

MAINE STATE LEGISLATURE

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OF THE
STATE OF MAINE

AS PASSED BY THE

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Augusta, Maine
2012

**STATE OF THE JUDICIARY ADDRESS
OF
CHIEF JUSTICE LEIGH INGALLS SAUFLEY
FEBRUARY 9, 2012**

We should never despair, our Situation before has been unpromising and has changed for the better, so I trust, it will again. If new difficulties arise, we must only put forth new Exertions and proportion our Efforts to the exigency of the times.

George Washington, letter to Philip Schuyler, July 15, 1777

Centralization and Consolidation: A Road Map to Improving Public Service

Good morning, and thank you, President Raye. Good morning, Governor LePage, Speaker Nutting, members of the 125th Maine Legislature, colleagues from the Maine bench, colleagues from the Tribal and Probate Courts, visitors in the gallery and, as always, my supportive family.

I am honored to have this opportunity to report to you on the State of Maine's Judiciary in 2012.

I begin with this: your individual commitment to improving justice in Maine has made a real difference in the lives of Maine people.

As difficult as the challenges have been for the 125th Maine Legislature and for a new Governor, you and the Governor have taken the time to understand the effects of these challenges on your constituents' needs for justice.

Governor: The Governor has supported a baseline Judicial Branch budget and is addressing the challenges of Domestic Violence in our courts.

Legislature: In the Legislature, many of you have worked very closely with us.

In Washington County, President Raye, and Representatives Maker, Tilton, and Burns visited the county courthouse. They will be working with us to improve that beautiful, but aging and dangerous facility.

In Aroostook County, Senator Sherman, Representative Martin, and Representative Fredette presented a session on the legislative process to lawyers in the region.

In Oxford County, Senator Hastings helped gather lawyers for a Legislative/Bench/Bar meeting.

In Hancock County, Senator Rosen, and Representatives Malaby, Flemings, and Luchini joined us to recognize Hancock County Judicial Branch employees followed by a Legislative/Bench/Bar lunch meeting.

In Newport, Representative Fredette assembled a large group of lawyers for a Legislative/Bench/Bar lunch meeting.

Representative Cushing met with the Law Court in Portland.

Senator Katz gathered stakeholders and is working passionately with the Courts, led by Justice Jabar, to build a consolidated, safe, energy-efficient courthouse in Augusta that will serve Kennebec County for centuries to come.

Representative Haskell has worked tirelessly to help improve the lives of juveniles, resulting in the State obtaining an Annie E. Casey Grant to help design detention alternatives for youth who might otherwise move from juvenile detention centers to the revolving doors of the county jails.

Representative Strang Burgess accepted our request to join the Children's Justice Task Force, bringing her knowledge from the Health and Human Services Committee to the table.

Many of you have taken time to visit the courts and talk with the judges, including: Senator Mason, and Representatives Stevens, Richardson, Monaghan-Derrig, Willette, Rochelo, Volk, and Pilon.

Speaker Nutting spent a day in the Augusta courts.

On the Judiciary Committee, Senators Hastings and Dill, Representatives Priest, Waterhouse, Sarty, and Maloney, assisted in reviewing the conflicting and unmanageable priorities of courts, and have made recommendations for change.

In the challenges of Domestic Violence, Representative Cain has worked closely with the courts to address an issue that I will talk about in greater detail in a minute.

And with your support, we brought real appellate court sessions to three Maine high schools: we sat at Lisbon High School at the invitation of Senator Mason, at Deering High at the invitation of Senator Alford, and at Richmond High at the invitation of Senator Goodall and Representative Berry.

These are just examples of the collaborative work you have all undertaken, and I recognize that it is always dangerous to identify specific people, for fear of leaving others out. I hope that those I may have missed will forgive me.

But I have taken the time to identify so many of you today to make a very important point. Maine benefits greatly from your cooperative and bipartisan support for access to justice. It doesn't happen in every State.

I am proud to tell the public that, despite the challenges of the economy, and the demands on all of you, in the Maine State House,

Justice is not forgotten. Thank you

1. Progress

Here is one small way to reward your efforts. Last year, I began my report with a discussion of events from the year 1820, with the establishment of the Maine Constitution. This year, rather than reaching back and beginning with the Magna Carta, in the year 1215, I will focus my comments on the last six months.

July 2011 marked the first occasion in many years in which the Judicial Branch began the fiscal year with a baseline budget that had not been significantly cut. The long-held clerk and marshal vacancies, dark courtrooms, and resulting delays and frustration for the public, caused by several years of deep cuts, led you to support the court budget proposed by the Governor that allowed us to restore critical positions.

In a time of extraordinary fiscal challenges, we are grateful for your recognition of the public's need for basic access to justice. You know that the Judicial Branch baseline budget does not provide sufficient funding for the full caseload to be addressed in a safe, timely, and efficient manner.

