURT

YEAR	ENTERED	DISPOSED	PENDING*
1965	10,896	10,230	9,948
1966	11,664	10,974	10,804
1967	11,677	11,266	11,215
1968	12,074	11,281	12,008
1969	12,133	11,312	12,829
1970	12,741	11,416	14,154
1971	12,868	12,308	14,714
1972	13,736	13,317	14,933
1973	15,064	14,373	15,665
1974	16,829	15,659	16,835
1975	17,398	15,791	18,441
1976	17,758	16,494	19,675
1977	16,793**	16,805**	18,685**

*AT END OF YEAR

**1977 Grafton County Figures Unavailable At Time of Publication; The 1977 Totals Do Not Include Caseloads In The Grafton Superior Court.

CRIMINAL CASEWORK OF SUPERIOR COURT (1965-1977)*

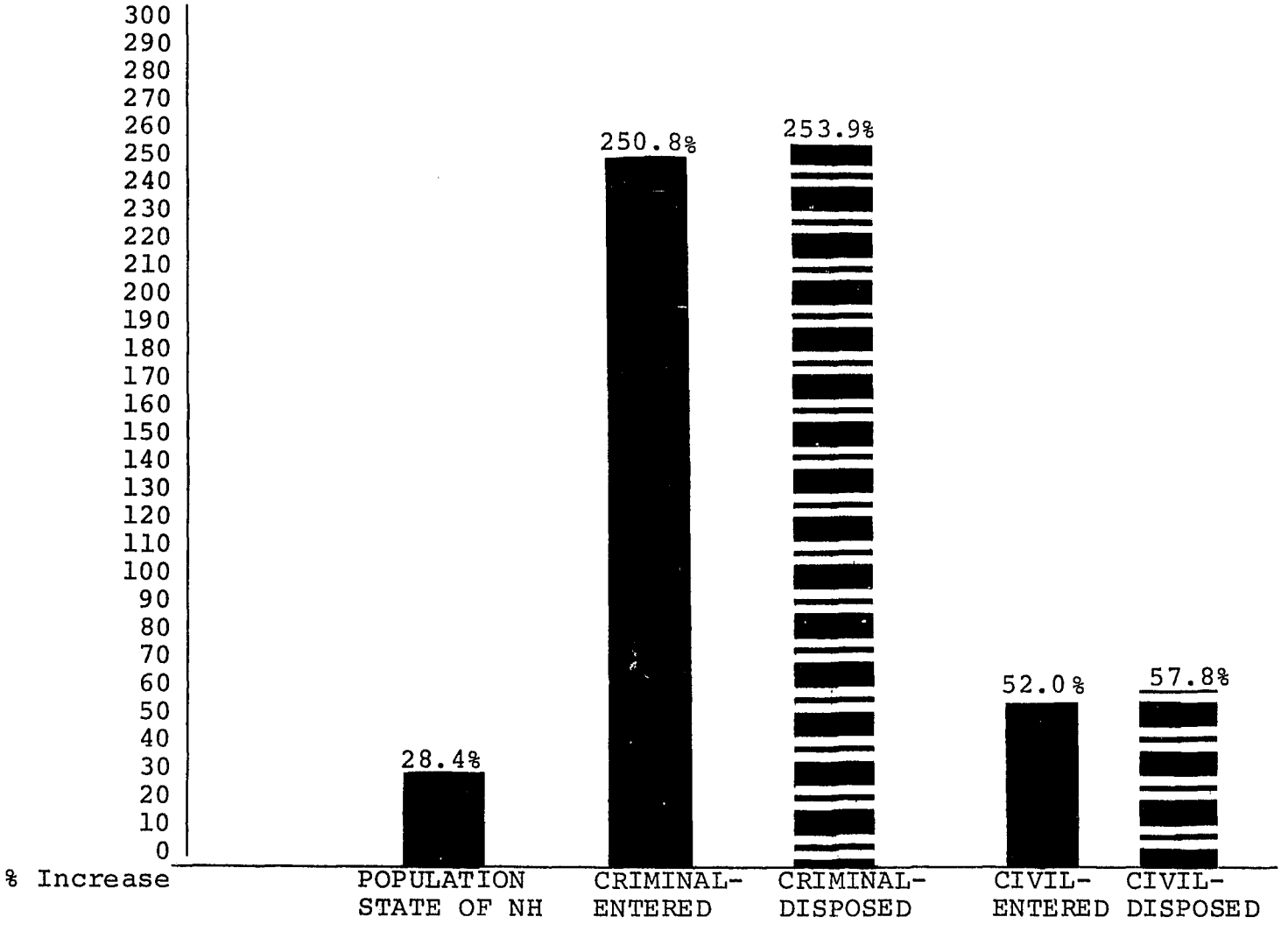
YEAR	ENTERED	DISPOSED	PENDING
1965	1,426	1,373	640
1966	1,685	1,677	648
1967	1,993	1,875	766
1968	2,523	2,363	926
1969	2,583	2,294	1,215
1970	3,319	2,766	1,768
1971	3,601	3,258	1,837
1972	4,665	4,070	2,390
1973	4,853	4,499	2,831
1974	5,145	4,199	3,373
1975	6,321	5,642	4,508
1976	6,431	5,771	5,118
1977	6,571**	6,210**	5,379**

*YEARS ENDING JULY 31.

SOURCE: (1965-1976) BIENNIAL REPORT(S) OF THE N.H. JUDICIAL COUNCIL
**(1977) Records of the New Hampshire Judicial Council (to be included in the SEVENTEENTH BIENNAL Report in 1978) - Grafton figures unavailable at time of publication; number therefore does not include work of Grafton Superior Court.

SUPERIOR COURTS CASELOAD

1967 - 77 % INCREASE



NUMBER OF CRIMINAL CASES ENTERED INTO SUPERIOR COURT (1965-1977)*

Superior Court	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977
Belknap	133	107	90	103	150	300	239	282	445	428	541	495	669
Carroll	53	67	98	120	67	93	100	326	136	205	276	216	93
Hillsborough	472	551	724	905	815	1208	1098	1355	1333	1433	1921	1745	1740
Merrimack	95	165	173	145	224	250	270	422	523	529	717	738	548
Rockingham	242	257	261	479	447	515	637	782	947	978	1118	1324	1989
Strafford	143	219	246	217	341	391	415	556	539	601	685	706	689
Coos	46	75	65	123	99	97	140	131	136	137	153	168	223
Grafton	102	113	112	188	178	220	300	339	303	288	355	302	N/A
Cheshire	86	63	120	162	136	130	240	292	333	354	376	432	372
Sullivan	54	68	104	81	126	115	162	180	158	192	179	305	248
TOTALS	1426	1685	1993	2523	2583	3319	3601	4665	4853	5145	6321	6431	

SOURCE: Biennial Reports of the N.H. Judicial Council (Years indicated); 1977 Figures: Records of Judicial Council, 1977 Grafton Figures Unavailable At Time Of Publication.

*YEAR ENDING JULY 31.

COMPARISON OF CIVIL AND CRIMINAL DISPOSITIONS IN SUPERIOR COURT
1967 - 1977

CIVIL	1967	1977
Jury Trial - Actions At Law	3.25%	1.39%
Jury Trials - All Other Actions	0.38%	0.02%
Trials To The Court - Actions At Law	5.86%	4.54%
Defaulted; Continued For Judgment	14.92%	4.47%
Contested Marital Cases	0.69%	2.08%
Uncontested Marital Cases	15.92%	13.88%
Marital Cases Brought Forward For Further Orders	11.45%	18.11%
Marital Cases Dismissed Without Prejudice	7.50%	6.40%
All Other Cases In Equity Heard	3.75%	22.71%
All Others - Disposed Without Hearing	36.24%	26.37%

CRIMINAL	1967	1977
Jury Trial	5.44%	5.68%
Non-Jury Trial (Jury Waived)	4.10%	2.97%
Guilty Or Nolo Contendere Plea	63.89%	43.12%
Nolle Prosequi	15.30%	24.55%
Disposed Otherwise	11.25%	23.65%

1977 FIGURES ESTIMATED FROM RETURNS OF NINE OF THE TEN COUNTIES.

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SECTION IV

DISTRICT AND MUNICIPAL COURTS

The District and Municipal Courts are the only courts in New Hampshire which do not derive their authority to act directly from the Constitution. These courts were created by the Legislature through its constitutional power to establish "lower courts" (Part II, Art. 72-a). The powers and duties of these courts are defined and limited by Chapters 502 and 502-A of the New Hampshire Statutes.

In both the civil and criminal areas of their respective jurisdictions, the District and Municipal Courts have similarities and differences, with the District Courts exercising slightly more power than the Municipal Courts. In the area of criminal work both courts are empowered to hear evidence, pass judgment and impose sentences for violations (like a parking ticket or speeding) and misdemeanors (like DWI or simple assault). If a person is found guilty of a misdemeanor or violation in either court he may appeal to the Superior Court for a new trial. He may also demand a trial by jury in the Superior Court if he was charged with a misdemeanor since he could not have such a trial in the District or Municipal Court and a misdemeanor is a more serious kind of crime which might result in a jail sentence. In addition it is possible to appeal directly to the Supreme Court if an important question of law arises in either court. However, there is no new trial in such cases since the Supreme Court will only address questions of law, and will assume as true the facts found in the first proceeding.

In addition to the powers discussed above, a District Court may also conduct probable cause hearings in felony cases (such as burglary and murder). The purpose of such a hearing is to give the accused person an opportunity to have the evidence the police have against him to be heard by an impartial person before he is required to post bail or be put in jail. At the

probable cause hearing the police or the prosecuting attorney must convince the judge that it is more probable than not that a crime has been committed and that the person they have arrested or brought before the court is probably the one who committed that crime. If the District Court judge makes a finding of probable cause, the accused will be "bound-over" to the Superior Court, where a formal charge or indictment will be brought (see Criminal Trial section in Superior Court part of this booklet). If probable cause is found the judge will set a bail amount to ensure that the accused will appear at any later proceedings, and if the accused cannot furnish the bail or if the crime is murder, the judge may order the person committed to jail.

As regards the civil portion of the duties of the Municipal and District Courts there is, again, some similarity in the area of so-called "small claims" cases. These are cases which involve $500 or less and are not concerned with title to real estate. The Legislature, through Chapter 503 of the New Hampshire Statutes, has attempted to provide a simple procedure to resolve this type of dispute, and chose to have it administered by the courts that are closest to where people live. The procedure can be carried out by anyone without the assistance of a lawyer (although lawyers may participate) and consists of the following steps:

1. A written statement of the reasons why the person bringing the action (the plaintiff) believes he or she is owed money and the amount owed.

2. Submittal of the statement with a filing fee (usually $1.50) and sufficient postage to send a copy of the statement to the person being sued (the defendant). After this is done the court clerk will schedule a hearing and will notify the parties.

3. The hearing of the claim by a Municipal or District Court judge, who will listen to the stories on both sides and decide the fairest way to resolve the problem. That decision will be legally binding on all parties involved.

In addition to its jurisdiction over small claims actions, the District Court has the authority to hear other civil cases which involve amounts up to $3,000 if no question of the title to real estate is involved. These cases, involving a larger amount of money, may also be heard by the Superior Court; appeals in such cases go directly to the Supreme Court.

The third area in which the Municipal and District Courts are empowered to operate is juvenile cases. This jurisdiction is given only to these courts making their responsibility all the more serious since they alone are charged with the decision regarding the disposition of young offenders. In only one instance, that of certification, does the Superior Court get involved. Appeals or transfers on questions of law, of course, may be taken to the Supreme Court.

All juvenile proceedings are closed to the public, and if possible, are conducted outside the regular courtroom. N.H. Statutes prohibit even the disclosure of a juvenile's name, and all records are sealed by the court. Further, juvenile proceedings are not conducted in an adversary fashion, but rather are designed to bring the greatest amount of relevant information to the judge's attention before he makes his decision. This process brings together police officers, probation personnel, school officials, counselors, employers and parents; all of whom are called upon to provide the court with information regarding the disposition which they consider best for the child.

Once this information is gathered the judge usually has three options regarding disposition. The first, and least serious, is to find the juvenile to be a Person In Need of Supervision (PINS). This category is designed for those children who have created problems in the community

but have not yet committed a serious crime. The second category covers those children who have done something which would be classified as a misdemeanor or felony if done by an adult. In such instances the court may find the child to be a delinquent and require him to serve a term of detention at the Youth Development Center in Manchester or put him on probation for a period of time, during which he must stay out of trouble, conform to rules set down by the court and make regular visits to his probation officer. The court may also require repayment of money or donation of services to the person or municipality injured by the offender.

The third, and most serious, disposition that can be made regarding a juvenile offender is certification. This alternative is used only when the most serious crimes (felonies) are involved and the offender has not responded positively to previous efforts by the Court. Certification involves a decision by the Municipal or District Court judge that the particular offender should be treated as an adult, therefore he does not have jurisdiction over the final decision, and he "certifies" the child to be an adult and sends this decision to the Superior Court. At that Court, a justice will review the required written findings and if they comply with the law will accept the certification. After the certification is accepted, the child is treated as an adult and the case will be handled as any other felony case would be at the Superior Court.

Because the decision to certify is such a serious one, with far-reaching consequences for a young offender, the Supreme Court of New Hampshire has amplified the statutory requirement that a hearing will be held before certification. In the case of State v. Smagula, (decided

August 29, 1977) the Court set down the findings which must be made by the judge to justify his decision to certify the child as an adult. They are as follows:

1. The seriousness of the alleged offense to the community and whether the protection of the community requires a waiver.

2. Whether the alleged offense was commited in an aggressive, violent, premeditated or willful manner.

3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.

4. The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment ....

5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime.

6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.

