

MAINE STATE LEGISLATURE

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**STATE OF THE JUDICIARY ADDRESS
OF
CHIEF JUSTICE LEIGH INGALLS SAUFLEY
MARCH 24, 2011**

Progress Amid the Challenges

Good morning, and thank you President Raye. Good morning Governor LePage, Speaker Nutting, members of the 125th Maine Legislature, members of the Court, colleagues from other Benches, and, as always, my supportive family.

It is an honor to present this report on the State of Maine's Judiciary in 2011. I am pleased to be joined here this morning by members of the Law Court and the Trial Court Leadership of the State of Maine. I want to introduce to you Justice Jon D. Levy of Portland, Justice Ellen A. Gorman of Falmouth, Justice Joseph M. Jabar of Waterville and formerly of the 118th and 119th Maine Legislatures. And the Trial Court Leadership: Chief Justice Thomas E. Humphrey of Sanford, Chief Judge Charles C. LaVerdiere of Wilton and formerly of the 118th, 119th, and 120th Maine Legislatures, and Deputy Chief Judge Robert E. Mullen of Waterville.

Along with Ted Glessner, who many of you know, and my colleagues on the Supreme Judicial Court who were not able to be with us today, this is the group of people who make the day-to-day and year-to-year decisions regarding the administration of justice in Maine. I am grateful to Maine's Governors who have understood how very important it is to have hard-working, ethical, and innovative jurists to guide the Judicial Branch, and I am pleased to hear that Governor LePage has already begun the process of assuring that high quality candidates will be presented to you for confirmation to the Maine Bench.

This is the tenth year that you have offered me the opportunity to update you on the delivery of justice in Maine. I want you to know that I never take this opportunity for granted.

We are all charged with remembering that the very first purpose of Maine's Constitution is "to establish justice." The collegial and collaborative efforts of Maine's separate branches of government have made all the difference in our capacity to establish justice during these last many hard economic years, and your attention to your constituents' justice-related needs means that scarce resources are used for the very best value we can obtain. I thank all of you, every one of you, for caring about access to justice, and for reaching out to us with ideas, concerns, and proposals.

INTRODUCTION

I must begin my presentation by reminding us all that the Maine Judicial Branch has been substantially underfunded for decades. A number of assessments have confirmed that the staffing shortages in Maine's justice and legal services are real, including the Reinventing Maine Report and the Report of the Maine Heritage Policy Center. We are fortunate to have an experienced and dedicated work force in the Judicial Branch, with employees whose commitment to public service makes them the unsung heroes of the delivery of justice. But the fact remains that there are too few positions—far fewer positions as compared to other states—to complete the work before us.

However, I am not going to dwell on these challenges today. Nor am I going to spend time today talking about some of the recent and most uplifting aspects of the delivery of justice, such as the improvements in Juvenile Justice, or the new evidence-based practices in criminal law that hold promise for reducing community risk and recidivism through focused interventions, such as mental health courts, drug courts, and improved monitoring capacities.

Instead, I am going to take advantage of this 10th Anniversary of my presentations to you to talk about the nuts and bolts of delivering justice. I will describe the improvements that have been made in the past ten years, and lay out a blueprint for the decade ahead.

I hope that when we are done here this morning, you will agree with me that Maine's Judiciary is moving ahead with a clear vision for the future.

CONTEXT

In order to understand our administrative goals for the last decade and the decade to come, some context is necessary.

In 1820, the Maine Constitution established one Court, the Supreme Judicial Court. It was both the trial court and the appellate court for 110 years. Judges rode on horseback throughout the State, presiding wherever a courthouse could be set up, usually over the local tavern.

By 1930, there was need for a full-time trial court, and the statewide Superior Court was created. Just 30 years later, the need had expanded again, leading to the creation of the District Courts in the mid 1960s.

With the establishment of the District Courts, the State of Maine had three State Court systems, with different administrations, and three overlapping judicial cost centers. In 1976, the 107th Maine Legislature took steps to create an administratively efficient court structure. In what was a visionary move, the Legislature consolidated all three components of the state court systems under one single administration, reducing duplication of staff and improving flexibility in the use of judicial resources. [Are there any current Legislators who served in the 107th Legislature here today? Please accept my very belated thanks for your vision.]

It is important to understand that many states have not yet completed that step, leaving state, county, and sometimes even municipal governments to pay for the overlapping costs of the courts.

One critical benefit of modernizing the Maine courts was an increased capacity to move resources in response to changing public needs. The number of newly filed cases varies somewhat from year to year, but the mix, complexity, and nature of cases changes substantially over time. As an example, here is a snapshot of recent changes in caseloads.