However, rather than dwell on what we cannot do, today I will tell you what is being accomplished with the baseline budget.

I begin with a snapshot of the Judicial Branch on July 1, 2011, as we entered this fiscal year.

- Every day, almost 600 new nontraffic cases are filed. These cases represent real people, your constituents. They include victims of crimes, and people with serious disputes regarding their families, their housing, and their businesses;
- To address these cases, the baseline budget for this Fiscal Year totals \$55 million, representing 1.9% of the General Fund;
- That \$55 million includes just over \$6 million for debt service and \$48 million for operations;

- The total \$48 million operation budget includes \$33 million for all staff, including judges; and
- \$14 million for the operations of a statewide system of justice that serves all Maine people, rural and urban alike.

We started the fiscal year with 39 courthouses, and we will end the year with 38, having consolidated court facilities in Dover-Foxcroft, eliminating the need for duplicative entry screening staff, two separate technologies, and a clerk's office that had to move back and forth between two buildings. The renovated court facilities for Piscataquis County opened this Monday, on time and under budget.

And in this year, we will have completed our long-term goal of consolidating all Superior and District Court clerks' offices that were located in the same town or city. From 46 clerks' offices existing several years ago, we have eliminated 15 separate offices, creating a current total of 31 clerks' offices. Not only is this more efficient and cost-effective for the taxpayer, it is less confusing for the public.

In July of 2011, approximately 40 nonjudge vacancies existed. We viewed the opportunity to fill the vacancies that had so plagued the system as both a responsibility and a challenge to engage in innovations that could improve our public justice services, and make the very best use of every available dollar.

Before filling vacancies, we reviewed the potential for reorganization, and, rather than return to business as usual, we looked at the vacancies to determine whether the positions could be streamlined, centralized, and consolidated to improve public service.

Some of that reorganization and innovation is still in the works today. Much of it is in place. So let me tell you what a baseline budget allows within the Judicial Branch.

- **Security.** First and foremost, we were able, finally, to fill all of the ten additional security positions that the Legislature created five years ago but that had remained mostly unfilled since then as a result of budget cuts.

That change alone has allowed us to provide entry screening, similar to the screening now in place in the State House, on nearly 30% of our court days. In December 2011, for example, we were able to provide entry screening on 35% of the court days. This represents a substantial improvement. Much more frequently, people

coming to courthouses will see staffed metal detectors and x-ray machines.

The potential for stressed, angry, or out-of-control litigants to arrive in a courtroom with lethal weapons is slowly but surely diminishing.

For this, on behalf of all the people who find themselves in court, I thank you.

We will continue to provide you with updates on current entry screening, along with the amount that would be necessary for every courthouse to have entry screening 100% of the time. Today, that number is just over \$3 million dollars. Incrementally, every approximately \$120,000 dollars added to the Judicial Branch budget allows for the equivalent of annual screening for one additional courthouse.

- **Centralized Services.** Our second objective in filling vacancies has been to centralize and streamline the trial courts' administrative public services. With three formerly vacant clerk positions, we have initiated a pilot project, creating for the first time a Judicial Branch Service Center.

- **Central Phone Services.** Primarily, the pilot project will provide centralized telephone services. There will be a real human voice at the end of a phone line to answer questions that would have gone to busy courthouses.

We have borrowed this idea from our New Hampshire neighbors. Chief Justice Dalianis reports that the New Hampshire courts undertook a study of centralized telephone services and concluded that as many as 70% of the calls to the local clerks' offices could be answered centrally.

New Hampshire has significantly more staff than the Maine Judicial Branch, and they were able to commit 20 staff positions to a statewide telephone service. We will begin more modestly in Maine, but in our pilot project, if even half of the phone calls to the clerks' offices can be answered by the centralized staff, the public will receive more prompt and thorough service, and the clerks in the targeted courthouses will be freed up to work directly with the public and provide more efficient services.

- **Centralized Bail Services.** We also anticipate that the Service Center will provide centralized return-of-bail services, which will improve the Judicial Branch's capacity to assure that bail funds are not released to a person who has failed to pay court fines.

- **Record Requests.** Ultimately, we hope that the Service Center will take on the additional responsibility of responding to record requests. Those requests, in many instances, come from businesses that need information from the courts in order to hire employees and make other business decisions. The centralization of this effort has the potential to provide much swifter responses to businesses. Representative Rotundo—you have sought these services for your constituents for years, and I am pleased to say, the first steps to making it happen are finally in the works!

The Service Center balances our efforts to maintain rural courthouses, and at the same time streamline and improve administrative services to the public, thus reducing the costs of duplicated staffing.

The baseline budget has also allowed us to reenergize several different areas of public service.