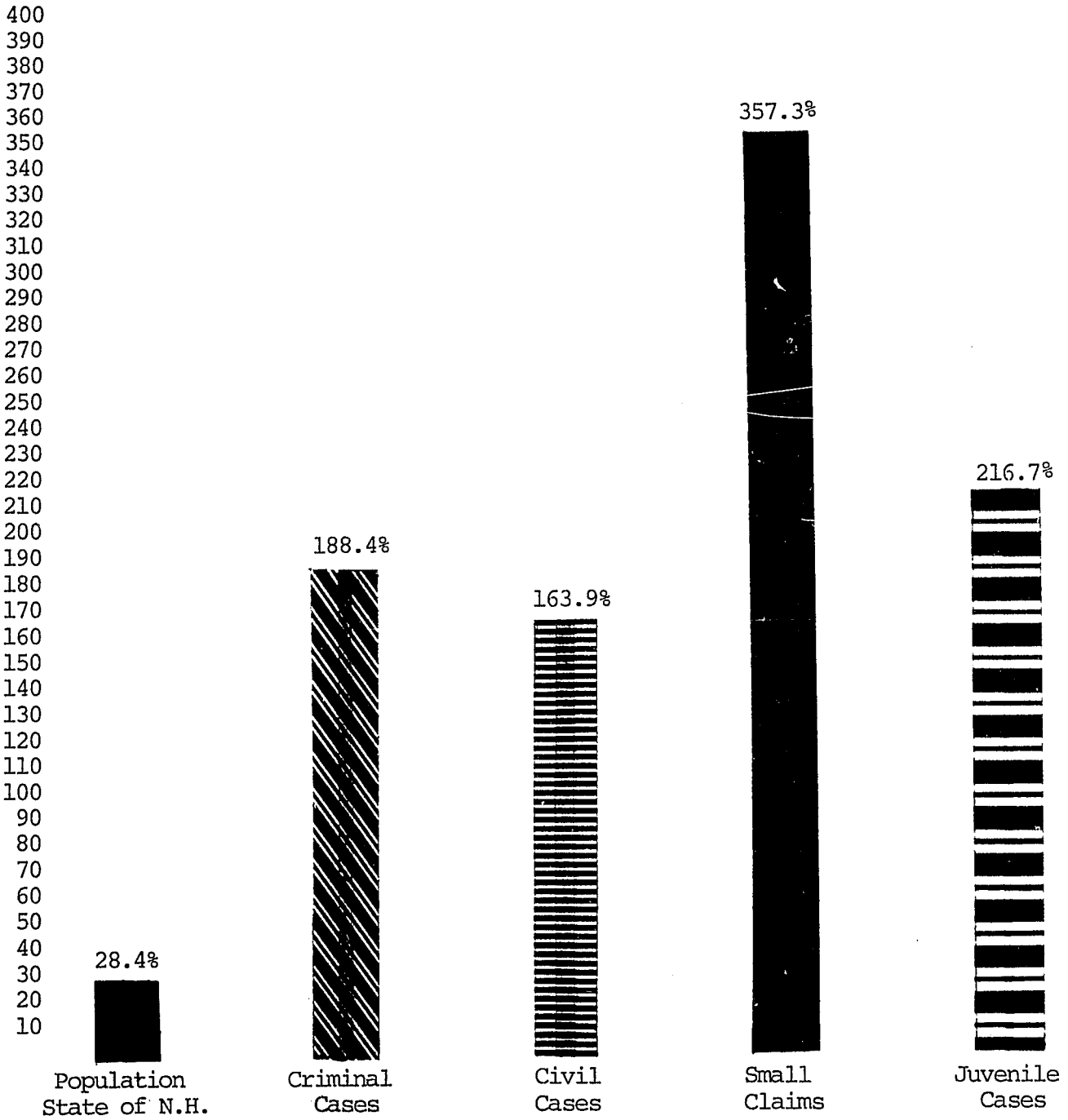
7. The record and previous history of the juvenile including previous contacts with the Youth Aid Division, other law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation in this Court, or prior commitments to juvenile institutions.

8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court.

The Court has also required that the Superior Court review the record of the certification hearing and accept the certification of the Municipal or District court judge unless he has misapplied the standards or his findings are not supported by the evidence presented to him.

District and Municipal Courts Caseload

1967 - 1977 % Increase



DISTRICT AND MUNICIPAL COURTS CIVIL CASELOAD

YEAR	ENTERED	DISPOSED	PENDING
1964	3,969	4,163	508
1965	6,212	5,974	658
1966	6,776	6,685	659
1967	6,809	6,857	802
1968	6,931	6,586	883
1969	8,742	8,359	1,098
1970	10,832	10,426	1,471
1971	11,996	12,355	2,047
1972	13,025	13,737	1,938
1973	14,124	12,859	N/A
1974	N/A	N/A	N/A
1975	N/A	N/A	N/A
1976	23,929	22,731	3,254
1977*	26,429	25,729	2,717

* Totals do not include Alton Municipal Court as the figures were not available. at time of printing.

DISTRICT AND MUNICIPAL COURTS PROJECTIONS

CIVIL CASES (1978-1983)

YEAR	ENTERED	DISPOSED	PENDING
1978	31,753	26,866	5,930
1979	36,658	30,429	7,086
1980	42,321	34,464	8,466
1981	48,858	39,034	10,116
1982	56,406	44,210	12,086
1983	65,120	50,072	14,441

TOTAL CRIMINAL CASELOAD

DISTRICT AND MUNICIPAL COURTS

YEAR	CASES
1964	41,066
1965	45,007
1966	51,197
1967	56,290
1968	66,260
1969	71,686
1970	82,955
1971	104,009
1972	116,426
1973	126,961
1974	145,367
1975	137,449
1976	146,084
1977*	161,970

* Total does not include Alton Municipal Court as the figures were not available at the time of printing.

DISTRICT AND MUNICIPAL CASELOADS OF JUVENILES

YEAR	NEGLECTED CHILDREN	DELINQUENT CHILDREN	PINS	TRANSFERRED TO SUPERIOR COURT
1964	81	1,758		1
1965	198	1,735		10
1966	169	1,632		16
1967	222	1,625		28
1968	224	1,962		14
1969	216	2,465		4
1970	280	2,461		11
1971	345	2,551		16
1972	378	2,456		15
1973	365	3,355		11
1974	COMPLETE FIGURES UNAVAILABLE DUE TO CHANGE IN RECORDING SYSTEM			
1975	546	3,872		24
1976	436	4,021	489	63
1977*	488	4,776	531	45

* Totals do not include Alton Municipal Court as the figures were not available at the time of printing.

SECTION V

PROBATE COURT

I. JURISDICTION

The jurisdiction of the Courts of Probate refers to the kinds of subject matter which are properly before the Court by authority granted by common law, state constitution, or statute. The Court may consider only those matters which are within its jurisdiction.

The New Hampshire Constitution, Part 2, Article 80, gave the Probate Court authority in all matters relating to the probate of wills and granting of letters of administration. The Legislature has extended these powers to include conservatorships (RSA 464:17), guardianships (RSA 462-465), commitment of the mentally ill (RSA 135-B-3), adoptions (RSA 170-B:11), change of name (RSA 547:7), partition of real estate (RSA 538:18), custodianship of the property of minors (RSA 463:1), apportionment of federal estate taxes (RSA 88-A:3), license to sell real estate when a married couple is separated and there are justifiable grounds for divorce (RSA 460:8, RSA 560:19), waiver of certain marriage requirements (RSA 457:6, 27), and general equity jurisdiction over an accounting (RSA 547:11-a).

The Legislature has the power to grant other areas of authority to the Probate Court in the future or to limit the Court's statutory jurisdiction. The constitutional authority of the Court of Probate could be altered only by constitutional amendment. They are official courts of record (RSA 547:1).

II. PROBATE PROCEDURE

The rules which govern the procedure of the Probate Court are the Rules of Practice and Procedure in the Probate Court of the State of New Hampshire. Following is an outline in generalized terms of the dispositions of a probate matter from the filing of the petition to the ultimate appeal of the decision.

1. A matter gets into probate initially through the submission of a petition to the Court of Probate. This petition might be a petition for change of name, for adoption, for administration, or a request to admit a will to probate. Certain forms which have been developed by the Judges of Probate are used for these petitions. The forms for various probate remedies and proceedings are available from the Register of Probate.

2. The Register gives notice to proper parties regarding the time and date of a hearing, if required, and sees that all documents are properly filed regarding the matter.

3. The Register places the matter on the Court Docket. A matter can come before the Court only when it has been properly presented and all necessary papers are on file. A matter may be considered by the Court either at general term or at a special session.

a) General term. These are sessions of the Court regularly scheduled according to statute. At general term documents are presented for Court approval and examined for accuracy and completeness. Contested hearings are held during general sessions only when time permits. Adoptions are confidential hearings and are usually held at the end of a regular session.

b) Special sessions. A petitioner may request a special session for reasons of convenience. If the request is granted, the petitioner must pay a special session fee to the judge. Scheduling of special sessions is determined by the Judge. Certain cases are often presented at special sessions:

- contested matters (unless time permits at general term),

- involved accounts, and

- involuntary commitment.

4. The Judge hears the matter and makes a determination, issuing a decree, order, or grant or denial of appointment as may be appropriate. There are no jury trials held in Courts of Probate. Any person who will be directly affected by the ruling may petition the Probate Court no later than five days prior to the hearing for a determination of any disputed material facts by jury trial in the Superior Court of the appropriate county. The findings of the jury are advisory; that is, they may be set aside or modified by the Superior Court. Questions of law may be certified by the Superior Court or Probate Court directly to the Supreme Court.

5. Any person aggrieved by the Judge's final action may appeal as of right to the Supreme Court on questions of law within thirty days of the final action. The appeal is first filed in the Probate Court, and the Court gives notice of the appeal to the appropriate persons. The person making the appeal must give a bond to cover any costs awarded against him by the Supreme Court. When all the papers required for the appeal have been presented to the Probate Court, the appeal is then filed in the Supreme Court.

6. On appeal, the Supreme Court may:

a) reverse or affirm in whole or in part any decree or order of Probate Court,

b) remand the case for further proceedings to the Probate Court, or

c) make any other order as law and justice require.

III. JUDGES OF PROBATE

Probate Judges in New Hampshire are appointed and serve on a part-time basis. An appointment is made when an individual has been nominated by the Governor and confirmed by the five-member Executive Council. Upon appointment, a Judge may serve until age seventy when retirement is constitutionally required.

Judges of Probate may maintain a private law practice, unlike full-time Justices of the Supreme, Superior, or full-time District Courts. Possible conflicts of interest are precluded by Part 2, Article 81 of the New Hampshire Constitution which prohibits any Probate Judge or Register from acting as counsel or receiving fees as counsel in any probate business which is pending or may be brought into any Court of Probate in which he is Judge or Register.

As all other Judges in New Hampshire, Probate Judges are subject to a code of ethics, the Code of Judicial Conduct, which is enforced by the Committee on Judicial Conduct and the New Hampshire Supreme Court. Rule 42 of the Rules of the Probate Court provides for the continuing education of Probate Judges. The rule states that "All Judges of the Probate Court shall attend biennially a minimum of one judicial conference. . . ."

The duties of the Probate Judge are to preside over the Court and to adjudicate matters which come before the Court and are within its jurisdiction.

IV. REGISTERS OF PROBATE

Each Probate Court has one Register of Probate. Registers of Probate are elected in each county to a two-year term. A Register of Probate keeps the probate records in an organized manner and makes the records available to the public upon request. All Court and case documents flow through the Registry of Probate, the central processing center.

Any probate record is public except those records of confidential proceedings. The Register also assigns matters to particular court sessions and maintains a docket and index of all matters to come before the Court. It is also the Register's duty to give notice of hearings and final decrees to parties concerned.

APPENDIX A

JUDGES, REGISTERS AND LOCATIONS OF PROBATE COURTS

BELKNAP COUNTY

Judge, Roger G. Burlingame, Sanbornton	934-9982
Register, Dorothea R. Conly, Laconia	524-0903
64 Court Street, Laconia 03246	

CARROLL COUNTY

Judge, Arlond C. Shea, North Conway	356-2713
Register, Ruth C. Eckhoff, Ossipee	539-4752
Carroll County Courthouse, Ossipee 03864	

CHESHIRE COUNTY

Judge, Harry C. Lichman, Keene	352-0132
Register, Phyllis J. Parker, Keene	352-0433
12 Court Street, Keene 03431	

COOS COUNTY

Judge, Frederick J. Harrigan, Colebrook	237-4266
Register, A. Gladys MacLean, Lancaster	788-2001
148 Main Street, Lancaster 03584	

GRAFTON COUNTY

Judge, Robert A. Jones, Lebanon	448-3128
Register, Barbara J. Fortier, Woodsville	787-6931
Grafton County Courthouse, North Haverhill 03744	

HILLSBOROUGH COUNTY

Judge, Nicholas G. Copadis, Manchester	623-7818
Register, C. Edward Bourassa, Nashua	882-1231
19 Temple Street, Nashua 03060 and	
300 Chesnut Street, Manchester 03101	

MERRIMACK COUNTY

Judge, Donald W. Cushing, Franklin	934-3632
Register, Carol Ingraham, Concord	224-9589
163 North Main Street, Concord 03301	

ROCKINGHAM COUNTY

Judge, William W. Treat, Hampton	926-6311 Ext. 15
Register, Edward Howard, Exeter	772-9347
Administration and Justice Building, Exeter 03833	

STRAFFORD COUNTY

Judge, William E. Galanes, Dover	742-3420
Register, Margaret Waldron Ogden, Dover	742-2550
Strafford County Justice and Administration Building, Dover 03820	

SULLIVAN COUNTY

Judge, Jarlath M. Slattery, Newport	863-4510
Register, Bernice M. Sawyer MacWilliams, Newport	863-3150
24 Main Street, Newport 03773	

APPENDIX B

PROBATE COURT STATISTICS

7/1/76 to 6/30/77*

New Files Opened (totals of all ten Probate Courts)

Adoptions	787
Change of Name	478
Relinquishment and Termination of Parental Rights	97
Commitments to Laconia State School	4
Conservators Appointed	166
Guardians Appointed	357
Wills Allowed	2,610
Administrations Allowed	1,435
Voluntary Administrations	531
Marriage Waivers Granted	1,764
Inheritance Tax Receipt where no Administration of Estate	43
Designation of Successor Custodian under Uniform Gift to Minors Act	12
Death Certificate where no Administration of Estate	97
Petitions to File and Record Authenticated Copy of Will	227
Total New Files Opened	8,608

Additional Probate Statistics

Trustees Appointed	201
Inquisitions	176
Accounts Allowed:	
a) Administrators and Executors	3,288
b) Guardians and Conservators	1,407
c) Trustees	1,582
Licenses Issued:	
a) Goods and Chattels	608
b) Stocks and Bonds	968
c) Real Estate	1,036
d) Miscellaneous	236

*Source: Judicial Council of the State of New Hampshire, Room 6, Statehouse, Concord, N.H. 03301.

