

MAINE STATE LEGISLATURE

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**STATE OF THE JUDICIARY ADDRESS
OF
ACTING CHIEF JUSTICE ANDREW M. MEAD
MARCH 10, 2021**

**MAINE JUDICIAL BRANCH
THE STATE OF THE JUDICIARY
A Report to the Joint Convention of the First
Regular Session
130th Maine Legislature**

**Presented by Acting Chief Justice
Andrew M. Mead
March 10, 2021**

Governor Mills, President Jackson, Speaker Fecteau, distinguished Members of the historic 130th Maine Legislature, and people of the State of Maine.

My name is Andrew Mead. I am the Senior Associate Justice of the Maine Supreme Judicial Court; I have been serving since April 2020 as the Acting Chief Justice pursuant to statute.

Thank you for the honor of inviting me to address you on the state of the judiciary. It has been an eventful year, to put it mildly, and I have much to report. However, before moving to the events of the year, I have some heartfelt thanks to express to some very special people.

My preference would be to personally thank by name each and every one of Judicial Branch's 518 employees who have worked tirelessly to keep the doors of justice open in Maine to the maximum extent that we safely can. They have truly gone above and beyond the call of duty. Unfortunately, time constraints prevent me from naming each of them, but please understand that we are blessed with an extraordinary team of dedicated public servants who constitute the Maine Judicial Branch.

The day-to-day operation of the trial courts is overseen by a team of exceptional managers. At the top of that team are the Trial Court Chiefs:

Chief Justice Robert E. Mullen of the Superior Court
Chief Judge Jed French of the District Court, and
Deputy Chief Judge Rick E. Lawrence also of the District Court

The administrative team is led by our State Court Administrator *extraordinaire* James "Ted" Glessner.

The Trial Court Chiefs and Ted have been at the epicenter of our response to the pandemic. We have placed enormous burdens upon them during this COVID era as we have been forced to reinvent almost all of what it is we do. They have consistently and unflinchingly and successfully risen to the task in every instance. Chiefs: Thank you. You have been pillars of strength during this time.

The Maine Supreme Judicial Court serves as a de facto Board of Directors for the operation of the courts and I could not be more honored and pleased to serve with my extraordinary colleagues. They are:

Associate Justice Catherine R. Connors
Associate Justice Andrew M. (Mark) Horton
Associate Justice Thomas E. Humphrey
Associate Justice Joseph M. Jabar

I thank them all for their unfailing support and assistance.

And I must single out Acting Senior Associate Justice Ellen Anne Gorman for particular recognition and my enduring and profound thanks.

The role of Chief Justice is a demanding one, even in the best of times. During the COVID era, it is a formidable task for one person. Fortunately, I have had the enormous, and absolutely indispensable, support of Justice Gorman. Her tireless efforts and boundless talents and commitment to the effective operation of the courts are immeasurable. Justice Gorman: Thank you, a thousand times over.

Finally, I would like to thank my wife Kelly. To her I say: As you know, I have been largely absent from the home scene over these last eleven months, but you have kept the family circle tight during these times, and your unfailingly cheerful support has buoyed me even during the most challenging times. "Thank you" isn't nearly enough. There simply aren't any words that are truly up to the task, so I will just say, "143."

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I'm going to offer this address in three segments:

First, where we've been;

Second, where we are; and

Third, where we're headed.

Let's go back in time.

Back to January 2020. Things were very much "business as usual." Little did we know, it all would change in very short order. And I am sure you remember all too well the dark days of March 2020, when the enormity of the threat of the novel coronavirus became apparent. Everyone immediately and urgently attempted to adjust and plan for a very uncertain future.

For those of us in court leadership, we knew we couldn't simply close our doors. We remained open, but only for matters involving life and liberty interests such as child protection matters, protection from abuse petitions, and individuals being held in lieu of bail awaiting trial.

We in court leadership knew we had to move forward, starting essentially from zero — a daunting task considering the geographical range of our court locations, the multitudes of people we serve, and the gravity of our mission.

We mustered all available resources and started the thoughtful response process that continues to this day.

Our mission then, as it is now, was to open the courts to the maximum degree possible while still taking responsible steps as recommended by health experts for the safety of the public and our people.