- General civil filings increased 48% over the last five years.
 - That includes a 146% increase in the number of mortgage foreclosures,
 - And a 56% increase in debt collection cases.
- In contrast, criminal filings are down approximately 20% over the last five years.
 - Criminal filings, which once represented 50% of the court's nontraffic caseload, are now 44% of the total.
- Divorces and family matters have held fairly steady over that five-year period.
 - But the complexity of those cases has increased over time with new laws and regulations, requiring additional court time and resources.
- Protection from Abuse new filings also remained steady at just over 6,000 cases each year. But as lethality and cycles of violence are better understood, those cases require and deserve more time.
 - The Attorney General's Office reports that there were 24 homicides last year; 37%—more than a third of the homicides—were

classified by the AG as domestic violence related.

These changes in caseloads regularly require that we reallocate judge, clerk, and security resources, and we are able to make the necessary shifts because the court system was consolidated in 1976.

A DECADE AGO

So, ten years ago when I first spoke to you from this podium, I set out several goals designed to take advantage of the efficient administrative structure of our State Courts, to consolidate further, and to make the system more responsive to the public's changing needs. Among those goals were the following:

First: Secure the courts. At that time, we had no system of entry screening whatsoever.

Second: Take advantage of the single administrative system to balance and improve the allocation of judicial resources to assure that priority cases, including those involving children, violence, and sexual assault, were reached quickly and resolved more promptly.

Third: Consistent with efforts to consolidate and streamline, address the aging and expensive infrastructure of Maine's courthouses.

Fourth: Make better use of technology to reduce staffing needs, improve record keeping, and provide much more prompt public service.

A DECADE OF ACCOMPLISHMENTS

In the last ten years, we have accomplished many of those goals.

1. Security.

First, regarding security, we have worked consistently, some of you might say stubbornly, to improve safety in our courthouses, and with your help, we have made substantial progress.

- You made it a crime to carry a gun into a courthouse;
- You created ten new entry screening positions; and
- Most important, we have progressed from zero days of entry screening in 2001 to providing screening in approximately 20% of our courthouses on a daily basis.
- The Governor's proposed budget for the Judicial Branch will allow us to fill security vacancies and increase that number to approximately 25%.

But we cannot stop here. In the last several weeks, Judicial Marshals doing entry screening removed three handguns from people entering courthouses. It is only a matter of time until something tragic happens in one of the many courthouses without screeners at the door. We cannot cease our efforts to improve safety in Maine's courthouses.

2. Balancing and Reallocation of All Judicial Resources.

a. Judicial Resource Team.

Second, regarding resource allocations, in 2003, the Judicial Resource Team, led by Justice Levy, created an entirely new approach to case management and scheduling which:

- Set up a regional system of judges from both trial courts working together;
- Focused on eliminating delays, wasted time, and duplicated efforts; and
- Improved case processing speed. Following the implementation of the recommendations, the time it took to complete family cases, for example, where children were waiting for stability, was cut in half. The work of the Judicial Resource Team demonstrated that real improvements were possible, even without additional funding and staff. That was an important lesson.

b. Streamlined Dockets.

In the last several years, we have built on those lessons by further re-engineering specific dockets. The Unified Criminal Docket in Portland, whose design and implementation was led by Justice Gorman, has proven to be a resounding success. It eliminated the antiquated bifurcation of criminal procedures, eliminated redundant work in our clerks' offices, and provided a clear process that the public can understand and participate in meaningfully. Those improvements, assisted greatly by the support of District Attorney Stephanie Anderson, have reduced the staffing resources necessary in our Portland criminal clerks' office, allowing us to shift funding from those three positions into security positions. And by reducing repeated, unproductive appearances, it has also reduced the strain and costs on the District Attorney's office, court-appointed and retained counsel, and local law enforcement.

This improved model for criminal processing is now under way in Bangor, and we are in the planning

stages for improving the criminal docket in York County.

3. Consolidate and Improve Infrastructure.

Third, over the last ten years we set about to streamline the court's infrastructure. I am very proud of our accomplishments here.

Again context is important. In the three decades that followed the creation of the District Courts in the 1960s, the court system built or rented separate, stand-alone District Court facilities even in towns where Superior Court facilities already existed. Those buildings required additional staff, duplicated security, and duplicated technology costs. They made it difficult for judges to assist with overflow dockets in a different building in the same town, and for cases to be managed in a rational fashion. Members of the public with related cases could find themselves going from building to building in the same town in an attempt to resolve their legal issues.