APPENDIX C

GLOSSARY OF LEGAL TERMS

ADJUDICATE	To judge; to settle a dispute on the merits of the issues raised in Court.
ADMINISTRATION	Supervision of the estate of a dead person by an executor or administrator, involving the collection, management, and distribution of the estate.
ADMINISTRATION, LETTER OF	The official record of the appointment of an administrator by the Court.
COMMON LAW	Also called "case law" or "judge-made law." The body of law comprised of case decisions made by Judges.
CONSERVATOR	Guardian or preserver of property appointed for a person who cannot legally manage it.
CONSERVATORSHIP	The holding of property by a conservator.
DECEDENT	A deceased person; one who has died.
DECREE	A decision or order of the Court that announces the legal consequences of the facts found in a case and orders that the Court's decision be carried out.
DEVISE	A gift of real estate by the last will and testiment of the donor.
DOCKET	The official list of cases which are entered in a Court.
DOWER	A wife's legal right to all or part of her dead husband's property. This right is now regulated by statute.
ESTATE	The property in which a person has an interest; also, the interest a person has in property and the person's right or title to property.
FEE SIMPLE	An estate with no restrictions on disposing of it and which will go, upon death, to a person's heirs.
GUARDIANSHIP	The office of a guardian, a person who has the legal right and duty to take care of another person or that person's property when that person cannot legally manage it.
JOINT TENANCY	Ownership of property shared equally by more than one

	person. When any joint tenant dies, the others get that person's share automatically.
JURISDICTION	The power or authority to hear and determine legal disputes. This power may be limited to certain areas of the law, certain stages of legal disputes, or certain geographic boundaries.
PROBATE	The process of proving that a will is genuine; also, the name of the Court that handles the distribution of decedents' estates and other matters within its jurisdiction.
QUESTION OF LAW	A question involving primarily the application of principles of law to a dispute or case.
STATUTE	A written law passed by a Legislature.
TESTATION	Having to do with a will.
WILL	A document in which a person tells how his or her property should be distributed after death.

APPENDIX D

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SECTION VI

THE JUDICIAL PLANNING COMMITTEE AND THE 1979 PLAN FOR COURT IMPROVEMENT

A. INTRODUCTION

Under the provisions of the Crime Control Act of 1976 (P.L. 94-503), each state is authorized funding for the establishment of a Judicial Planning Committee to prepare, develop and revise an annual state judicial plan. The Act requires that the membership of the JPC be reasonably representative of the various local and state courts and include a majority of court officials (Section 203(c)). On November 24, 1976, New Hampshire established the Judicial Planning Committee by Supreme Court order. The Committee members are:

Associate Justice Charles G. Douglas, III, Chairman
Associate Justice William A. Grimes, Vice Chairman
Chief Justice William W. Keller, Superior Court
Justice Aaron A. Harkaway, District Court
Edward J. McDermott, District Court
Thomas D. Rath, Attorney General
James A. Duggan, Public Defender
Carl O. Randall, Clerk of Superior Court
James A. Gainey, Administrative Assistant to Chief Justice of the Supreme Court
Carroll F. Jones, Attorney

Consistent with the Act and the needs of the New Hampshire court system, the Committee established the following specific objectives:

(1) Develop an annual state judicial plan for courts;

(2) Define, develop and coordinate plans and projects for court improvement;

(3) Establish priorities for the development and implementation of court programs.

The Committee's 1979 New Hampshire Court System Comprehensive Plan meets the first of these three objectives. The Plan is based on the results of the Supreme Court's recently completed court system survey and will be submitted to the Governor's Commission on Crime and Delinquency for inclusion in the State's annual comprehensive plan. The programs included in the Plan are basically aimed at areas which will not require continued or recurring funding. They are one-time efforts which are aimed at implementing programs which can be built upon but which stand alone should subsequent funding not be available.

The total dollars being requested is $345,500 and represents an increase over previous years' federal funding of approximately 120 percent. This increase is consistent with the provisions of the Crime Control Act of 1976, and realistically reflects the needs of the court system. Previous funding levels have been approximately 5 to 6 percent of the total of Part C funds available. This plan looks beyond LEAA Part C monies to adequately address the court's needs. LEAA discretionary grant monies, funds from private foundations and other sources have

been considered in assessing the potential amount of funding available.

B. COORDINATION, COOPERATION, AND COMBINATION OF EFFORTS

Programs that encourage coordination, cooperation or combination of efforts from many elements of the criminal justice system may best be exemplified by the recently completed New Hampshire Court Systems Survey.[1]

This comprehensive study of the New Hampshire court system was designed to encourage direct participation by a wide range of criminal justice system participants as well as by the general public. The study reflects the perspectives of corrections, the law enforcement community, the state legislature, juvenile justice system participants, prosecution, public defender, members of the private bar, private citizens and of course, court system personnel, including judges from all levels of courts, clerks of court and other non-judicial personnel. Participants from the above-mentioned elements of the criminal justice system contributed to defining the results they expected from their court system and identifying approaches for making needed improvements in the court. It is anticipated that the cooperation and combination of effort established by the study will be continued as the courts plan for the future.

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[1] [National Center for State Courts,] New Hampshire Court System Survey: Development of Standards and Goals, (1977).

The courts, in the conduct of their business also call upon the resources of the National Center for State Courts, the National Judicial College, the Institute for Court Management and the Appellate Judges' Conference.

C. PROBLEM ANALYSIS

List of Problem Areas

- Reduction of Case Delay
- Court Facilities Improvement & Security
- Analysis of Judicial Practices
- Court Budgeting Procedure
- Continuing Judicial/Non-Judicial Education
- Improved Administrative Procedures
- Public Information Services
- Appellate Procedures

Reduction of Case Delay

The New Hampshire Constitution under Article 14 of the Bill of Rights states:

> "Every subject of this state is entitled to a certain remedy ...to obtain right and justice freely, without being obliged to purchase it; completely, and without delay; conformably with the laws." [2]

In State v. Blake, 113 N.H. 115 (1973), the New Hampshire Supreme Court held that, "the accused is entitled to be free from arbitrary vexatious or oppressive delays." While sufficient constitutional and caselaw authority for eliminating delay exists, the time required to complete many criminal and most civil cases can hardly be termed expeditious or free from delay.

The goals regarding delay include:

- prevent deprivation of rights, attachment of property and separation of families;
- minimize anxiety associated with potential liability and public accusation;
- insure that witnesses are competent and available; and
- satisfy the interest of both plaintiffs and defendants for expeditious resolution of conflicts.[3]

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[2] N.H. Const. Pt. 1, Art. 14.

[3] NCSC, supra note 1, §11.0 at p. 308.

The issues associated with delay affect all types of cases; civil, juvenile and criminal, however, the greatest public concern is aimed at delay of criminal cases. Swift prosecution is often viewed as the primary deterrant to future crime. Expeditious processing of cases reduces the likelihood of diminished availability and quality of evidence and witnesses.

To enhance the courts' ability to accurately evaluate the extent of delay occurring in the processing of criminal cases, four standards were developed. These standards represent the perrormance levels residents of the state felt should be attained. Actual statistics varied from the goal:

Average Time from Complaint or Indictment to Disposition
(Calendar Year 1975)

Table 1(A)

Court	Type of Case	Avg. Time in Days
District	Misdemeanors	28.06
	Violations	18.96
	Combined Misdemeanors and Violations	20.42
Superior	Felonies	167.18
	Appeals	197.25
	Combined Felonies and Appeals	187.21

The results of the District Court survey indicated that both misdemeanor and violation cases are being completed within the time limits specified by the standards. Although the figures in Table 1 (A) include both released and incarcerated defendants, the combined average elapsed time from

filing of the complaint to final disposition is below the time limit goal established for incarcerated defendants.

Statistical survey and interview results indicate that downward revision of the time period for the standard which sets 60 days as the maximum time for processing of misdemeanor and violation cases, may be desirable. While selected cases do require more time, the vast majority are currently being completed in less than thirty days. If the standard is to serve as a benchmark to monitor the progress of the court, a thirty-day time limit for both released and incarcerated defendants appears logical.

In contrast to the results of the District Court elapsed time, the time for completion of Superior Court criminal cases--197.25 days for appeals de novo and 167.18 days for felonies--substantially exceeds the standards.

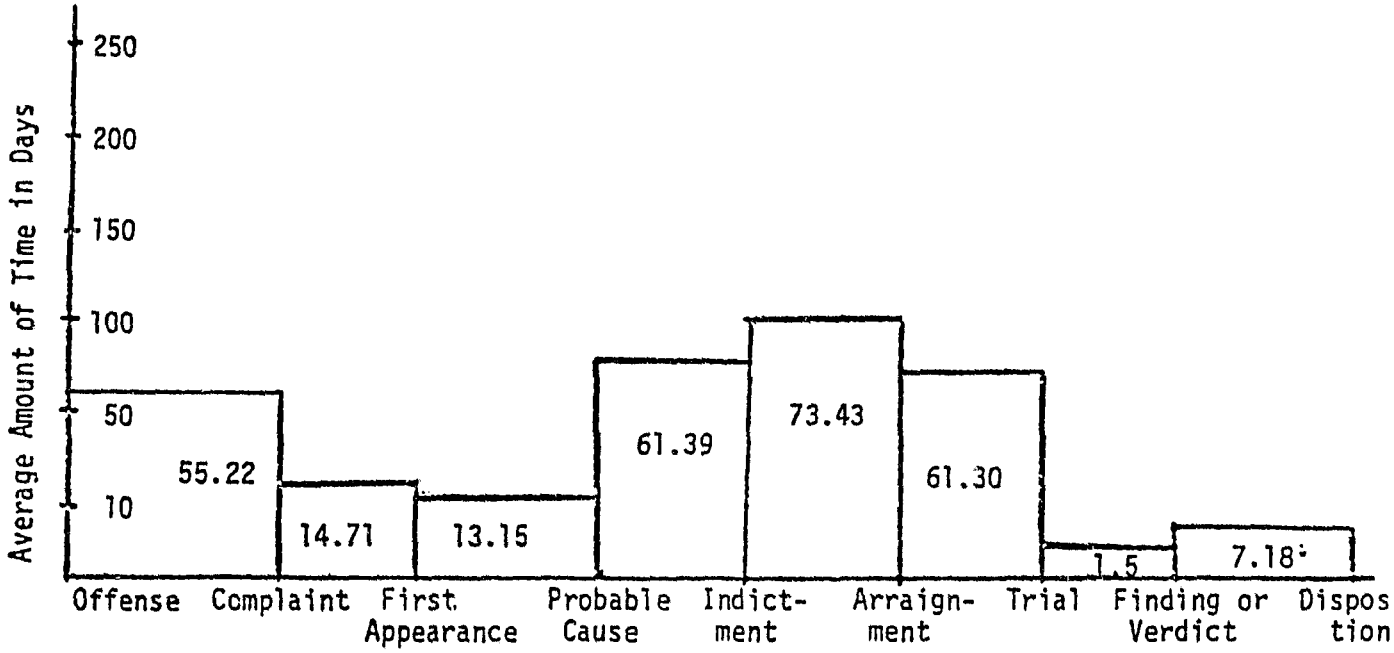
The mean time to complete Superior Court criminal cases (whether the defendant is released or incarcerated) exceeds the time limit specified in the standards of 120 days, and 60 days respectively. Tables 1(B) and 1(C) display the average amount of time required to complete each phase of the Superior and District Court case process. The greatest delay in the Superior Court occurs between indictment and arraignment (73.43 days). The next longest time period comes between the probable cause hearing at the District Court and indictment (61.39 days). The causes for delay thus rest more with the prosecutor and grand jury than with the court's ability to move the case forward.

