

State of the Judiciary Speech
Chief Justice Leigh I. Saufley, Maine Supreme Court
Message to the Maine Legislature
February 11, 2003, in Augusta, Maine

Good morning Governor Baldacci, President Daggett, Speaker Colwell, Members of the 121st Maine Legislature, Members of the Court, Friends and Family. It is my honor and privilege to be before you for the second time to describe to you the State of Maine's judiciary.

Approximately one year ago, I stood here and told you that I would be back this year with a detailed plan for the infusion of just a few new resources necessary to launch Maine's system of justice firmly into the 21st century.

Isn't it amazing how much a single year can change your outlook on the phrase "just a few new resources"

So let's be clear eyed about this. This year, a different approach is necessary. The people of Maine are looking to the leaders of government to be accountable, to find reasonable solutions, and to keep our eyes on priorities as we do so. They are counting on me, on you, on all of us who make up the government of this great state to limit our spending and to find new ways of doing business in difficult economic times. Today, I will set out the efforts that the Judicial Branch is undertaking to respond to those financial challenges while keeping our eyes firmly on the priorities that we have established.

The Supreme Judicial Court as the Board of Directors

I begin today by introducing the people who are responsible for guiding the courts through these challenges. Maine law establishes that the Supreme Judicial Court is the equivalent of the Board of Directors of the court system. With the assistance and input of the Trial Court Chiefs, and the State Court Administrator, it is the seven men and women of the Supreme Judicial Court who shape policy, allocate resources, and determine the tone and direction of the entire Judicial Branch of government.

Many of you know me and know that I am a native Mainer, and a proud product of Maine public schools. I grew up in Cumberland County, spent four of the best years of my life in Penobscot County at the University of Maine, and, after graduating from Maine's School of Law, I started my legal career in Hancock County. But you may not know the extraordinary jurists who sit with me on the Supreme Judicial Court. Now one thing, I know that you are a very welcoming group, but judges are not accustomed to applause. If you have such an inclination, I would ask you to hold your applause until I've introduced all the judges.

Justice Robert Clifford is our Senior Associate Justice. And he still resides in his hometown of Lewiston, Maine. He served as Lewiston's mayor in 1971 and 1972, and he was a member of the Maine Senate in the 106th and 107th Legislatures. His wisdom, experience, and intellect are respected throughout New England, and he has been a wonderful mentor to me in my current capacity.

Justice Paul Rudman is a Bangor native but has migrated all the way to Veazie. Justice Rudman has many responsibilities on the Court, but he is best known as the wizard of judicial education. He has exhibited remarkable skills at finding scholarships, grants, and tuition waivers so that our judges can attend the necessary judicial education but do so at no cost to the State of Maine.

Justice Donald Alexander served as an assistant to Senator Edmund S. Muskie and a Deputy Attorney General for the State of Maine. He has served as a judge on both of Maine's trial courts and is a prolific publisher of important books and compilations relating to Maine legal practice. Justice Alexander's well-known intellect and rapier wit keeps all of us on our toes.

Justice Susan Calkins hails originally from Colorado. Even though she is a graduate of the University of Maine's School of Law and has resided here for over thirty years, we still refer to her as "the westerner." In 1980, Justice Calkins became the third woman ever appointed to any Maine court. She served on both of the trial courts, including several years as Chief Judge of the District Court. Justice Calkins's experience in administering trial courts has been a welcomed assistance to the Court during our latest efforts to streamline the delivery of justice.

Justice Jon Levy is a New York native, but had the good sense to come to Maine to practice law. Justice Levy is the author of the definitive treatise on Maine Family Law. He has recently, at my request, taken on the responsibility of shepherding the court's current efforts to make more effective use of our limited judicial resources.

Now, I'd like to introduce two other important people the Chiefs of the Trial Courts.

The Chief Justice of the Superior Court may have a familiar name.

Chief Justice Nancy Diesel Mills was born in Connecticut and came to the University of Maine School of Law because she wanted to live in Maine. During law school, she met a lawyer by the name of Peter Mills, and her relationship with Maine became set in cement. As Chief Justice of the Superior Court, Justice Mills has been instrumental in expanding the Single Justice System and the Judicially Assisted Settlement Program, and in organizing schedules so that victims of violent crimes and their families no longer have to wait years for matters to come to trial. She has also improved rural access to justice by creating a schedule that assures the presence of a Superior Court justice in every county for some part of every month.