We meticulously reviewed data from all court locations and assessed urgent needs. We expanded court operations in several locations on a limited basis and staggered the attendance of court employees to minimize overlap. We carefully complied with all CDC safety measures.

We cancelled preexisting dockets, recalled warrants for unpaid fines, reviewed bail orders, and set personal recognizance bonds wherever possible.

We established basic safety rules for in-court proceedings. Everyone who could work from home was directed to do so. We had our IT department arrange for

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secure internet connections and telephone forwarding services. We obtained and deployed plexiglass barriers, masks, face shields, and air purifiers for all judicial branch locations throughout the state. We were able to accomplish these efforts in fairly short order as a result of the hard work and dedication of individuals throughout the judicial branch.

During those first weeks, we addressed the changing circumstances through ad hoc orders and directives, but it soon became apparent that we needed a new format and specific archive location for measures undertaken to address the realities of the pandemic. Thus, a new genre of judicial directives was created: the Pandemic Management Order — the "PMO."

PMOs are efficient court administration and process tools. They can be quickly implemented and revised — most have gone through multiple revisions to date — and they can be equally easily vacated when necessary. They are archived on the Judicial Branch website for quick and easy access. You can find them under the yellow "COVID" banner.

The PMOs filled a critical need as we have endeavored to reinvent almost everything we do. Input and suggestions from within and outside the judicial branch provided critical insights and information that informed the drafting of the PMOs. The PMOs have addressed, for example:

- Courthouse scheduling;
- Obtaining protection orders;
- Conditions for entry into courthouses;
- Boards and committee activities;
- Oral arguments before the Supreme Judicial Court;
- Creation of stakeholders meetings;
- Limitations on summoning for specific court dates;
- Conditions for the taking of depositions;
- Approved mailing of pleadings by email (this is not e-filing!);
- Extended deadlines for filing;
- Approved electronic signatures;
- Rescheduled bar exams;
- Promulgated special rules for eviction proceedings;

- Promulgated rules for remote video (Zoom) proceedings;
- Specified matters requiring in-person hearings;
- Approved written waivers of first appearances and arraignments;
- Established special rules for child protection hearings.

The original plan was that PMOs would be promptly vacated when the COVID siege was over. However, it is becoming increasingly apparent that many of the innovations — such as emailed filings and remote video proceedings — have demonstrated their value and will likely be retained in the future in some fashion.

As April moved toward May, it became abundantly clear that we needed a plan for scheduling that extended beyond the two-week periods that we were addressing at the time. On May 27, 2020, we issued our **"State of Maine Judicial Branch COVID-19 Phased Management Plan."**

The Plan, which consists of five discrete phases, required us to do two things as we moved cautiously toward reopening the courts: first, it required us to complete a comprehensive review of each of our 34 courthouses and 2 judicial branch facilities to establish capacity controls and create coronavirus containment processes, and secondly and separately, it required us to create new processes for handling matters based upon case types. All matters are classified and prioritized in differentiated case types based upon the specific nature of the proceeding.

Before moving to each next phase, we ensured that the necessary modified procedures were in place and that our containment measures were adequate. In each instance, we sought and obtained review and approval of our efforts by the Maine CDC and DHHS.

Throughout the summer of 2020, we moved through the phases according to the Plan. In the earliest phases, only a few case types were approved for scheduling, but as we progressed to later phases, additional case types were added to the approved list. In the meantime, however, new cases were still being filed. These newer cases, added to those cases that were

pending when the pandemic hit, have created a backlog, which continues to grow.

Phase Five, the final phase of the Plan, which opens up virtually all case types for scheduling including jury trials, was on track for commencement last October.

After months of planning and modification of processes and facilities, we successfully conducted jury trials in Bangor and Augusta in late September and early October. Through the tremendous efforts of court staff, judges, and the bar, and with the implementation of modified processes and the protective measures, those jury trials were held without any reports of viral spread or outbreak.