CONTINUED

1 OF 2

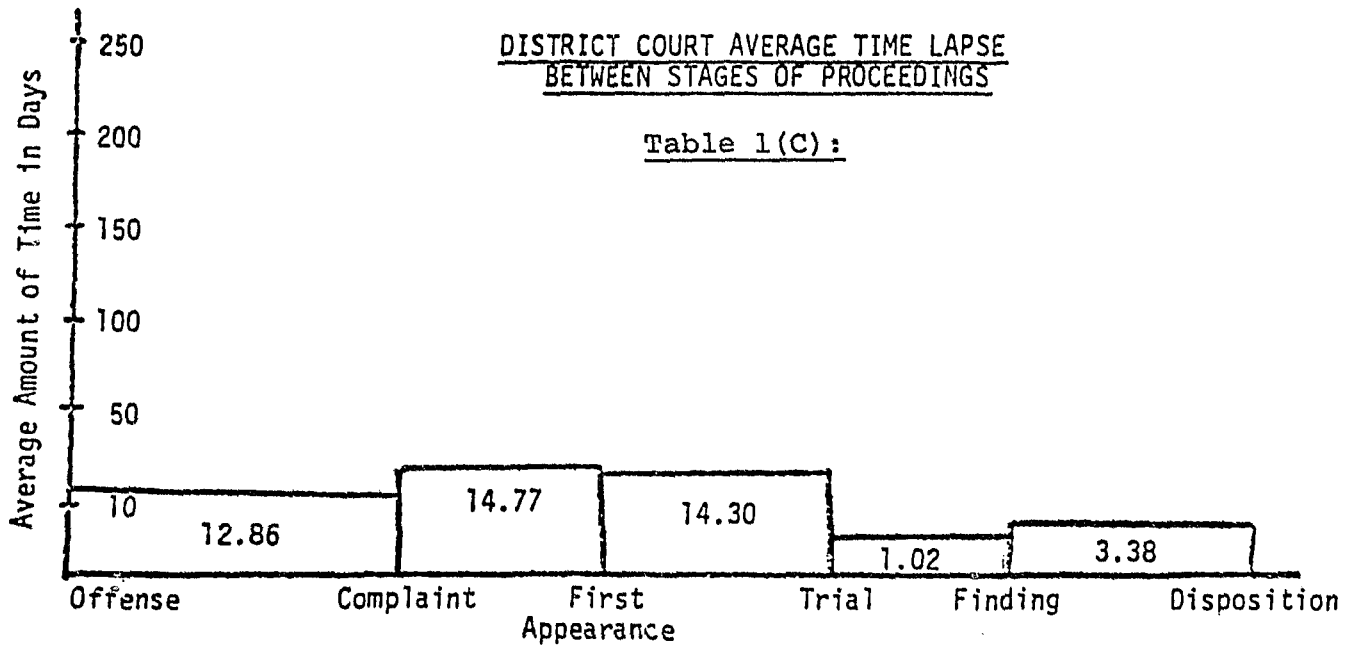
SUPERIOR COURT AVERAGE TIME LAPSE BETWEEN STAGES OF THE PROCEEDINGS

Table 1(B):



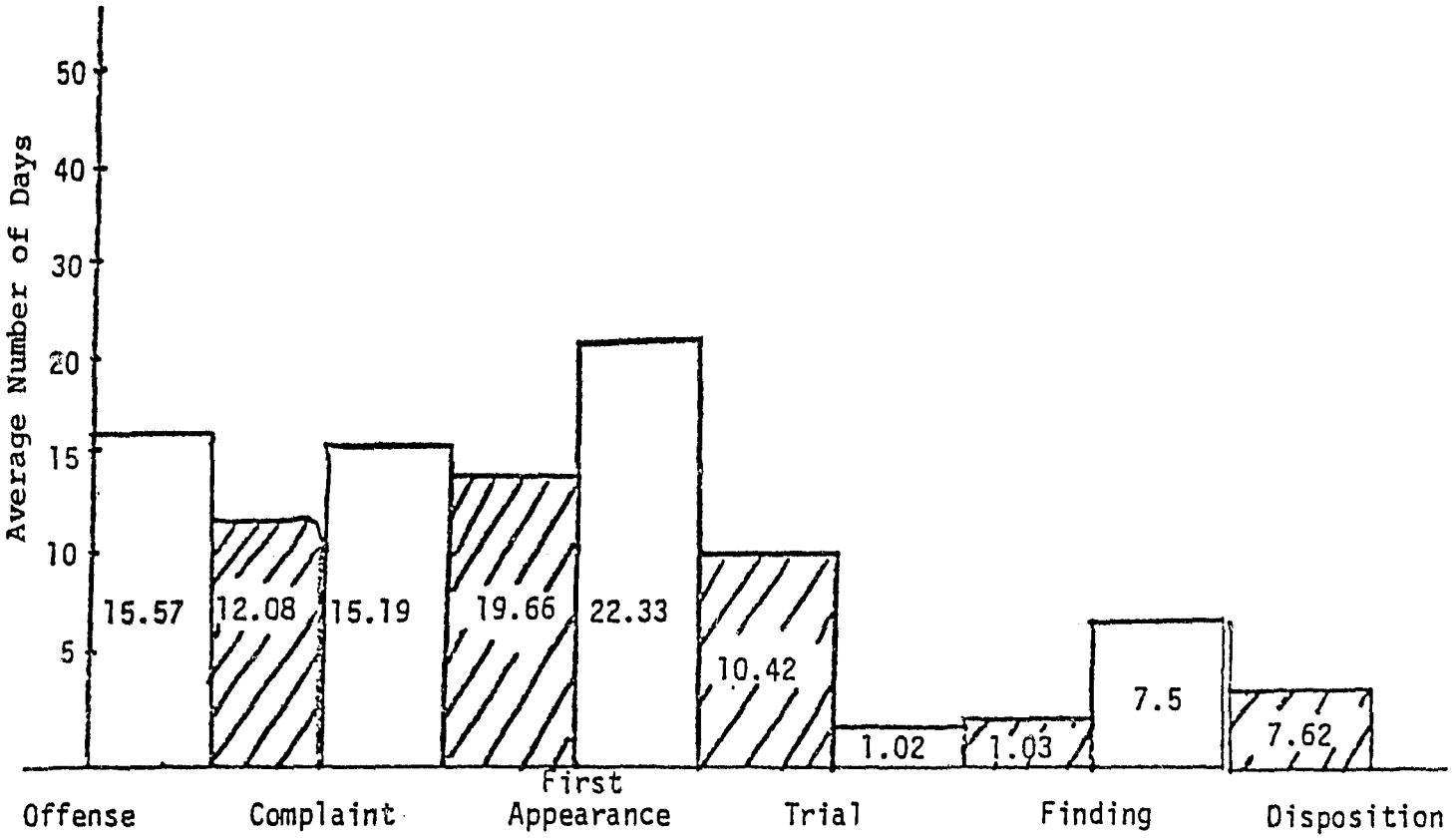
DISTRICT COURT AVERAGE TIME LAPSE BETWEEN STAGES OF PROCEEDINGS

Table 1(C):



COMPARISON OF MISDEMEANOR and VIOLATION PROCESSING
AVERAGE ELAPSED TIME BETWEEN STAGES

TABLE 1(D)



Key: Misdemeanors

Violations

An indication of increases in the amount of delay experienced in processing Superior Court ciminal cases--both District Court appeals and felonies--is disclosed in comparing the results of the sample conducted by the Governor's Commission on Court System Improvement in 1974[4] with the instant survey results.

The Commission report projected a mean elapsed time of 89.7 days from filing to disposition in 1973 compared to 187.21 days in 1975, Table 1(A). (Given the lack of available data concerning how the 89.7-day figure was developed, these figures may not be directly comparable; however, the discrepancy suggests that the problem of delay is increasing rather than remaining static).

In reviewing alternative approaches for reducing the amount of time required to process felony cases, three different time periods need to be addressed: (1) probable cause to indictment; (2) indictment to arraignment; and (3) arraignment to trial. Each of these steps in the judicial process is affected by numerous variables. When these have been identified, alternative approaches for implementing the standards can be clearly defined and assessed.

As noted above, the average amount of time between the return of an indictment to arraignment is approximately 73.4 days. Some of the factors contributing to this situation

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[4] Report of the Governor's Commission on Court System Improvement, N.H.B.J. 1 (1974) at p.12.

are: high prosecutor caseloads; irregular court sessions, and the time taken to arrest or serve process. The court has little control over the length of time it takes to arrest or serve a defendant. The resolution of this issue is contingent upon greater availability of personnel to serve process and better control or supervision of defendants released after bindover from a probable cause hearing. Similarly, the size of prosecutorial caseloads neither is an area which can be controlled by the court nor is the greatest contributor to delay at this stage.[5]

One of the greatest problems associated with the delay between indictment and arraignment is the frequency with which the court sits in a given area. In the sourthern, more populated areas of the state, the Superior Court meets almost continuously; however, in the northern part of the state, the court convenes less frequently due to a lack of judges. For example, in Coos County, the court holds two terms annually for a total of 12 weeks. Anyone indicted at the beginning of a term who is not arrested or served may wait six months before being arraigned. This problem is somewhat reduced with the present system of appointing a presiding judge for the term of court, thus assigning administrative responsibility beyond the time the judge is physically presiding in the county. While the court can reconvene for special issues, this practices occurs infrequently.

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[5] NCSC, supra note 1, §11.1 at pp.312-320.

The time period between the probable cause hearing and indictment is the second largest time span encountered in processing a felony case. The most frequently cited causes for delay at this stage were the frequency of grand jury sessions and availability of the court. As a rule, grand juries sit at the beginning of each term of court. As previously noted in Coos County, the grand jury only sits twice a year. Consequently, aside from waiving indictment or requesting a change of venue, in several counties a defendant who has been bound over may wait more than three months before grand jury review is even possible. Additionally, if the grand jury were recalled, given the infrequent court sessions, no judge would be available to hear new indictments.

Delays between the time of arraignment and trial cannot be attributed to a single source. The elements most frequently cited as contributing to delay at this stage of a criminal proceeding are: (1) lack of full-time prosecution; (2) court backlog; (3) repeated defense requests for continuances and (4) de novo appeals to Superior Court. Reduction in the extent of delay, then, is contingent upon resolution of issues associated with each of these factors.

The solutions or partial solutions to delay, in both criminal and civil matters, go beyond merely adding personnel and expanding facilities. Delays in case processing are a visable by-product of one or more aspects of the justice system breaking down. For example, delay in criminal cases may be attributable to problems at (1) the lower court;

(2) grand jury; (3) prosecutor's office; (4) clerk's office; (5) the trial court; or (6) the defense attorney or defendant. With all these potential bottlenecks effective resolution of delay becomes complex. Each element of the justice process must be evaluated to assess the degree to which it contributes to delay and what is the best resolution of that effect.

Initial attempts at reducing delay in criminal case processing should include increased availability of court personnel and grand juries, objective criteria for making arraignment decisions, and increased judicial access to support personnel, e.g. law clerks and stenographers.

Court Facilities Improvement and Security

> "While justice is not guaranteed by adequate facilities, a neglected and inadequate courthouse debases the entire judicial system."
>
> --Report of the New Hampshire Court Accreditation Commission on the Accreditation of Court Facilities, p.1.

The quality of justice cannot be assured by the design and maintenance of court facilities; however, the physical and operational environments significantly affect the public's perception of the provision of justice and the efficiency of court operation. Public perception that justice is done in space which is attractive and efficient demonstrates that the courts are regarded as important in the society. Further, the public, paying for the facility, can expect it to be a place in which they may feel civic pride.

If the public is to maintain confidence in the justice system and the courts are to provide efficient and effective service, the facilities which house the court must be well designed and maintained.

> "The physical organization of the modern courthouse has become completely transformed by the enlarged scale of the court's operations and concomitant growth of their administrative staffs. The problem is not simply one of providing the necessary additional space..most older courthouses cannot support the court as it now functions and become a positive hindrance to efficient operations, security, and public safety."[6]

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[6]Allan Greenberg, Courthouse Design: A Handbook for Judges and Court Administrators (1976), p.31.

Consideration must be given to the following issues when addressing the special needs of a court facility:

- proximity to detention facilities;
- organization of court support services, e.g., clerks, bailiffs, stenographers, probation;
- security of the facility;
- availability of specialized court resources, judicial chambers, attorney conference rooms, law library, jury room, holding facilities, and waiting rooms;
- suitable courtroom facilities' evidence storage space, recording equipment, evidence presentation equipment (audio visual aids); and
- access to information systems and records systems.

Poorly designed court facilities do not incorporate the desired features previously mentioned and often demean the appearance of justice. Locating police stations, political headquarters, prosecutors, county welfare or other agencies, banks, private attorneys, registers of deeds, or recruiting stations in the courthouse compromises the court's ability to administer justice fairly and efficiently.

Aside from poor design, the second major problem in providing adequate court facilities is the inability or unwillingness of many localities to allocate sufficient financial resources either to build or maintain courthouses which will accommodate the level of judicial business of the locality. In New Hampshire, except for the Supreme Court (which is totally state supported and in 1970 moved to an

excellent building constructed with the court's needs paramount in the design), all courts occupy structures built and maintained by counties or localities.

Many court facilities in New Hampshire are adequate to meet the needs of the courts.[7] While New Hampshire has a Court Accreditation Commission which has studied court facilities statewide and which has made recommendations for improving existing structures, the Commission cannot impose sanctions. Therefore in many communities little has been done to improve existing facilities.

In addition to the need to rennovate and perhaps construct new court facilities in some localities, several courts throughout the state lack sufficient office and recordation equipment to function efficiently and effectively.

The results of a study conducted in New Hampshire by the National Clearinghouse for Ciminal Justice Planning and Architecture[8] showed that judges and law enforcement officials perceive a need for a maximum security courtroom in the state. There is no such facility in the state at this time.

Improvements in existing facilities, construction for a maximum security courtroom, and provision of necessary equipment to selected courts will help to improve the administration of justice in New Hampshire.

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[7] Report of the New Hampshire Court Accreditation Commission on the Accreditation of Court Facilities, (1973).

[8] New Hampshire Courthouse Security, (Jan. 1977). at p. 145.

Analysis of Judicial Practices

As legislation affecting the courts and new rules of court are proposed and considered, the need to examine current judicial practices becomes necessary. Such examination is crucial in assessing the potential impact of a suggested change and in reviewing the results or impact of existing procedures. To date, the Judicial Council has been charged with this important research and analysis function, however only too often responsibility for such review is assigned to the Council members and/or their respective staffs to document and analyze issues with which they are either too intimately involved to objectively review or too overburdened with work to be able to afford the time required to thoroughly assess the situation. To insure that issues affecting the courts are adequately and accurately examined, a program to augment existing court services is required.

At present two issues which require additional examination and analysis are pretrial release and sentencing. Both areas are perennial targets for legislative or rule changes, yet only limited assistance has been available to accurately document the issues having the greatest affect upon these areas. Additionally, the areas of pretrial release and sentencing continue to be cited by the public as needing the greatest improvement.

Pretrial Release

The system of pretrial release enables courts to insure the appearance in court of those against whom criminal proceedings have been commenced. While some jurisdictions have used the bail system to arbitrarily detain individuals, in New Hampshire "the only issue before the court in a hearing on a motion to set bail is insuring the accused will appear as required."[9] The form of pretrial release selected, then, should enhance the probability of appearance. At present in New Hampshire all defendants, with limited exceptions are eligible for bail RSA 597-1. RSA 597:6-a establishes four conditions which the legislature feels should be met to authorize release on personal recognizance. The rationale for the use of some form of release is that it enables adequate case preparation, maintains a defendant's earning capacity, and minimizesthe personal and financial cost of public maintenance in jail. The values which accrue from pretrial release are significant, however, maintained emphasis on a system of bail release reduces the number of individuals who are actually released. In a survey of Superior Court felony cases, 47% of the individuals released were on some form of cash bail or surety.[10] In a survey conducted for the Chief Justice of the Superior Court in 1976, more than 50% of the defendants detained awaiting trial on misdemeanor charges would have been released under many other pretrial release

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[9] State v. Williams, 115 N.H. 437 (1975).