District Court Chief Judge Vendean Vafiades was born in Bangor and is also the product of Maine's public schools. Chief Judge Vafiades's commitment to improving the lives of Maine families has been demonstrated in her dedication to assisting the Legislature in Child Protection Reforms, in her work as a Juvenile Drug Court judge, in securing funding for the Family Drug Treatment Court and in her tireless energy in helping Maine's District Court judges do the extraordinary work they do with limited resources.

As you can see, the talent and experience of the people who guide the Judicial Branch of Maine's government should be a source of great pride for the State of Maine.

Overview of the Delivery of Justice in Maine

I turn now to the basics of the Maine court system. We all know from civics classes that it is the role of the Judicial Branch to interpret and enforce the laws that are enacted by the Legislative Branch, and brought to life by the Executive Branch.

What is not so clear from those civics lessons is how different the administration of the Maine Judicial Branch is from judicial systems in many other states.

We are a lean organization administratively, and that is by design. Unlike courts in many other states, all three levels of our state courts, including the District, Superior, and the Supreme Judicial Courts, are managed through one single small administrative office.

The Administrative Office of the Courts has been headed up for ten years by a very talented individual who Dan Wathen stole fair and square from Delaware Ted Glessner. Ted Glessner and his dedicated staff are responsible for the management of every state courthouse in Maine. This method of organization has kept our administrative costs low and allows us to allocate resources within the system as necessary to meet the changing needs of the public.

But I would not be honest with you if I did not tell you that Maine's courts are a bit too lean to do all of the work that you have given us.

In contrast to our neighbor, New Hampshire, which has 47 courthouses for an almost identical population and much smaller geography, we have only 42 courthouses. We have had, until recent budget restrictions, 470 people including judges. While New Hampshire's Judicial Branch includes 676 full time positions -- fully 200 more people to do the same job.

Our budget of approximately \$54 million a year (obviously significantly less than that of the New Hampshire's Judicial Branch) is offset by income to the General Fund of fines and fees totaling approximately \$30 million each year. The net cost to the General Fund to support an entire system of justice in Maine is approximately \$25 million, or less than 1% of the State's budget.

As you can see, we are a very small segment of government. Yet, in fiscal year '02, over 282,000 new cases were filed. Using nationwide comparisons, we have very high caseloads, and a very efficient operation.

Unfortunately, that efficiency comes at a price. With our lean administrative staff, we do not have:

- a facilities administrator,
- an Americans with Disabilities Act compliance officer,
- an office of language and interpreter services,
- or a website manager

Our efforts to improve access to justice are hampered by these limitations.

One of the other side effects of having so few administrators is the need for judges to be much more involved in administration. This reduces our ability to be in the courtroom meeting the needs of the people of this state. Further reductions in our staff would result in an even greater loss of the most effective use of judge time.

Collaboration

In order to assure that the people of Maine have the best system of justice that we can deliver, collaboration with other branches of government is more important than ever. We have made significant strides in working, when it is appropriate, with both other branches of government.

For example, the Attorney General's office has asked us to consider greater use of telephonic conferences in order to reduce travel expenses for Executive Branch agencies and for other litigants, and we have done so.

We are working with the Sheriffs' offices to better coordinate scheduling for security and transportation of prisoners.

And we will be coordinating our efforts wherever possible with the prosecutors' offices, which are also suffering from the prospects of reduced staffing.

Other Court Systems

In addition to collaborating with other branches of state government, we also collaborate with three other institutions in Maine that deliver justice to Maine's citizens. None of these other three court systems is funded through the State budget, but each has contributed in its own way toward helping our state courts carry out their responsibilities.

The Federal Courts

I begin with the federal court system. The federal courts include the federal trial courts, the Bankruptcy courts, and the First Circuit Court of Appeals. Judge Kermit Lipez, an appellate judge with the First Circuit Court of Appeals, is here this morning representing the federal courts. I am proud to say that Judge Lipez is a former member of the Maine courts. The federal courts have been a great assistance to the state court system, particularly in areas of security and judicial training. They have even found a way to donate their old entry screening equipment to our state courts. We are grateful for their support and collegiality.

The Tribal Courts

Next, I'd like to introduce Maine's Tribal Courts. The Tribal Courts have jurisdiction over misdemeanors on tribal territory, as well as domestic violence cases, child protection proceedings, and other family and probate matters.