In the last ten years, we have made a concerted effort to eliminate those problems. Wherever District and Superior Courts exist in different facilities in the same town, our goal has been to consolidate the courts into one facility and consolidate the clerks' offices. Those changes alone can substantially reduce the strain on staffing, security, and technology costs. We have accomplished many of these goals:

- The Judicial Branch used to have 41 separate clerks' offices. Today, through consolidations, we have 26 clerks' offices.
- We have consolidated several courthouses, including
 - Houlton, where the separate District and Superior Courts facilities were consolidated into the renovated second floor of the Houlton County building;
 - Bangor, where both trial courts are now consolidated in a single energy-efficient courthouse in that city;
 - Ellsworth, where we merged the Bar Harbor District Court into the Hancock County building;
 - And Lewiston, where we merged the former Livermore Falls District Court into the Lewiston District Courthouse.

- We are in the process of consolidating the two separate courthouses in Dover-Foxcroft into one single floor in the Piscataquis County building.
- With the Governor's help and your support, we will soon consolidate three trial court facilities and court staff from four separate buildings into a single courthouse here in Augusta.
- And in Washington County, we will update and renovate the beautiful, but aging, county building with a consolidated facility for both trial courts.

4. Technology.

Our use of technology has also expanded substantially. Although we do not yet have electronic filing, which is one of our ultimate goals, we have achieved several major steps forward.

- **Fine Payments.** Both criminal fines and traffic tickets can now be paid online, speeding recovery of revenues, and reducing the potential for license suspensions and bench warrants.
- **Domestic Violence Orders and Conditions of Release on Bail.** All domestic violence orders are in electronic format and are available instantaneously to law enforcement officers in the field, as are conditions of release on bail in criminal cases.
- **Centralized Warrant Repository.** This year, we will complete a centralized electronic arrest warrant repository again providing instant electronic access in the field to all pending arrest warrants.
- **The Criminal Records Broker.** With the support and cooperation of the Department of Public Safety, and particularly Commissioner Morris and former Commissioner Jordan, we have also completed the new criminal information electronic broker. This is an electronic system that automatically sweeps data in criminal cases from the court system into the State Bureau of Identification.

What this really means is that the days of piling criminal history data into shoe boxes at the SBI and hoping that they will eventually have sufficient staff to type them into an electronic system are over. All new convictions are immediately placed into the SBI's database and become available for appropriate law enforcement agencies.

Community safety is significantly enhanced by these developments, and they ease staffing burdens, not just for the courts, but for local law enforcement, for Pub-

lic Safety, and for others in the criminal justice system. Some of these improvements will require your help in updating our laws, and we will be working with you to craft appropriate changes.

CURRENT STATUS

Looking back over these last ten years, we have worked hard to keep our eye on our goals and move forward, notwithstanding the resource limitations.

Unfortunately, the challenges of understaffing have taken their toll on the public. The bottom line is that the limited number of staff and judges simply cannot do all of the work that is generated. With only 53 trial judges across the State, and with 150,000 new cases pouring into the courts each year, the strain is real. That's 600 new cases every court day, and that doesn't include 130,000 traffic infractions. We have had to set priorities, slow the response to nonpriority cases, and even reduce access at certain times. For example, public hours are currently reduced in the clerks' offices in Rumford, Millinocket, and South Paris.

Here is the current snapshot:

- The Maine Judicial Branch today is an organization of 39 courthouses, down from 43, and 493 General Fund positions, down from 512.
- The total operations budget for the current fiscal year for all of the Judicial Branch is just over \$49 million, with another \$6.8 million that is dedicated to debt service.
- 70% of the Judicial Branch operations budget is people, that is, those 493 positions, approximately 35 of which have remained vacant as a result of funding shortages.
- The remaining 30% of the operations budget, just over \$15 million, is the full year-long budget for all nonpersonnel costs for the statewide court system.

It is one of the leanest judicial budgets in the country.

THE NEXT DECADE

Nonetheless, given what we have accomplished in the last ten years, with focus and hard work, I am confident that we will meet our goals for the next decade. As we move ahead, in addition to continued progress in security, technology, and consolidations, we will be focusing on several substantive areas that require attention.

Business Litigation

One of our goals must be to provide better public service for our business communities. There are three areas that need help:

Complex Claims: Business and Consumer Docket.

First, our fledgling Business and Consumer Docket has suffered substantially with staffing limitations. Three years ago, the Business Docket got off to a great start. Some of the most complex business cases in the system were being resolved in nine or ten months. The benefit to businesses of prompt, predictable justice cannot be overstated. Delays and uncertainty do not support a solid business climate. The Business Docket was designed to avoid those problems, and it did so very well in its first full year.

Unfortunately, staffing shortages devastated that Docket over the past year. Chief Justice Humphrey, who guides the Business Docket, is currently working toward an administrative rejuvenation of the Docket. By moving resources from other areas, we hope in six months to have restored the Docket to solid footing once again.

Small Claims. Second, small claims, landlord/tenant, and collection matters have had to take a back seat to urgent matters of violence, sexual assault, and children's needs. I have asked the Trial Court Chiefs to design a new case processing plan for these cases as soon as resources are available.