[10] NCSC, supra note 1, §1.4 at p.51.

programs.[11] The costs of such incarceration are obvious.

The courts need to review alternative methods of pre-trial release as well as establishing more specific criteria for evaluating the form of release to be imposed (see Standards 1.2).

Sentencing

Recently, attention has been directed toward study of the sentencing decision-making process. Preliminary findings indicate the most crucial aspect of the sentencing decision, determination as to whether a convicted defendant should be incarcerated or put on probation is largely based on presentence investigation reports provided by the Probation Department. Court reliance on this typed information and the quality of these reports is now being studied nationally. In addition to reliable presentence investigations, a promising national development has been the preparation of sentencing guidelines for court use, based on the past experience of judges, the seriousness of the offense and the previous criminal history and background of the offender. Mechanisms such as those used by the Sentence Review Division in New Hampshire can utilize these guidelines to review decisions that vary beyond the normal ranges and therefore learn when exceptions should or are likely to occur. Guidelines and a review process permit the courts to examine the nature of the offense, the background

[11] Pretrial Release Survey Concerning Persons Incarcerated Awaiting Trial on Misdemeanor Charges, April 28, 1976.

of the defendant and the intent of the legislation which is obviated by mandatory sentence provisions.

In New Hampshire, the Chief Justice of the Superior Court appoints three Superior Court justices or judicial referees (and alternates), to constitute a sentence review disision of three members (RSA 651:57). Application and review procedures are set forth in NH RSA 651:58 and RSA 651:59, respectively. The Sentence Review Division (as it is known statutorily) has not been in operation for a sufficiently lengthy period to permit significant conclusions to be drawn concerning its operations or effectivness. Its rules took effect January 1, 1977.

It will be most important however, to assess review division impact to assure that offenders do not gain sentence reduction or parole merely through repeated petitions and to protect judges from avoiding imposition of appropriate sentences because of fear that the division may revise them.

As the crime rate in America continues to rise, public concern regarding the sentencing practices of our courts has increased drastically. Many believe that the courts are too lenient, that harsh sentences are a deterrent to crime and that courts treat criminals with too much indulgence.

"Certainly, it is one of the major goals of sentencing that an offender be dealt with in a manner that is most likely to avoid the commission of a new offense at some future time."[12] This goal requires sentencing to be viewed in terms of its ultimate effectiveness in addition to its functions of providing retribution for crime and of protecting the community. The sentencing decision thus is both difficult and complicated. While it prescribes punishment, it also must serve as the basis for rehabilitation, protection of the community and deterrence of others from committing similar crimes. These objectives often prove to be "mutually inconsistent, and the sentencing judge must choose one at the expense of others."[13]

Complicating the sentencing decision is the fact that in large measure, sentencing is no more than a prediction. It involves predicting human behavior under certain circumstances: specifically, how the offender will react to various correctional alternatives. Often, information on the offender's background and character is fragmentary or is not available at all to the judge. Few judges in our crowded criminal courts have the time to adequately mull the likely impact of sentencing decisions. At best, "wise and fair sentencing requires intui-

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[12] ABA, Sentencing Alternatives and Procedures (1963) §1.11, Introduction at p.5.

[13] President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society (1967), p.141.

tion, insight and imagination; at present, it is less a science than an art."[14]

The Model Penal Code specifies the general purposes of sentencing and the treatment of offenders as follows: preventing the commission of offenses, promoting the correction and rehabilitation of offenders, safeguarding offenders against excessive, disproportionate or arbitrary punishment and differentiating among offenders with a view to a just individualization of their treatment.[15] This latter purpose requires that a distinction be drawn not only between individuals but also between age groups, i.e., juveniles and adults.

Juveniles possess unique characteristics, are involved in different activities and are viewed as a comparatively distinct entity by society.[16] While no age bracket is uniformly identified, there is general agreement that juveniles should receive more individualized treatment from the justice system. Therefore, juvenile sentencing practices must be distinguished from adult sentencing practices.

Obviously, several issues pertaining to sentencing need to be addressed:

(1) the use and content of presentence investigations and mini-reports:

(2) accurate documentation of sentencing practices for court review;

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[14] ABA, supra note 12.

[15] ABA, supra note 12, Appendix B, Model Penal Code Sentencing Provisions, Art. I, Sec. 1.02, at p.306.

[16] President's Commission on Law Enforcement and Administration of Justice: Juvenile Delinquency and Youth Crime (Washington: GPA, 1967), p.120.

(3) greater public understanding of sentencing considerations; and

(4) general guidelines to aid in the decision-making process.

Court Budgeting Procedure

Obtaining sufficient funding for the courts has become increasingly difficult as a result of competing interests for public funds. Most court systems rely on units of local or state government for appropriations. However, regardless of the funding source, courts must follow sound budgeting procedures and practices to (1) accurately and fully demonstrate the need for funds; (2) maintain financial records which provide timely and meaningful management information and (3) accurately project future needs.[17]

An effective budgeting system provides the basis for financial control and audit by producing a plan against which actual performance is monitored. Budgeting translates system objectives into fiscal terms and creates an objective framework with which to evaluate programs and policies.[18]

In New Hampshire, only the Supreme Court submits a single budget to a single funding source. The Superior Court submits a budget to the state and a budget to each county. Similarly, the Probate Court is funded by both the state and the county. The District and Municipal Courts submit budgets to the municipalities served by the court. As a result, there is no systemwide fiscal planning. Each court reports its projected

[17] NCSC, supra note 1, §16.2 at pp. 426-430.

[18] Ibid., p. 431.

expenditures for the subsequent fiscal year (the fiscal year period varies between units of government) on forms which are different because they conform to different procedures. Not only does this limit the ability of the Administrative Committee of District and Municipal Courts, for example, to aid local courts in the preparation of their budgets, but it also renders inconsistent and incompatible the body of information generated, which, in turn, frustrates a comprehensive review. Fiscal information cannot be combined on an intra-court level and it is difficult, if not impossible, to construct an accurate statewide picture of the total budgetary needs of the court system.[19]

Until such time as state financing of the courts becomes a reality, it may be impossible to develop a completely uniform budgeting process for the District, Municipal and Superior Courts. It is, however, essential for the sound fiscal management of these courts that the budgeting process provide a clear and accurate record of expenditures and that projected funding requests clearly demonstrate the funding needs of the courts. Much can be accomplished in this regard by developing a budgeting manual which provides some degree of uniformity to the budgeting process and would ensure the accuracy and assessibility of budgetary information.

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[19] Ibid., p. 432.

Continuing Judicial/Non-Judicial Education

The absence of continued training isolates judges, masters, attorneys and non-judicial court personnel from exposure to new legal thought and management and judicial techniques helpful in improving the administration of justice. Continuing education should not be limited to legal training. Each individual within the court system exercises varying measures of responsibility and can benefit from additional training.

"The best organization of the courts will be ineffective if the judges who man it are lacking in necessary qualifications."[20] When these words were written in 1956, continuing education of judges had just begun with the first appellate judges seminar held at New York University Law School. The seminar objectives, as stated by Judge Frederick G. Henley, then Chief Justice of the State of Washington and an early leader of the Appellate Judges Seminars, were to provide appellate court judges with refresher courses in the law, emphasizing particularly recent and current trends, procedures and thinking.

Following the appellate judges seminars, which have continued to be held annually, many judicial education seminars followed, sponsored by The Appellate Judges Conference, the National College of the State Judiciary, the National Council of Juvenile Court Judges, and the National Conference of State Trial Judges, among others. In addition to the national organizations sponsoring judicial education seminars for judges, state and regional sponsored sessions are conducted.

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[20] A. Vanderbilt, Judges and Jurors: Their Functions, Qualifications and Selection. (1956), p.3.

As with judicial personnel, non-judicial staff should also be continually afforded opportunities for specialized training. The changing court environment requires that all employees maintain and improve their skills. Formal training programs offer the opportunity to communicate changes in court procedure, case processing, office operations and policy. In addition , non-judicial employees can be instructed in new techniques as they relate to their particular area of responsibility.

In New Hampshire, few training opportunities are available for non-judicial personnel. During the court systems survey, clerks of court, probation officers, stenographers, and other non-judicial personnel were asked to assess the availability of specialized training in their particular area of responsibility; 72 percent of the respondents rated the existing opportunities as "fair to poor" and attendance at programs that are available as "poor."

It should be the responsibility of the Supreme Court in its supervisory capacity to see that all personnel practicing and working in the state courts are aware of changes in law, court rules and administrative policies. Further, the Supreme Court should establish minimum continuing legal education requirements for all judicial and non-judicial court personnel. The establishment of minimum continuing education requirements would help ensure that all court personnel continue to perform their respective duties in an effective and efficient manner.

For the Supreme Court, however, to establish minimum continuing education requirements, educational program opportunities must be available to all court personnel. Such program opportunities may be made available on a local, regional, state or national basis.

a. Maintenance of Administrative Assistant Job

Historically, the management of all business of the courts was left to judges, whose training and primary responsibility was to resolve issues of law. Of necessity, judge time was devoted to resolving legal disputes rather than developing and implementing administrative policies or procedures. Frequently, management of the non-judicial business of the courts fell to the clerks (many of whom had no specialized training) who developed administrative procedures and policies based on local needs without regard to the needs of the court system as a whole. The result has often been disparity between courts in record-keeping procedures, caseflow management techniques, budgeting practices and personnel policies.

Effective court administration not only involves formulating and promulgating consistent administrative policy but also aims, as its basic purpose, to "relieve judges of some administrative chores and to help them perform those they retain."[21] Administrative services in the courts should facilitate developing and implementing administrative policy including: calendar management, employment and management of non-judicial personnel, budgeting, management of auxiliary services, compilation of statistical information regarding court operations and planning

[21]National Advisory Commission on Criminal Justice Standards and Goals, Courts. (1973) §9.0 at p.171.

future operational needs.[22] Delivery of these services to the court may be effected through a variety of administrative techniques and structures.

In order for the chief justice to better exercise his traditional leadership role in the administration of the courts, the continued availability of an administrative assistant is necessary.

b. Personnel System

The introduction and adoption of recommendations for judicial administration by the ABA in 1938 and in subsequent publications on standards of judicial administration[23] has resulted in greater awareness of the importance of court management. As interest in court administration has increased, several specific areas including personnel management have been recognized as essential for the effective operation of the court. Both the ABA and National Advisory Commission have recognized the importance of personnel management as an activity for inclusion under court administration.[24]

Court personnel can be divided into two major categories: judicial personnel (including judges of all levels of courts, special justices, referees, masters and auditors) and non-

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[22]ABA, Standards Relating to Court Organization, §1.40 at p. 86.

[23]See generally, Arthur T. Vanderbilt, Minimum Standards of Judicial Administration (1949).

[24]See ABA supra note 22 §§1.40 and 1.41 at pp.86-87; and NAC, supra note 21, ch. 9 Introduction at p.175.

judicial personnel (including clerks, registers, stenographers, administrators, clerical personnel, and bailiffs). Discussion here will be limited to the latter category of court personnel.

Authorities in the field of court administration, e.g., Friesen, Gallas & Gallas, Managing the Courts (1971) include recruitment, screening, selection, promotion, classification systems, grievance procedures, termination, and job descriptions as the essential elements of a personnel system. The ABA Standards Relating to Court Organization expands on these elements slightly with the inclusion of personnel evaluation systems, uniform compensation, and inter-departmental transfers.[25]

While the interviews and questionnaires used in the New Hampshire Court Systems Survey to poll New Hampshire residents and court system participants and practitioners did not reveal concern in all areas of personnel administration, the results did indicate (1) an interest in ensuring the court exercised control over its personnel procedures; (2) the desire to establish well-defined personnel procedures for all courts and (3) that whatever system existed, it should be so designed to be compatible with existing state and, to the extent possible, county and local systems. The cornerstone for the accomplishment of these results is the precise delegation or delineation of operational responsibility for personnel administration within the

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[25] ABA, supra note 24, at p. 79.

court system, and the promulgation of well-defined personnel procedures and policies which will be used throughout the system. Regardless of the administrative structure of the court system, the assignment of direct responsibility and issuance of procedural guidelines is imperative for the development of an effective personnel system for the courts.

New Hampshire's statutory law and present caselaw define the general superintendence power of the Supreme Court.[26] The Supreme Court is responsible for supervising the efficient operation of all courts in New Hampshire. The present system is a hybrid of personnel practices adopted over time more on a traditional than a rational basis. The result of this system is a series of poorly defined relationships which accord varying degrees of administrative control in the court.

Rates of compensation and the procedures for administering them vary between levels of court. The salaries for Supreme Court clerical personnel, except for the clerk, are set by the state department of personnel. While the positions are included under the executive branch system, a special court job classification was established for two of the positions. The standard state personnel practices apply to these employees. Although the amount of compensation and method of promotion or demotion of clerical personnel in the Superior Court is to a large

[26] RSA 490:4; Brown v. Knowlton, 102 N.H. 221 (1959).

extent locally regulated, the Superior Court approves all salary and increment requests for employees of that court. The intent of such an approval procedure is to insure greater comparability between the Superior Courts.

Analysis of personnel practices between individual courts and between levels of courts is all but impossible. The organizational and operational structures of the various clerks' offices are so dissimilar as to preclude the potential for an accurate comparison. Only the Supreme Court (which is state financed) has established uniform personnel practices. The District, Municipal, Probate and Superior courts are, to a greater or lesser extent, subject to the personnel practices of local governmental units.

The District Court has the greatest variation in clerical salaries as they are established by the municipality in which the court is located. While the clerk's salary is established by statute (RSA 502-A:6 (III)) no such salary guidelines are available for support staff. The absence of job descriptions in all but the larger District Courts and disparate salary schedules for support personnel impairs inter-court personnel transfers and reduces the court's control over its personnel practices. While the Administrative Committee of District and Municipal Courts is charged with overall administrative responsibility for the District Courts, it has no authority to regulate personnel practices.

The lack of uniform personnel practices, specifically in establishing (1) job classifications and wage scales, (2) job descriptions, (3) promotion procedures, and (4) grievance procedures restricts the ability of the court and the individual to transfer within the system. Intra- and inter-court personnel transfers are all but non-existent in New Hampshire.