Representing the Penobscot Tribal Court today is Chief Judge Gary Growe. Beside him is Judge Rebecca Irving, the Chief Judge of the Passamaquoddy Tribal Court. I understand that soon the Houlton Band of Maliseets will also begin to provide justice within a Tribal Court.

We are renewing our collaboration with the Tribal judges to coordinate judicial training in areas of child and family related law. The Tribal Courts face many of the same difficult human problems and resource limitations that we are facing every day. We are pleased to be working with the Tribes on these issues of mutual interest.

The Probate Courts

The third group is the Probate Courts through which Maine's 16 counties provide access to justice. Probate Judges are Maine's only elected judges and they have jurisdiction over matter such as trusts, estates, adoptions, and private termination of parental rights proceedings.

Judge Dana Hanley, President of the Probate Judges' Assembly, and a former member of the Maine Legislature, is here today representing the Probate Courts throughout the State of Maine.

The Probate Courts have been extremely generous with their courtroom space. In the state courts, we often find that we have too few courtrooms, and the Probate judges have graciously donated their own courtrooms for our use whenever they are not in session. Judge Hanley has also reached out to the state courts to collaborate on judicial training in family matters, and I am pleased to say that a cooperative relationship among our courts has been enhanced by his efforts.

As resources dwindle, the necessity for continued interaction and sharing of resources is heightened. I am thankful for the generous responses from each of the other providers of justice in Maine and grateful for their presence here today.

Budget

Now I turn directly to matters of the judiciary's budget.

Prior Efforts to Address Court Under Funding

The state courts in Maine have been lacking in sufficient resources for quite some time. Every single State of the Judiciary Address to the Legislature for the past ten years has addressed this chronic problem. Yet, Maine still has the fewest Superior Court justices of any state in the entire country. On a per capita basis, Maine judges handle more cases than many other state judges do.

In this time of budget shortfalls, this may seem like an empty refrain.

But it is an inescapable fact that if the laws created here are to have meaning and life, the courts of this state must have the resources to effectuate and enforce those laws.

It does no good to craft finely detailed statutes, such as child protection reforms, or statutes requiring accountability from people convicted of domestic violence, if the courts are too overwhelmed to give meaningful time to each case. The good news is this:

Over the last several years, the Legislature has, in fact, recognized these problems and responded in several areas.

- You have helped us establish a Case Management Officer system to assist families, in divorces and other parental proceedings, who cannot get access quickly to our overwhelmed trial judges.
- A court security bond issue was successfully presented to the voters last year, and we have begun the process of obtaining equipment to help us make our courtrooms safer.
- With your assistance, we have begun to address the security staffing that in future years will help assure safety throughout our courtrooms.
- Last year, you appropriated funds to address our chronic shortage of clerks, creating five new positions.
- With the generous support and assistance of many of you here this morning, we have undertaken a conservative, but steadily progressing, program of replacing dilapidated courthouses with buildings in which people can feel that they are treated with respect and dignity.

Responses to Budget Challenges

There is much more to be done. But the last year has stopped our forward progress in many areas, and the challenges of the year ahead are daunting.

Faced with a One Billion Dollar shortfall, state government everywhere, including the courts, must react responsibly.

- Similar to all other branches of state government, we have undertaken the traditional austerity measures, including:
- eliminating out-of-state travel costs,
- prohibiting overtime except in emergencies, and delaying hiring where there are vacancies.

In addition, in the fall of 2002, we instituted a program of Voluntary Unpaid Leave days, in order to meet the additional budget restrictions for fiscal year '03. The program is similar to the Executive Branch's furlough days, but was created to fit the unique structure of the Judicial Branch.

I am proud to report that our employees, including judges, donated 800 days of unpaid leave. Although this program created greater stresses on an already understaffed system, it allowed us to meet our fiscal obligations while keeping the courts open.

But we all know now that more than simple belt tightening is necessary. In the Judicial Branch, we have, therefore, begun the process of completely reevaluating how we make the courts available to the people of Maine.

We have turned to technology to make the courts more accessible. Our new webpage garnered the Judicial Branch an Award for Best Practices in Access to Justice from Maine's Justice Action Group for providing greatly improved access to information about the court system and its use.