- **BCD.** We have been able to reinvigorate the Business and Consumer Docket Clerk's Office. That office struggled with staff vacancies, causing our response to businesses to fall short of our initial expectations. In the last six months, the Business and Consumer Docket has been restored to health, and Chief Justice Humphrey, who leads that docket, reports a return to expeditious services for businesses and consumers alike.
- **Rolling Closings.** Also, in these last six months, with the return of staff to many of our beleaguered clerks' offices, we no longer have rolling closings in the smaller courts. When I spoke to you last year, courthouses in several rural areas were routinely experiencing reduced clerk hours. That has stopped.
- **Access to Justice Coordinator.** Finally, we have taken a vacant staff position that supported the Supreme Judicial Court and changed the position to establish, for the first time in Maine, an Access to Justice Coordinator. This position will be responsible for assuring that people with dis-

abilities do not find those disabilities to be a barrier in their efforts to obtain justice. Similarly, the coordinator will address language barriers, and compliance with state and federal law, and will help organize our assistance for the growing number of litigants who are unrepresented during some of the most important events in their lives. Some states have entire departments within their Judicial Branches focused on access to justice issues. Until now, Maine has not had a single staff person dedicated to addressing these critical issues.

All of these improvements occurred within current staffing levels, with no new dollars beyond baseline funding. In addition, we have continued with several other important innovations.

- **Unified Criminal Dockets.** Our efforts to streamline the antiquated and overlapping criminal dockets of the District and Superior Courts, which caused delays and duplication of staff, have been completed in the two largest consolidated courthouses: Portland and Bangor. Innovative trial judges, clerks, district attorneys, and defense attorneys worked creatively with Justices Gorman and Silver to accomplish these achievements.

With those Unified Criminal Dockets in place, we can confidently report that the improved process cuts the time for resolution of the serious criminal felony cases, *in half*. That change alone improves public safety. Particularly in matters of domestic violence prosecutions, swift responses and prompt trials are critically important.

- **Katahdin Counsel.** This year also saw the launch of a new effort, referred to as the Katahdin Counsel project, led by Justice Levy, to recognize the important work of Maine lawyers who provide free legal services to Maine people caught up in the legal system who cannot afford an attorney. As you know, Maine lawyers donate their time and their dollars in substantial amounts, putting them second in the entire country for generosity.

Recent research has revealed how critically important legal services are in one key area. The availability of legal assistance programs has been identified as one of the best predictors of decreased Domestic Violence.

In all of our work with Maine lawyers, we are fortunate to have Justice Alexander's commitment to supporting and training new and experienced lawyers. We must continue to support our lawyers in these crucial efforts.

- **Co-Occurring Disorders Court and Veterans Court**

And I am pleased to report that the successful Kennebec County Co-Occurring Disorders Court has now added a Veterans component. Once again, Justice Nancy Mills, working with community providers, has found a way to address a serious community need. I want to thank the Veterans Administration at Togus for working with us to find resources for struggling veterans. In addition, I want to thank T.J. Wheeler, who is a Case Manager in the Co-Occurring Disorders Court, a veteran himself, for his persistence and commitment in moving this new Veterans docket forward. This year, with the assistance of a grant, an extension of the Co-Occurring Disorders Court into Cumberland County is being considered.

As I have indicated, all of these improvements and innovations have been accomplished within the authorized budget.

Imagine what we could do to improve justice services with just a little more funding:

- **Security**—again, every additional \$120,000 allows us to provide the equivalent of full-time entry screening in one more courthouse.
- **Technology**—We must move the courts into the twenty-first century, not just for efficiency, but also for improved public service. With the assistance of Justice Mead's technological skills, we will be reporting to you in July on a plan for creating a fully electronic court system.

And I am pleased to report that this April, the Maine Supreme Judicial Court will pilot live-streaming oral arguments. With some serious creativity, we believe that we can accomplish this without new resources. So mark your calendars: on April 10, 2012, you will be able to sit at your computers and listen to every oral argument. Case summaries are available on our website, so if you can't dedicate your whole day, you can listen to the cases that interest you most.

2. Domestic Violence

My last topic will not surprise you. The Domestic Violence tragedies of this last year have made it clear that we must continue the search for solutions, and we must do so together. The statistics are chilling: the Attorney General reports that, in the past five years, 57 people were killed in Domestic Violence related assaults. Fifty-seven people—including children—died at the hands of people close to them. And that doesn't address the thousands who have been injured, isolated, or sexually assaulted, many of whom live in daily fear.

To be clear, in our efforts to eradicate domestic violence, we must not allow a rush to judgment to sweep in the innocent. We must preserve and enforce the rights guaranteed by the Maine and federal constitutions. And we must carefully balance the rights of the accused against public safety and protection for victims.