The general practice of not advertising job openings creates the impression of, if not the potential for, exclusionary hiring practices. While evidence of improper hiring practices was not found, maintenance of public confidence and adherence to equal opportunity employment guidelines mandate the review of current procedures. Only the clerical positions for the Supreme Court are routinely advertised when openings occur. As positions become available as a result of promotion or vacancy, a specified recruitment policy (including advertisement, screening, interview and selection requirements) should be followed to engender public confidence and access to the best possible personnel.

c. Information Systems and Records Management

Although most courts have internal systems directed to the recording and maintenance of information concerning their work, the methods employed are often not consonant with current information system needs. Built over the years in reaction to changing needs and priorities, without periodic reorganization, the information systems in the courts have gradually become unresponsive.

Problems in information and records management are not seen starkly; they are reflected in an inability to discern building backlogs, in inefficiency in completing forms, in delays in preparing transcripts, and in underutilization of jurors. Only when these shadow problems affect the expeditious flow of criminal and civil litigation, when responses to letters and inquiries are inaccurate or late, when transcript costs rise, when jurors are frustrated awaiting assignment, when the costs of file storage devices and space become a disproportionately large appropriation item; only in these circumstances do the inefficiencies and waste of dysfunctional and outmoded information and records systems become apparent.

The statistical compilation in the Biennial Report of the Judicial Council is a useful historical and summary document. Unfortunately, the valuable information cannot readily be transformed to meet the needs of judges and clerks charged with day-to-day responsibilities of calendar movement. For example, the biennial Judicial Council reports provide information relative to the total number of filings and number of dispositions; however, information is not available as to the elapsed time from filing to disposition or between stages in the judicial process. Reference to existing reports disclosed that filings are mounting. Responsive information and records management systems should serve as tools as the courts continue finding and testing solutions to cope with increased and more complex access.

Public Information Services

For the public to support the judicial system, citizens must know and understand their role in the judicial process. A basic understanding of the formal procedural framework of the courts is fundamental to citizen participation as litigants, jurors, witnesses, or as observers monitoring the performance of the courts.[27]

The National Advisory Commission on Criminal Justice Standards and Goals strongly believed that the effective functioning of courts which, by their very nature, are subject to public scrutiny, depends upon the quality of their relations with the community, and the resulting respect which the public feels for the court process. The standards proposed by the commission suggest public information and education programs as a means of fostering public interest in the judicial system.[28]

The Code of Professional Responsibility[29] for attorneys has been adopted by many states. Existing and proposed standards are now being examined for use as guidelines in individual states.

Courts are becoming increasingly aware of the needs and responsibility to educate the public concerning the judicial process. Public information offices for the courts have been

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[27] NCSC, supra, note 1 §14.0 at p. 387.

[28] NAC, supra note 21, §§10.2 and 10.3 at pp. 198 ff.

[29] ABA, Code of Professional Responsibility (1971).

established in a number of states (e.g., Illinois, California, New Jersey, Pennsylvania and Massachusetts) to serve as a central source of information regarding the courts. Unless the courts clearly express their interest in increasing the information flow, however, these offices can result in reducing the amount of information the public receives about court operations. The Conference of California Judges' Project Benchmark has strived to broaden lawyers' and judges' understanding of the problems of the news media covering a court, and has prepared materials to educate students on court functions.

New Hampshire citizens appear to be less than fully aware of the goals, methods and procedures of the courts, according to a sampling by questionnaires distributed to citizens throughout the state.

When asked "Are you familiar with the various levels of court within the state and how they operate?" approximately 44 percent responded yes, 39 percent no, and 17 percent did not answer, commenting that they felt unqualified to respond to the entire questionnaire because of total unfamiliarity with the court system. A closer analysis discloses that of those who responded yes, 25 percent said that their knowledge was only of a very general nature (i.e., what levels of court exist, but not procedures within the courts), acquired through newspapers or local chatter; others attributed their knowledge to jury service, direct involvement in court proceedings as a

party, or attendance at court sessions as an observer. Those who responded affirmatively generally desired to learn more about the courts.

Of those who responded negatively, lack of knowledge was attributed to having been spared the "misfortune" of an encounter with the courts. Some others who failed to comment upon their answer indicated their attitude in responding to a later question: "Can the average citizen impact upon the court's operation?" The response: "Why bother? Courts don't listen to the average citizen anyway." Others were frustrated by not being able to influence the courts because they know too little to make any judgments about court operations.

Despite lack of specific knowledge of the courts, most were able to identify problems in the courts -- leniency, variation in sentencing, backlog -- problems easily detected through reading newspapers. Those who understood more about the system tended toward more favorable comments -- viz., by comparison with other states, and considering inadequate funding, facilities and staff, the New Hampshire system is functioning surprisingly well. The same questions were asked of legislators; although a greater proportion acknowledged familiarity with the courts, responses indicated attitudes similar to those of the citizens.

An attitude of distrust was evident in both groups, indicated by such comments as "courts are a closed operation";

"lawyers and judges are out for themselves," and "impervious to criticism"; "court actions favor the accused, not the victim"; "'justice' is dependent upon the lawyer's ability to use technical loopholes."

The responses of those who have at least general knowledge of the courts show the positive effect that a public education program can have. Their comments stressed constructive means to improve the operations and public image of the courts: inclusion of courts in school curricula; and more detailed reporting in the media, particularly to explain reasons for dismissal of cases before the courts.

The courts have until now relied on a "laissez-faire" approach which has proven ineffective. Only if the judicial system is willing to initiate and implement a widespread public education program and demonstrate its willingness to be responsive to the needs of the citizens, can negative impressions of the courts be corrected.

Also a "judicial impact statement" system similar to one in use in California is needed to gauge the affect legislation will have on the courts. This will aid the legislature in its deliberations on bills impacting the court system.

Appellate Court Improvements

Two kinds of proceedings are called appeals in the New Hampshire legal system. The first are appeals of decisions made in trial courts on questions of law. These appeals are taken to the state's highest court, the Supreme Court, which is primarily responsible for resolving disputed legal questions. A second appellate proceeding occurs when a case in which the defendant possesses a right to jury trial is tried in Superior Court following an initial trial in District or Municipal Court before a judge.

With respect to appeals on law to the Supreme Court, appellate courts across the country have been expediting the process by supervising each stage of an appeal from its inception. Supervision involves monitoring of the filing of a notice of appeal, of the preparation of the transcript of proceedings before the trial court and of the submission of briefs and records. A next step sometimes taken by an appellate court after assuming supervisory responsibility over the process is, when increased caseload requires, the introduction of screening devices. These may require a person who wants to appeal to obtain the permission of either the trial judge or the Supreme Court before filing the appeal, or may require all appeals to be reviewed by a staff attorney, who may separate those deserving full hearing by the court from routine cases which can be decided rapidly. Also to be considered are settlement conferences at an early enough stage in the proceedings to save money for the clients if the case is settled.

Given the increase in the number of appeals entered with the Supreme Court, (315 cases entered in statistical year 1977 compared to 138 cases entered 10 years earlier) the necessity for improved screening mechanism and monitoring techniques to keep track of cases has become critical. Numerous alternative procedures are available to the court to increase its present capability to screen and monitor cases, including: (1) complete court control of appellate case processing; (2) simplification and documentation of procedures; (3) use of more memorandum opinions; and (4) creation of a screening panel. As each of these and other alternatives have distinct advantages, a study and analysis of the most effective method of screening and monitoring the present caseload is essential if the present exponential growth rate continues.

As the number of filings has increased over past years, so too have the number of opinions written.

Supreme Court Opinions[30]

Year	Totals
1970	106
1971	107
1972	123
1973	180
1974	192
1975	205
1976	243
1977	249
Total	1405

[30]George S. Pappagianis, "A Primer on Practice and Procedure in the Supreme Court of N. H.," New Hampshire Bar Journal, March 1976, Vol. 17, No. 3.

The number of opinions issued by the Supreme Court from 1970 - 1975 increased 93 percent. While the court's ability to respond to the increase in the number of filings has been exceptional, the pending caseload doubles approximately every three years. The development of an opinion retrieval system will enhance the court's ability to maintain its present performance level. Without efficient access to prior opinions the time required to adequately research increasingly complex cases will increase immeasurably resulting in even more rapid increases in pending caseloads.

SECTION VII

STATEMENT OF PURPOSES, STANDARDS AND PRIORITIES

1.0 PRE-TRIAL RELEASE

1.1 AS LONG AS PROFESSIONAL SURETIES ARE INCLUDED IN NEW HAMPSHIRE'S SYSTEM OF PRE-TRIAL RELEASE, REGULATORY AUTHORITY OVER THEM SHOULD BE EXERCISED BY THE STATE INSURANCE COMMISSION.

1.2 ESTABLISH PROCEDURE TO GATHER AND VERIFY INFORMATION PERTINENT TO RELEASE DECISIONS AND IDENTIFY CRITERIA GOVERNING ELIGIBILITY FOR PERSONAL RECOGNIZANCE, BAIL, AND BAIL RECONSIDERATION.

1.3 INTRODUCE PROCESS OF WEEKLY REVIEW AND BAIL RECONSIDERATION BY THE COURT FOR INCARCERATED DEFENDANTS.

1.4 MAINTAIN EMPHASIS ON USE OF PERSONAL RECOGNIZANCE UNLESS CLEAR BASIS FOR BOND IS SHOWN.

1.5 INCREASE USE OF SUMMONS IN LIEU OF ARREST BY IDENTIFYING SPECIFIC OFFENSES FOR WHICH USE OF SUMMONS IS PREFERABLE (AND ELIMINATE ARRESTS) IN VIOLATION CASES.

1.6 MAINTAIN IMMEDIATE BAIL DECISION BY EMPOWERING SUFFICIENT IMPARTIAL JUDICIAL OFFICERS TO SET BAIL.

1.7 REQUIRE A COURT ORDER TO DETAIN A JUVENILE FOR MORE THAN FOUR HOURS AND INSURE THAT A COURT HEARING OCCURS WITHIN 24 HOURS OF ARREST.

1.8 PROVIDE SUITABLE AND SEPARATE FACILITIES FOR JUVENILES AND ADULT FEMALE DEFENDANTS FOR EACH REGION, COUNTY OR MUNICIPALITY.

1.9 MAINTAIN SUPPORT FOR THE COURTS' USE OF CONDITIONS ON RECOGNIZANCE TO EMPHASIZE THE USE OF NON-MONETARY FORMS OF RELEASE.

1.10 INFORM DEFENDANT OF SANCTIONS WHICH MAY BE IMPOSED IF DEFENDANT FAILS TO APPEAR.

1.11 PROVIDE PROCEDURES TO PERMIT RELEASE OF DEFENDANTS ON BOND SUBSEQUENT TO DETERMINATION OF GUILT BUT PRIOR TO SENTENCING.

2.0 SCREENING AND DIVERSION

2.1 COURT-DIRECTED SCREENING CAPABILITIES, WITH SANCTIONED GUIDELINES, SHOULD BE ESTABLISHED IN EACH COUNTY AND MUNICIPALITY IN THE STATE.

2.2 A MAXIMUM EFFORT SHOULD BE MADE BY THE COURTS, THE COMMUNITY AND LAW ENFORCEMENT OFFICIALS TO DIVERT, WHEN APPROPRIATE, OFFENDERS FROM THE FORMAL CRIMINAL JUSTICE SYSTEM.

STATEMENT OF PURPOSES AND PRIORITIES

Goals

The goal or major purpose of this court system is the prompt, fair resolution of disputes. The provision of equal access, adequate representation and effective and efficient proceedings and procedures is envisioned as critical to the accomplishment of this goal. A series of standards, benchmarks or measures, have been developed to aid the justice system in evaluating its performance against the system's ultimate goal. These standards or desired results represent intermediate goals designed to direct the court's activities.

Standards and Priorities

The court system standards are presented as a group to demonstrate the comprehensive nature of their impact; and secondly, as a listing of eight priorities. The priority ranking was assigned after tabulating the comments of over 200 justice system participants, legislators, and citizens from throughout the state. The process of establishing priorities is dynamic and influenced by changes in the availability of resources, public concern and changes in the law.

While the priorities listed represent an accurate reflection of present thought, modifications or alterations to these priorities may be anticipated as conditions change.

The quantified objectives for each program area are included at the end of the multi-year forecast of results and accomplishments.

2.3 THE NUMBER AND TYPES OF DIVERSION PROGRAM ALTERNATIVES SHOULD BE EXPANDED IN EACH COUNTY.

a. Juveniles (status offenders, delinquents)
b. Adults and specifically youthful offenders
c. Mental retardation, child abuse or neglect

3.0 PROSECUTION

3.1 INCREASE PROVISION OF PROFESSIONAL PROSECUTION IN EACH COUNTY:

a. EXTEND TERM OF OFFICE TO A MINIMUM OF FOUR YEARS TO INCREASE CONTINUITY.
b. MAKE PROSECUTORIAL POSTS FULL-TIME POSITIONS.
c. ORGANIZE PROSECUTORIAL OFFICES TO INCREASE AVAILABILITY OR ASSISTANCE OF LEGALLY TRAINED PROSECUTORS IN ALL TRIAL COURTS SO THAT LAY PROSECUTION MAY BE ELIMINATED AND POLICE PROSECUTION MINIMIZED.
d. COMPENSATE PROSECUTORIAL STAFF SO AS TO ESTABLISH AN EXPERIENCED OFFICE.

3.2 CASELOAD STATISTICS SHOULD BE UTILIZED TO DETERMINE PROSECUTORIAL STAFF SIZE.

3.3 PROSECUTORS SHOULD BE PROVIDED AN INVESTIGATIVE CAPABILITY FOR SCREENING ALL CASES FOR ACCURACY OF CHARGE AND PARTICULARLY IN JUVENILE MATTERS, APPROPRIATENESS OF COURT REFERRAL.

4.0 DEFENSE

4.1 DETERMINE AND APPLY CLEAR STANDARDS OF ELIGIBILITY TO CONTROL PROVISION OF COUNSEL BY THE COURT, INCLUDING RULES GOVERNING PARTIAL ELIGIBILITY.