Unfortunately, as you know, coronavirus cases started ramping up significantly in October and November. By early November, it was obvious that the infection rates and deaths attributable to the virus were rising at an alarming rate — new case numbers that hovered in the low double digits statewide during the summer increased dramatically into three digits — and our hopes for a return to almost full operational ability in early winter were not to be realized. We issued an Addendum to the Phased Plan, and I issued a statement, explaining that the Plan's anticipated reopening dates could not be accomplished as hoped. We were unable, nor would it have been appropriate, to project a date for expansion of court operations given the uncertainty of the trajectory of the virus.

In-person dockets were already running at maximum capacity given the limitations of capacity controls, judicial resources, and availability of judicial marshals.

Let me digress for just a moment. As you likely know, judicial marshals provide security screening, among other duties, at courthouses — entry screening that now must include COVID screening measures. The ability to schedule in-person proceedings was and continues to be limited by the inadequate numbers of judicial marshals. We can't open a courthouse to the public without judicial marshals, and we simply do not have enough marshals to provide full coverage throughout the state at any one time. No technological advances could ever replace our need for additional marshals at courthouse entry points.

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Given the limitations on in-person hearings, we acquired Zoom licenses for judges and court clerks during the summer of 2020 to allow for remote video proceedings. We acquired "Zoom carts" — mobile rolling Zoom terminals with large screen video displays — all fully reimbursed with Cares Act funding later in the year.

Our proficiency with Zoom-based judicial proceedings continues to grow and our number of Zoom sessions — including both meetings and judicial proceedings — is expanding exponentially. In August 2020, we conducted 270 remote video sessions. In the month of January 2021, we conducted 1,680.

However, the simple reality is that even with these in-person and remote video processes being fully utilized, court dockets continue to be filled to capacity with priority cases involving protection, families, and criminal matters. Neither cases further down the priority list, nor jury trials, even for criminal cases, are being heard. This is a deeply distressing and frustrating circumstance for the court and litigants alike.

We have pushed forward, maximizing our available resources, and creating strategies and tools for monitoring local coronavirus trends with color-coded indicators for specific locations around the state. We involved Regional Judges, in conjunction with the Trial Court Chiefs, in making decisions regarding openings and closings on a local basis, as opposed to the statewide decisions we had previously been making. The Judges are provided with detailed weekly reports on local conditions to assist in the decision-making process.

This brings us to where we are now.

We are basically holding our own, but not moving forward in the way we would hope. We have reached the limitation of our existing resources under the current conditions of the ongoing pandemic.

The "currently pending" numbers for most case types are up from 2019 levels. Most notable are the pending criminal numbers.

At the end of January 2020, on the eve of the arrival of the pandemic, slightly over 17,000 criminal cases were listed as pending.

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At end of February 2021, slightly over 27,000 criminal matters were pending.

In other words, the number of pending criminal matters increased by approximately 10,000 cases during the past twelve months. Of that number, 52 are homicide cases, which because of their typical length and complexity tend to dominate and slow down criminal dockets.

On the civil side, here are some rounded-off, representative numbers:

General civil cases:

Pre-COVID — about 3,000; currently — about 4,300; up — about 1,300

Real Estate:

Pre-COVID — about 2,000; currently — about 1,500; down — about 500

Evictions:

Pre-COVID — about 1,300; currently — about 1,700; up — about 400

Small Claims:

Pre-COVID — about 1,300; currently — about 4,700; up — about 3,400

These numbers do not include cases that involve bankruptcies or are otherwise stayed by judicial order.

The numbers speak for themselves.

Where are we headed?

As you know, the coronavirus numbers have improved in the recent past and vaccinations are being administered throughout the state. I'm pleased to say I received my first injection a week ago when my age group was opened up!

We are cautiously optimistic that we can return to the reopening process set out in the Phased Plan. We are currently actively exploring the feasibility of resuming jury trials in several locations in the very near future.

We are seeking funding for the additional critical marshal positions.

If the coronavirus figures continue to improve, we will move tenaciously forward with the Phase Five plans.

When the virus allows us to return to something like normal, in addition to reinstating those practices that allowed us to process cases far more expeditiously prior to the pandemic, we will also look for new and innovative ways to move the dockets. We are in the process of creating working groups to develop and propose new, improved, and efficient practices in the post-COVID era.