But, while the courts are neutral fact-finders, courts are not neutral on the fact of, or the solutions for, Domestic Violence. Chief Justices across the country are looking for ways to better identify the potentially lethal cases. Several years ago, the Conference of Chief Justices identified several principles that help guide us, and here are just a few of the most critical principles:

- Families in crisis must be able to easily access courts;
- Judges must have comprehensive information on prior court orders and any history of violence in the family;
- Convicted abusers must be held accountable; and
- Judges can be catalysts to enhance intergovernmental collaboration for improvement.

In Maine, all three branches of government are focused on taking concrete actions that will reduce and eliminate family and intimate partner violence and sexual assault.

Governor LePage has taken a critical step forward in emphasizing that the tragedy of Domestic Violence is not *only* a women's issue. It affects children, women, men, and increasingly, the elderly.

In the next months, you will have before you a number of bills aimed at improving governmental responses to this terrible problem.

Today, I suggest several actions you can take to improve Maine's response to Domestic Violence in all its forms.

- **Community Involvement.** Think long-term and globally. Violence in any form cannot be stopped through one single approach. We need to assure that children grow up in healthy and loving settings, that bullying and violence are swiftly addressed wherever they occur, and that everyone understands that violence is unacceptable.

Our response must involve community programs such as the Coordinated Community Response program working with local police; organizations that support healthy teen years—like Hardy Girls Healthy Women, and Boys to Men; and men speaking out against violence, as the Governor has done so candidly.

- **Improved information.** Next, in the context of judicial proceedings, we must improve the quality of information available to bail commissioners, judges, and legal advocates when Domestic Violence charges are filed. Criminal history information, prior Protection Orders, and Risk Assessment information should be available for bail decisions and sentencing decisions. Some of these efforts will require new legislation and fiscal resources. Thoughtful responses and improved attention to risks of continued violence may ultimately require more resources for the courts, prosecutors, indigent legal services, and pretrial services.
- **UCDs.** Next, you can support the development of Unified Criminal Dockets when we are able to bring them to your districts. As I noted earlier, just this change alone can cut felony resolution time in half.

Justice delayed is not only justice denied, in some cases it is a recipe for tragedy.

- However, it is not a simple task to streamline criminal procedures. The unification of a region's criminal dockets is a complex process, involving counties, law enforcement, prosecutors, and defenders. Each new Unified Criminal Docket requires its own design, an initial infusion of scarce judicial resources, and the input of all stakeholders to do it right.

- We are beginning the design of a Unified Criminal Docket in York County, and we will be working with the various stakeholders to assure success in the second largest criminal docket in the entire State.

3. Lack of Criminal History Record Information

Finally, we know that one of the most important tools in averting repeated violence is for judicial officers to have the criminal history records of the person charged with Domestic Violence. Without that history, informed decisions cannot be made.

We have recently learned that there are substantial impediments to Bail Commissioners receiving that important information. The problem stems from a variety of issues, including varying legal interpretations, technological limitations, law enforcement staffing limitations, and miscommunication.

But frankly, it doesn't matter why Bail Commissioners don't have the records.

By law, you have mandated policies by which criminal history records will be relayed to the Bail Commissioners.

To make well-informed decisions, they must have the information.

Too often, they are not receiving the reports.

That is simply not acceptable.

Today, on behalf of the Chief Judge of the District Court, I am announcing that, effective immediately, Bail Commissioners will be instructed not to set bail in Domestic Violence related charges unless they have received access, at a minimum, to the Maine Criminal History Record Information of the defendant.

We recognize that this step may strain resources, and that there are potential constitutional considerations that must be addressed. But we cannot ignore the problem any longer.

To address these problems quickly, I have charged the Trial Court Chiefs with bringing together a collaborative task force to solve the problem of obtaining criminal history records in Domestic Violence cases.

Attorney General Schneider and Commissioner Morris of the Department of Public Safety are already at work on the problems and, with us, are committed to finding a solution.

In the end, we must all work together to find a way for critical information to reach judges or bail commissioners quickly, and to ensure that domestic violence cases are resolved promptly.

4. Conclusion

To conclude this morning, I want to thank all of you again for your efforts to support the courts to improve access to justice for Maine people. We continue to invite you to visit courts and to invite the Law Court to your local schools.

We must remember as we grapple with some of the most difficult social and economic issues we have faced, that Maine is a wonderful place to live and work. We can and we will work together to make it an even better place for our children and the people of this great State.

I leave you with this:

Mahatma Gandhi reminded us that

"The future depends on what we do in the present."

We cannot wait for a better time, for a better economy, for an easier path.

We must follow Teddy Roosevelt's advice—

"Do what you can, with what you have, where you are."

Thank you very much for your support for justice for Maine people.