4.2 MAINTAIN ACCESS TO COUNSEL IN ALL INDIGENT DEFENDANT CASES WHERE THE CRIME OR OFFENSE CHARGED IS PUNISHABLE BY IMPRISONMENT.

4.3 INSURE AVAILABILITY OF COUNSEL AT EARLIEST STAGE OF CRIMINAL PROCESS (TIME OF ARREST) THROUGH POST-CONVICTION REVIEW.

4.4 REQUIRE MOTIONS FOR WITHDRAWAL IN WRITING.

4.5 PROVIDE DEFENSE SERVICES TO INDIGENTS THROUGH PUBLIC DEFENDER OR ROTATING ASSIGNED COUNSEL SYSTEMS AS DETERMINED APPROPRIATE BY EACH LOCALITY.

4.6 INCREASE SUPERVISION OF INDIGENT DEFENDANTS DETERMINED TO BE CAPABLE OF REPAYING THE COSTS OF THEIR DEFENSE.

4.7 ESTABLISH SYSTEM FOR APPOINTING COUNSEL TO INSURE ADEQUATE EXPERIENCE IN AREA OF ASSIGNMENT AND PARTICIPATION IN ROTATING ASSIGNED COUNSEL SYSTEM BY ALL QUALIFIED ATTORNEYS.

4.8 SET MAXIMUM CASELOAD LEVEL FOR INDIVIDUAL PUBLIC DEFENDERS AND ASSIGNED COUNSEL.

4.9 REQUIRE A WRITTEN WAIVER OF COUNSEL IN ALL COURTS.

4.10 INSULATE PUBLIC DEFENDER SYSTEM FROM POLITICAL CONTROL.

4.11 RECOGNIZE EXPANDED ROLE OF COUNSEL IN JUVENILE PROCEEDINGS AND ASSURE ASSISTANCE OF COUNSEL FAMILIAR WITH JUVENILE PROCESS.

4.12 MAINTAIN PROVISION OF COUNSEL TO INDIGENTS IN INVOLUNTARY COMMITMENT AND SEXUAL PSYCHOPATH HEARINGS.

4.13 PROVIDE DEFENSE SERVICES FOR INDIGENTS IN CIVIL CASES.

4.14 ESTABLISH ADEQUATE COMPENSATION FOR ASSIGNED COUNSEL IN INDIGENT CASES, INCLUDING SPECIFIED RATES, DETERMINED BY THE DIFFICULTY OF THE CASE, AND A FINANCING SYSTEM.

5.0 GRAND JURY

5.1 PERSONS SELECTED FOR GRAND JURY DUTY WILL RECEIVE THOROUGH ORIENTATION BY THE COURT. JURORS WILL BE INFORMED OF THEIR DUTIES AND RESPONSIBILITIES, COURT PROCEDURES AND LEGAL TERMINOLOGY.

5.2 GRAND JURIES SHOULD, AT THE DISCRETION OF THE COURT, BE SUBJECT TO RECALL UNTIL SUCH TIME AS A NEW GRAND JURY IS IMPANELED AT THE NEXT TERM OF COURT, OR IN THE ALTERNATIVE, VENUE SHOULD BE SHIFTED TO AN ADJACENT COUNTY WHERE A GRAND JURY IS AVAILABLE WHEN SPEEDY TRIAL IS DEMANDED.

5.3 GRAND JURY SERVICE SHOULD BE LIMITED TO THE TERM OF COURT FOR WHICH THAT GRAND JURY HAS BEEN IMPANELED.

6.0 PLEA BARGAINING

6.1 INFORM DEFENDANT PRIOR TO THE ACCEPTANCE OF PLEA THAT IF PROSECUTION SENTENCE RECOMMENDATIONS ARE NOT FOLLOWED THE PLEA MAY BE WITHDRAWN.

6.2 EXCLUDE TRIAL JUDGE FROM PLEA NEGOTIATION PROCESS, BUT INFORM THE JUDGE OF THE REASONS FOR A REQUESTED DISPOSITION.

6.3 REVIEW OF SENTENCES BY SENTENCE REVIEW DIVISION SHOULD BE DIRECTED TOWARD REDUCING DRASTIC ABUSES CAUSED BY PLEA BARGAINING.

6.4 INSTITUTE CHANGES IN PROCESSING OF CASES AIMED AT REDUCING NEED FOR PLEA BARGAINING.

7.0 TRIAL PROCEDURES

7.1 REQUIRE PROBABLE-CAUSE HEARINGS IN ALL FELONY CASES AS AN EARLY SCREENING STAGE.

7.2 USE OF COURT-ORDERED, IMMEDIATE, VIDEOTAPE DEPOSITIONS TO MAINTAIN COOPERATION AND PROTECTION OF WITNESSES AND EXPAND CAPABILITY OF COURTS TO VIDEOTAPE TRIAL SEGMENTS AND DEPOSITIONS AT INITIATION OF COUNSEL.

7.3 EMPHASIZE AND INCREASE AVAILABILITY OF ARBITRATORS AND MEDIATORS TO RESOLVE DISPUTES WHERE PARTIES AGREE.

7.4 USE OMNIBUS HEARINGS TO EXPEDITE CRIMINAL PRE-TRIAL PROCESS.

7.5 EMPLOY PRE-TRIAL PROCEDURES AND CONFERENCES AS NEEDED TO:

a. MONITOR AND EXPEDITE DISCOVERY PROCESS;
b. OUTLINE MATTERS TO BE TRIED; AND
c. STIMULATE SETTLEMENT WHERE POSSIBLE THROUGH SCHEDULING OF CONFERENCE SHORTLY BEFORE TRIAL.

7.6 ASSIGN APPROPRIATE COMPLEX CASES AND FAMILY-RELATED MATTERS TO MEDIATORS OR MASTERS IN THE FIRST INSTANCE. IN SOME CASES, A SINGLE JUDGE SHOULD MONITOR A COMPLEX PROCEEDING.

7.7 CONDUCT ALL TRIALS IN THE STATE IN ADHERENCE TO UNIFORM RULES AND PROCEDURES APPLICABLE IN ALL TRIAL COURTS.

7.8 ADOPT RULES FOR EFFECTIVE PROCESSING OF CASES. THESE SHOULD BE DRAFTED IN THE FIRST INSTANCE BY COMMITTEES COMPRISED OF JUDGES AND ATTORNEYS. DRAFTS SHOULD BE WIDELY DISTRIBUTED, WITH SUFFICIENT TIME PERMITTED FOR COMMENT PRIOR TO ADOPTION AND THOROUGH DISSEMINATION UPON EXAMINATION.

7.9 MINIMIZE CONFLICTS IN CASE SCHEDULING BETWEEN DIFFERENT TRIAL COURTS AND SESSIONS IN THE SAME AND ADJACENT COUNTIES.

7.10 RESERVE TRIAL BY JURY, IN CIVIL CASES, FOR MATTERS IN WHICH IT IS MOST NEEDED TO RESOLVE ISSUES OF FACT. NO CASE SHOULD BE TRIED BY JURY UNLESS THE AMOUNT IN CONTROVERSY EXCEEDS $3,000.

7.11 SEPARATE ADULT CRIMINAL TRIAL CALENDARS FROM JUVENILE HEARINGS SO THAT, IN CONFORMITY WITH EXISTING LAW, JUVENILES ARE NOT PRESENT IN COURTROOMS WHEN ADULT DEFENDANTS ARE THERE.

7.12 PROVIDE FOR FULL AND OPEN DISCOVERY IN ALL CASES, RESTRICTED ONLY BY PRIVILEGES, CONSTITUTIONAL BARS AGAINST SELF-INCRIMINATION, AND SERIOUS DANGER TO WITNESSES.

7.13 INSTITUTE USE OF STANDARD FORM OF POLICE REPORT TO EXPEDITE DISCOVERY IN CRIMINAL CASES.

7.14 LIMIT CONTINUANCES IN ALL CASES TO EMERGENCY SITUATIONS, ESPECIALLY WHERE A DEFENDANT IS INCARCERATED BEFORE TRIAL. ADVANCE APPLICATION IN WRITING SIGNED BY A PARTY SHOULD BE REQUIRED FOR CONTINUANCES.

7.15 SESSIONS FOR MOTION HEARINGS SHOULD BE SCHEDULED REGULARLY, BUT NOT LESS OFTEN THAN MONTHLY.

8.0 SENTENCING

8.1 DETERMINATION OF WHERE A SENTENCE IS SERVED SHOULD DEPEND ON WHAT RESULTS THE SENTENCING COURT INTENDS TO PRODUCE, RATHER THAN UPON THE LENGTH OF THE SENTENCE OR THE AGE OF THE DEFENDANT.

8.2 OVERALL CONSISTENCY IN SENTENCING SHOULD BE ACHIEVED THROUGH MECHANISMS SUCH AS A SENTENCING REVIEW BOARD.

8.3 OFFENDERS SHOULD NOT BE SUBJECT TO HABITUAL OFFENDER IMPRISONMENT AFTER FIVE YEARS HAVE PASSED FROM THE DATE OF THE EARLIER OFFENSE.

8.4 JUVENILE STATUS OFFENDERS SHOULD NOT BE INCARCERATED.

8.5 ADULT AND JUVENILE CLASSIFICATION AND DIAGNOSTIC UNITS SHOULD BE ESTABLISHED FOR PRE- AND POST-SENTENCING REVIEW.

8.6 JUSTIFICATION SHOULD BE REQUIRED BY THE SENTENCE REVIEW DIVISION IN ALL INSTANCES WHERE CONSECUTIVE SENTENCES ARE IMPOSED.

9.0 PROBATION

9.1 INVESTIGATION AND SUPERVISION FUNCTIONS SHOULD BE ORGANIZED TO INSURE CONSISTENT LEVELS OF PERFORMANCE.

9.2 SEPARATE REGULAR PROBATION PERSONNEL FROM ALL DOMESTIC RELATIONS COLLECTIONS RESPONSIBILITIES.

9.3 ESTABLISH PROBATION SERVICES ADEQUATE TO MEET THE SPECIAL NEEDS OF ALL PROBATIONERS, DEVOTING SPECIFIC ATTENTION TO THE NEEDS OF JUVENILE AND FEMALE PROBATIONERS.

9.4 ORGANIZE PROBATION SERVICES UNDER AN ADMINISTRATIVE STRUCTURE WHICH FOSTERS THE MOST EFFECTIVE PROVISION OF SERVICES TO THE COURT AND PROBATIONER.

9.5 PRE-SENTENCE INVESTIGATION REPORTS SHOULD BE INITIATED ONLY AFTER A PLEA OR CONVICTION UNLESS (A) AUTHORIZED BY DEFENDANT, OR (B) SPECIFICALLY REQUESTED BY THE COURT.

9.6 INSULATE THE RATIONALE FOR TREATMENT PLAN (BUT NOT FACTUAL MATERIAL OR RECOMMENDATIONS) IN PRE-SENTENCE REPORTS FROM VIEW OF ALL EXCEPT THE TRIAL JUDGE AND THE SENTENCE REVIEW DIVISION.

9.7 INCREASE INVOLVEMENT OF PROBATION PERSONNEL IN PRE-TRIAL SCREENING AND CONDITIONAL RELEASE-SUPERVISION.

10.0 APPELLATE PROCEDURE

10.1 RESOLVE ISSUES OF FACT AT A SINGLE TRIAL BEFORE A LEGALLY TRAINED JUDGE, INSTEAD OF CONTINUING TO USE THE REPETITIOUS APPEAL DE NOVO WHICH RESULTS IN EVIDENCE LOSS, WITNESS ABSENCE, AND INEVITABLY UNSPEEDY TRIALS. ALTERNATIVELY, DECRIMINALIZE SELECTED OFFENSES WHICH NOW REQUIRE APPEALS DE NOVO.

10.2 IMPROVE MONITORING OF SUPREME COURT CASES BY REQUIRING ADEQUATE NOTICE TO THE COURT AT THE START OF AN APPEAL, AND INCREASING SUPERVISION OF TRANSCRIPT PREPARATION IN ORDER TO BE ABLE TO ASSESS REGULARLY WHETHER THE IMPACT OF AN INCREASING CASELOAD REQUIRES MECHANISMS SUCH AS SCREENING, CERTIORARI, SUMMARY DISPOSITION, OR AN INTERMEDIATE APPELLATE COURT TO DISPOSE OF APPEALS.

11.0 SPEEDY TRIAL

11.1 CRIMINAL OFFENSES SHOULD BE TRIED WITHIN THE FOLLOWING TIME LIMITS, WITHOUT DEMAND BY THE DEFENDANT:

(A) FELONY CASES IN WHICH THE ACCUSED IS NOT INCARCERATED SHOULD BE TRIED WITHIN 120 DAYS FROM THE DATE OF ARREST OR INDICTMENT:

(B) WHERE THE ACCUSED IS INCARCERATED, A FELONY CASE SHOULD BE TRIED WITHIN 60 DAYS OF ARREST:

(C) MISDEMEANORS AND VIOLATIONS SHOULD BE TRIED WITHIN 60 DAYS OF SUMMONS OR ARREST; WHERE THE ACCUSED IS INCARCERATED, THE PROCESS SHOULD BE COMPLETED IN 30 DAYS; AND

(D) ARRAIGNMENT ON ANY CHARGE SHOULD BE COMPLETED WITHIN 24 HOURS OF THE TIME OF ARREST.

11.2 PETITIONS INVOLVING JUVENILES -- EITHER PERSONS IN NEED OF SUPERVISION (PINS) OR DELINQUENTS -- SHOULD BE COMPLETED (A) WITHIN THIRTY (30) DAYS FROM FILING OF PETITION IF THE JUVENILE IS NOT INCARCERATED. (B) IF INCARCERATED, PROCEEDINGS SHOULD BE COMPLETED AS QUICKLY AS POSSIBLE, BUT WITHIN (30) DAYS

11.3 CIVIL CASES SHOULD GENERALLY BE DISPOSED OF WITHIN NINE MONTHS OF ENTRY OF APPEARANCE (OR THE EXPIRATION OF THE TIME FOR SPECIAL PLEAS) AND A PRE-TRIAL CONFERENCE SHOULD BE REQUIRED WITHIN SIX MONTHS OF THAT DATE.