It is difficult, if not impossible, to predict when "back to normal" will occur — that date is directly tied to the status of the virus, but we stand ready to go full steam ahead as soon as safely possible.

Although emerging victoriously from the pandemic is our primary focus these days, we are moving forward on a number of very important and exciting initiatives.

We are deeply committed to equal justice for all. We have spoken loudly and clearly on the critical need for justice systems to operate free from the scourge of racial bias and discrimination. Justice and the rule of law demand no less. The Judicial Branch has conducted critically important in-house educational programs on implicit racial bias in the past. Our current and future educational efforts, including a three-component series on racial justice, will continue to focus upon diversity, equality, and inclusion issues.

In addition to continuing educational efforts, we will be embarking on a comprehensive, introspective study to identify and address systemic racial bias within the judicial system. We need to gather and analyze the data and, where any racial inequity appears, ask the question, "Why?" and implement systemic changes as necessary to alleviate disparate treatment. We have been gathering information on resources and seeking knowledgeable consultants to help us plan for this major initiative. We will be moving to the actual planning stages in the very near future.

Construction on the York Judicial Center is underway. The new building is slated for occupancy in 2023. It will be a spacious, well lit, efficient, and safe place for judicial proceedings. Photovoltaic cells will be mounted on the roof of the building and canopies in the parking area, providing for an extremely energy and cost-efficient building that will take us well through the twenty-first century.

Our new Odyssey case management and e-filing system is up and running on a pilot project basis in Bangor and in the Business and Consumer Docket. It is, at present, in a working but evolving status with additional components and case types to be added as we gain experience.

This is truly a "shakedown cruise," during which we will identify and address any aspects requiring modification before moving to deployment in other areas. We have created an email address and secured a dedicated telephone number (available on our website) for users and stakeholders to register suggestions or concerns.

Before we vacate our PMOs, we will closely review the innovations and new processes that we created during the COVID crisis to determine which of them should be retained when this siege is over.

We will create disaster management plans so we won't have to reinvent our processes on the spot if — heaven forbid — we are faced with another widespread systemic crisis.

We have completed our Annual Report that has all of the usual facts and figures. Copies will be appearing in your mailboxes soon, if they haven't already arrived. If you would like to receive a digital copy, our legislative liaison, Julie Finn, will be happy to provide it to you upon request.

When we talk of future plans, it is important to remember that we are *still* in the midst of this pandemic, and there is *still* much to be done. However, when I envision the future, I am fully confident we will emerge better, stronger, more efficient, and more effective as a result of experiences and lessons learned during the COVID crisis.

I know this because we have exceptionally skilled and dedicated people on our team — people committed to our Mission statement which is:

"To administer justice by providing a safe, accessible, efficient and impartial system of dispute resolution that serves the public interest, protects individual rights, and instills respect for the law."

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Finally, I would be remiss if I did not mention the recent departure of three esteemed members of the Supreme Judicial Court:

Associate Justice Jeffrey L. Hjelm retired from the court at the end of 2019, but we are grateful that he continues to be a resource to the court in his role as Active Retired Justice.

Senior Associate Justice Donald G. Alexander — the "*legendary*" Justice Donald G. Alexander — retired in January 2020 but not before securing the distinction of being the longest continuously serving judge in the history of the State of Maine. His books, writings, and contributions to continuing legal education will guide the profession for generations to come.

Chief Justice Leigh Ingalls Saufley resigned in early 2020 to accept the position of Dean of the University of Maine School of Law after a long record of innovation and progress that have occurred within the Judicial Branch under her inspired leadership.

In better times, we would have convened gatherings to offer fitting tributes to these distinguished jurists, but for the meantime we are constrained by the circumstances of the pandemic.

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We wish them well.

And I thank you, Governor Mills and distinguished Members of the historic 130th Legislature for your kind attention. We wish you well in your important service to the people of the State of Maine.

And as I close, I would like to take a moment to acknowledge the challenges and losses that have confronted the people of Maine during this difficult time.

It has been an exceptionally difficult time, but I do believe we are turning a corner.

I will leave you with a short quote from Alfred Lord Tennyson:

"Hope smiles from the threshold of the year to come, whispering 'it will be happier'..."

True enough.

Be safe. Be well. And thank you.