Intermediate Claims. And third, we must simplify and reduce the costs for those civil cases that are too big to be filed as small claims, and not large enough to qualify for the complex Business and Consumer Docket. I regularly hear from businesses and other litigants that our system of justice allows too much expensive discovery and motion practice, and makes it fiscally impossible to assert their claims. The bench and the bar are working together to improve the process for these claims.

Access to Justice

One last cautionary note for the decade to come. We must all work to improve the availability of legal services for vulnerable Maine people who cannot afford an attorney when they are confronted with urgent legal problems including those involving their children, their homes, or, in the face of domestic violence, their very lives. Imagine the confusion, the fear, and even anger of having to be alone in court at a time like that. And we must not abandon our elderly, who are increasingly vulnerable to economic and physical abuse.

The work that you do, in carefully crafting laws to protect our citizens, will be lost if only those who can afford their own lawyers receive the protection of those laws. We cannot allow the phrase "Access to Justice" to become a hollow promise.

VISION

And so, as we prepare for progress, we must keep our eye on the very specific vision of justice we have set out for Maine. I'm going to take the last few minutes to describe some of our most important goals for the decade ahead.

1. First, our court facilities will be physically accessible to everyone and will be safe from dangerous weapons. The court's infrastructure will be designed to best serve the public while keeping costs at a minimum.

- Multiple courthouses in any community will be consolidated into a single facility.
- The largest courthouses will provide central hubs for jury trials and complex litigation.
- Maine's rural system of justice will be strong and vibrant, without the need for reduced public hours. The rural courthouses will become centers of local innovation with improved video communication and reduced costs to local businesses, litigants, and law enforcement.

2. All cases will be heard promptly, because every case type is a priority for the people involved.

- The Business Docket will be fully staffed and providing prompt justice for businesses and consumers.
- Litigants with small claims and landlord/tenant matters will no longer wait months for hearings.
- Criminal Dockets will be streamlined throughout the State.
- There will be sufficient resources to expand innovative judicial approaches that have been proven to be effective, such as the Adult and Family Drug Treatment Courts, Mental Health Courts, and Domestic Violence Courts.

3. Support for access to justice will be strong and deep.

- Maine lawyers, who are already among the most generous in the country, last year donated more than \$300,000 in cash and more than 20,000 hours

of free legal services. They will be even more engaged in their local communities through the work of the Justice Action Group's Library Collaborative, which connects local libraries, more than 50 of them, with key legal information sources, and with local lawyers, in essence, giving each of those communities its own access to justice center.

4. Jury trials will be readily accessible.

- Costs of litigating smaller civil cases will be reduced.
- Jurors, who now receive only 15¢ per mile and \$10 a day, will be reasonably compensated for their community service.
- Maine lawyers will continue to partner with the Judicial Branch to improve public service in the courts.
 - Did you know that in the past two and a half years, the work of Maine trial lawyers, in injury-related litigation, has recovered over 11 million dollars for Maine's Medicaid accounts?

5. Finally, electronic information systems will substantially improve public service.

- Electronic filing will be available in all case types.
- All financial services will be centralized.
- Central help lines will be available to respond to litigants' questions about schedules and process. Other states have dramatically improved public service through these help lines, and we can do the same with just a few additional resources.

All of these goals are works in progress right now, with many of the foundations for realizing the vision progressing well.

And the good news is that Governor LePage's proposed budget for the Judicial Branch will allow us to fill vacancies and will support the Business Court reorganization, allow improved small business case management, and still protect the priority cases. And that budget provides the funding to assure a consolidated, safe, and energy-efficient courthouse, right here in the State's capital, and renovations in Washington County.

Realistically, it will probably be five years for much of the vision to be realized, and possibly ten years before we have electronic filing in every case type. But hav-

ing spent the last ten years working toward many of these goals, I know that they are reachable if we keep our eyes on the prize. And I can tell you that ten years goes by very fast.

WHAT YOU CAN DO TO HELP

Albert Einstein once said:

In matters of truth and justice, there is no difference between large and small problems, for issues concerning the treatment of people are all the same.

Here is what you can do to help us assure that Maine people are treated fairly regardless of the nature of their legal disputes, where they live, or their ability to afford lawyers.

- First, support the Governor's budget for the Judicial Branch.
- Second, come to our courthouses, watch justice in action, and give us your feedback. I know that many of you have already taken the time to get into your local courthouses and watch the proceedings. Mary Ann Lynch stands ready to help you make the arrangements.
- And finally, if you find extra money, send it on to us. We promise to make the very best use of every dollar you find.

It is an honor as always to speak to you here today. We are grateful for your support for justice in Maine. I wish you the best in the very challenging days and weeks ahead. Thank you.