11.4 SMALL CLAIMS CASES SHOULD BE DISPOSED OF ON THE RETURN DATE, NO LATER THAN 60 DAYS FROM THE INITIATION OF THE CASE.

11.5 UNCONTESTED PROBATE AND UNCONTESTED DOMESTIC RELATIONS CASES SHOULD BE DISPOSED OF WITHIN SIXTY (60) DAYS: IF CONTESTED, THE STANDARD SET FOR CIVIL MATTER (11.3) SHOULD APPLY.

11.6 ADOPT AND ENFORCE REASONABLE TIME PERIODS IN THE TRIAL COURTS FOR COMPLETION OF EACH PHASE OF THE LITIGATION PROCESS.

11.7 DECISIONS IN MATTERS TRIED TO A JUDGE SHOULD BE RENDERED WITHIN THIRTY (30) DAYS FROM SUBMISSION TO THE COURT.

11.8 APPEALS SHOULD BE PROCESSED ACCORDING TO THE FOLLOWING TIME PERIODS:

1) transcripts should be provided within 30 days of request;
2) appeals should be submitted for decision or argued within 120 days from the taking of the appeal;
3) decisions should be completed within 60 days from argument or submission.

12.0 JUDICIAL SELECTION AND CONDUCT

12.1 A MERIT SELECTION PLAN FOR THE SELECTION OF JUDGES SHOULD BE DESIGNED AND ADOPTED IN NEW HAMPSHIRE.

12.2 MASTERS OR ARBITRATORS WHO AID THE COURTS AS FINDERS OF FACT SHOULD BE SELECTED BY THE CHIEF JUSTICE FROM NOMINATIONS PROVIDED BY A COMMISSION.

12.3 ESTABLISH A JUDICIAL CONDUCT COMMISSION TO REVIEW AND SCREEN COMPLAINTS AGAINST JUDGES WITH POWER TO DISCIPLINE OR REMOVE JUDGES.

13.0 CONTINUING EDUCATION

13.1 THE SUPREME COURT SHOULD ESTABLISH MINIMUM CONTINUING EDUCATION REQUIREMENTS FOR JUDGES, LAWYERS, AND COURT PERSONNEL. THE COURT WITH THE COOPERATION OF THE NEW HAMPSHIRE BAR ASSOCIATION SHOULD CERTIFY AND, IF NECESSARY, ORGANIZE IN-STATE PROGRAMS FOR CONTINUING EDUCATION.

13.2 SPECIALIZED TRAINING SHOULD BE REQUIRED FOR ALL JUDGES, INCLUDING MASTERS, IN ALL COURTS; IF THE TRAINING IS ONLY AVAILABLE OUT OF STATE, THE COURT SYSTEM SHOULD INCUR THE COST OF ATTENDANCE.

13.3 SPECIALIZED TRAINING SHOULD BE PROVIDED FOR NON-JUDICIAL COURT PERSONNEL, INCLUDING COURT OFFICERS, COURT REPORTERS, CLERKS, PROBATION AND POLICY PERSONNEL.

14.0 PUBLIC EDUCATION AND NEWS COVERAGE

14.1 INFORM THE PUBLIC OF THE GOALS, METHODS AND PROCEDURES OF THE COURTS AND THE REASONS FOR EACH, IN ORDER TO PREPARE MEMBERS OF THE PUBLIC FOR SERVICE AS JURORS, PRESENCE AS WITNESSES, AND RIGHTS AS PARTIES.

14.2 SPECIFY THOSE ASPECTS OF CRIMINAL CASES WHICH ATTORNEYS, JUDGES, LAW ENFORCEMENT OFFICERS, COURT EMPLOYEES, PARTIES AND WITNESSES ARE FORBIDDEN TO DISCLOSE TO THE PRESS OR PUBLIC IN ORDER TO PRESERVE AN ACCUSED'S RIGHT TO A FAIR TRIAL.

14.3 INSURE FAIR TRIALS BY PROVIDING TRIAL JUDGES WITH A RANGE OF MEASURES TO USE WHEN PREJUDICIAL PUBLICITY THREATENS AN ACCUSED PERSON'S RIGHTS: CHANGE OF VENUE, CONTINUANCE, SEQUESTRATION OF JURORS AND WITNESSES, EXAMINATION AND SPECIAL CAUTIONING OF JURORS, EXCLUSION OF PUBLIC FROM PRE-TRIAL HEARINGS, AND SETTING ASIDE VERDICTS IN CASES WHERE EARLIER STEPS HAVE PROVEN INSUFFICIENT.

14.4 THE CLERK SHOULD PROVIDE THE PUBLIC AND THE PRESS WITH RAPID ACCESS TO ALL ACCURATE INFORMATION ABOUT THE WORK OF THE COURTS WHICH IS PART OF THE PUBLIC RECORD.

15.0 COURT FACILITIES

15.1 PROVIDE ADEQUATE AND APPROPRIATE COURTHOUSE FACILITIES TO SUIT NEEDS OF COURTS AND COMMUNITIES THROUGH ENFORCEMENT OF THE ACCREDITATION COMMISSION STANDARDS. PREPARE A STATE-WIDE SCHEDULE OF NEEDS EMPHASIZING MODERNIZATION OF NONACCREDITED FACILITIES.

15.2 PROVIDE SUFFICIENT SEPARATION OF COURT FACILITIES FROM LAW ENFORCEMENT OR OTHER GOVERNMENT AGENCIES HOUSED IN THE SAME BUILDING TO MAINTAIN AN ATMOSPHERE CONDUCIVE TO JUSTICE.

16.0 COURT ORGANIZATION AND ADMINISTRATION

16.1 REQUIRE ALL JUDGES TO SERVE ON A FULL-TIME BASIS. USE OF A ROTATING CIRCUIT SYSTEM CAN INCREASE ACCESS TO COURTS IN ALL COMMUNITIES IF MAKING ALL JUDGES FULL TIME REDUCES THE TOTAL NUMBER OF JUDGES.

16.2 DEVELOP A SYSTEM OF COURT FINANCING WHICH PROVIDES GREATER UNIFORMITY AND CONSISTENCY OF FUNDING THROUGH A CLEARLY DEFINED BUDGET PROCESS WHICH INVOLVES ALL LEVELS OF COURT. EXERCISE GREATER COURT CONTROL OVER FINANCIAL MANAGEMENT, MOST NOTABLY THE PROCESSING OF EXPENDITURES AND REVENUES. AUTHORIZE LINE-ITEM TRANSFERS BY THE COURT NOT SUBJECT TO EXECUTIVE BRANCH APPROVAL. VEST GENERAL FINANCIAL MANAGEMENT CONTROL IN THE SUPREME COURT TO FOSTER CONSISTENT COMPREHENSIVE ALLOCATION OF JUDICIAL RESOURCES AND FINANCIAL PLANNING.

16.3 ORGANIZE A PERSONNEL SYSTEM TO INCLUDE ALL COURT EMPLOYEES OF THE STATE.

16.4 MAKE THE POSITION OF PROBATE JUDGE A FULL-TIME POST BY EXPANDING THE COURT'S JURISDICTION OR ASSIGNING PROBATE JUDGES TO OTHER COURTS BASED ON AVAILABILITY. COURT SHOULD END USE OF FEE SYSTEM TO FINANCE COURT OPERATIONS.

16.5 BASE THE NUMBER OF JUDGES NEEDED ON SIZE AND CHARACTER OF CASELOAD IN ADDITION TO POPULATION.

16.6 REDUCE WAITING TIME FOR WITNESSES INCLUDING POLICE OFFICERS, BY INTRODUCING PROCEDURES TO NOTIFY WITNESSES WHEN ACTUALLY NEEDED.

16.7 PROVIDE EFFICIENT ADMINISTRATIVE SERVICES AT ALL LEVELS OF COURT AND WHERE FEASIBLE, CENTRALIZE ADMINISTRATIVE FUNCTIONS.

PRIORITY LIST

11.1 CRIMINAL OFFENSES SHOULD BE TRIED WITHIN THE FOLLOWING TIME LIMTIS, WITHOUT DEMAND BY THE DEFENDANT:

(A) FELONY CASES IN WHICH THE ACCUSED IS NOT INCARCERATED SHOULD BE TRIED WITH 120 DAYS FROM THE DATE OF ARREST OR INDICTMENT;

(B) WHERE THE ACCUSED IS INCARCERATED, A FELONY CASE SHOULD BE TRIED WITHIN 60 DAYS OF ARREST;

(C) MISDEMEANORS AND VIOLATIONS SHOULD BE TRIED WITHIN 60 DAYS OF SUMMONS OR ARREST; WHERE THE ACCUSED IS INCARCERATED, THE PROCESS SHOULD BE COMPLETED IN 30 DAYS; AND

(D) ARRAIGNMENT ON ANY CHARGE SHOULD BE COMPLETED WITHING 24 HOURS OF THE TIME OF ARREST.

15.1 PROVIDE ADEQUATE AND APPROPRIATE COURTHOUSE FACILITIES TO SUIT NEEDS OF COURTS AND COMMUNITIES THROUGH ENFORCEMENT OF THE ACCREDITATION COMMISSION STANDARDS. PREPARE A STATE-WIDE SCHEDULE OF NEEDS EMPHASIZING MODERNIZATION OF NONACCREDITED FACILITIES.

16.1 REQUIRE ALL JUDGES TO SERVE ON A FULL-TIME BASIS. USE OF A ROTATING CIRCUIT SYSTEM CAN INCREASE ACCESS TO COURTS IN ALL COMMUNITIES IF MAKING ALL JUDGES FULL TIME REDUCES THE TOTAL NUMBER OF JUDGES.

3.1 INCREASE PROVISION OF PROFESSIONAL PROSECUTION IN EACH COUNTY:

a. EXTEND TERM OF OFFICE TO A MINIMUM OF FOUR YEARS TO INCREASE CONTINUITY.

b. MAKE PROSECUTORIAL POSTS FULL-TIME POSITIONS.

c. ORGANIZE PROSECUTORIAL OFFICES TO INCREASE AVAILABILITY OR ASSISTANCE OF LEGALLY TRAINED PROSECUTORS IN ALL TRIAL COURTS SO THAT LAY PROSECUTION MAY BE ELIMINATED AND POLICE PROSECUTION MINIMIZED.

d. COMPENSATE PROSECUTORIAL STAFF SO AS TO ESTABLISH AN EXPERIENCED OFFICE.

12.1 A MERIT SELECTION PLAN FOR THE SELECTION OF JUDGES SHOULD BE DESIGNED AND ADOPTED IN NEW HAMPSHIRE.

8.1 DETERMINATION OF WHERE A SENTENCE IS SERVED SHOULD DEPEND ON WHAT RESULTS THE SENTENCING COURT INTENDS TO PRODUCE, RATHER THAN UPON THE LENGTH OF THE SENTENCE OR THE AGE OF THE DEFENDANT.

16.2 DEVELOP A SYSTEM OF COURT FINANCING WHICH PROVIDES GREATER UNIFORMITY AND CONSISTENCY OF FUNDING THROUGH A CLEARLY DEFINED BUDGET PROCESS WHICH INVOLVES ALL LEVELS OF COURT. EXERCISE GREATER COURT CONTROL OVER FINANCIAL MANAGEMENT, MOST NOTABLY THE PROCESSING OF EXPENDITURES AND REVENUES. AUTHORIZE LINE-ITEM TRANSFERS BY THE COURT NOT SUBJECT TO EXECUTIVE BRANCH APPROVAL. VEST GENERAL FINANCIAL MANAGEMENT CONTROL IN THE SUPREME COURT TO FOSTER CONSISTENT COMPREHENSIVE ALLOCATION OF JUDICIAL RESOURCES AND FINANCIAL PLANNING.

4.5 PROVIDE DEFENSE SERVICES TO INDIGENTS THROUGH PUBLIC DEFENDER OR ROTATING ASSIGNED COUNSEL SYSTEMS AS DETERMINED APPROPRIATE BY EACH LOCALITY.

16.7 PROVIDE EFFICIENT ADMINISTRATIVE SERVICES AT ALL LEVELS OF COURT AND WHERE FEASIBLE, CENTRALIZE ADMINISTRATIVE FUNCTIONS.

JUDICIAL BRANCH BUDGETING

For fiscal year 1978, the Supreme Court was appropriated the sum of $444,123 of general fund revenue and $225,000 in federal funds for the discretionary grant from L.E.A.A. to the court.

The Superior Court budget for FY 1978 included the following:

Highway funds	$134,810
County for stenographers	360,352
General funds	533,847
	$1,029,009

The sentence review division, office of administrative assistant, court recorders and law clerks add $16,990 in highway and $67,960 in general funds to the budget. A total of $70,311 in federal L.E.A.A. money is also included for the ten clerks of court; their staff and the maintenance of the courthouses are all presently expenses of the counties. The total Superior Court budget appropriated by the State is $1,254,581.

The Probate Court is funded at the county level out of fees, except for the salaries of the judges and the deputy registers. The total FY 1978 budget for Probate Court is $325,697, all being general fund revenue.

The Judicial Council and the Administrative Committee of the District and Municipal Courts are appropriated $15,461 and $17,856 respectively.

The District and Municipal Courts are local courts with no State funding. Over 200,000 cases a year are processed through these courts producing a total of $3,381,508 in fines collected as of July 31, 1976. $1,376,000 was paid to the State, $1,583,000 to towns and cities and $294,000 was paid for the expense of the 58 district and municipal courts as of July 31, 1976.

Thus excluding the one-time federal grant of $225,000 to the Supreme Court, the entire court system was appropriated $2,218,000 for FY 1978 by the legislature, or about the same amount of money as the State pays for one mile of interstate highway. Thus, of the total one-half billion dollars appropriated for New Hampshire government for this fiscal year, the judicial branch was appropriated only four-tenths of 1% to process over 200,000 cases a year.

A limited number of copies of this publication are available on request:

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This report was produced with the assistance of the New Hampshire Governor's Commission on Crime and Delinquency Subgrants Nos. 78-I-A1950 E06 and 77-I-A2156 E04 and with the assistance of the Joint Committee on Legislative Facilities of the General Court of New Hampshire.

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