- We will be saving printing costs this year by publishing our Annual Report on line rather than in hard copy.
- We have eliminated over one-third of the committees existing within the Judicial Branch and have limited the sheer number of meetings in order to increase productivity.
- With the substantial donations of time from Maine's private attorneys, we have been able to meet the State's constitutional obligations to provide lawyers to the poor without increasing the funds necessary for those services in the coming year.

In addition, last year Maine lawyers donated at least 12,725 hours of free legal services to Maine's poorest citizens who were not eligible for court-appointed attorneys. Using a conservative hourly rate of \$95 hour, those services are valued at \$1,208,875.

The generosity of Maine lawyers has been invaluable in helping us make access to justice a reality in Maine.

- And, in the most difficult of our decisions to date, you will see in the Governor's budget that we have agreed to maintain 20 vacancies throughout the next biennium. The savings to the General Fund of approximately 1.6 million dollars will help in the efforts to balance the State's budget, but clearly leaves us with difficult staffing issues.

Ordinarily, we fill vacancies immediately, and never have more than four or five vacancies on any one day. But we cannot ignore the dire straits that the shortfall has created, and we have offered this no-nonsense approach early in the process with the faith that the Legislature will not further restrict the public's ability to obtain justice in Maine.

We are reviewing our entire distribution of resources in an attempt to minimize the impact of these reductions, and we trust that you recognize that any additional cuts will further jeopardize our ability to carry out the responsibilities you have given us.

On the Revenue side:

I turn now to the revenue side of our efforts.

- We are increasing our traffic violation fines, which have not been comprehensively updated for over five years, in order to discourage dangerous driving and simultaneously increase income to the General Fund. With that simple change, we anticipate increasing General Fund revenues by as much as 4 million dollars a year.
- Regarding fines that have already been imposed but remain unpaid, we have tightened up our process of holding the defaulters accountable. The combination of better information available to us through our MEJIS computer system, and recent changes in the laws expanding sanctions for failure to pay fines has allowed us to redouble our efforts to collect unpaid fines.

We are grateful for the recent, very prompt assistance that the Department of Motor Vehicles has provided us in our heightened attention to locating people who have failed to pay their fines. We are in the process of notifying those people of the impending suspension of their licenses, including motor vehicle, fish and game, and professional.

I am pleased to report that the first regional mailing of notices of impending license suspensions went out last week. We will be expanding this improved program throughout the state.

It will no longer be wise in Maine to ignore your obligation to pay your fines.

Other Economies

In addition, as in both other branches of government, we are turning to economies of scale.

- Wherever possible, we are consolidating our clerks' offices, moving from separate District and Superior Court offices to single trial court clerks' offices. Six offices have already been consolidated, and more are in the works.

- We have consolidated the scheduling of nonjury criminal motions and civil nonjury dockets in the District and Superior Courts where that is possible.
- More globally, we are reexamining the very structure of the way we now schedule cases. Last spring, the Supreme Judicial Court set upon a course to critically reexamine the entire process of scheduling cases.

We have established a Judicial Resource Team, which has been soliciting input from the many users of the court system, including the lawyers and the public. We have also enlisted the assistance of the National Center for State Courts to complete a statewide study of judicial workloads.

Our goal is to think in new ways and to restructure judicial time, clerk time, and court schedules so that those cases that should receive priority come first.

Priorities

In order to assure that scarce judicial resources are placed where they are most needed, the Supreme Judicial Court has established a set of written priorities to guide all of our decisions regarding the use of judges and clerks. The fulcrum of that set of priorities is the following:

It is the immediate goal of the Maine Judicial Branch to assure that cases involving children and families, and those involving people immediately threatened by violence, are allocated sufficient judicial resources to allow thorough and thoughtful judicial attention and to provide resolution in a reasonable time.

Added to these priorities must be attention to people who are incarcerated and to statutory and constitutional mandates. We are committed to maintaining those priorities, but we must all understand that with fewer resources, the less urgent cases may not be reached as quickly as they should.

Initiatives

Keeping our focus on the court's priorities, we are engaged in several very promising initiatives. These initiatives focus on: Sexual Assaults and Domestic Violence, and Substance Abuse

Sexual Assaults and Domestic Violence

In 2001, reports of domestic violence grew by 10% and sexual assault reports increased another 2%. The Attorney General reports that one out of every two murders in Maine over the last decade has been a domestic violence related homicide.

And make no mistake about it, the effects of domestic violence are not limited to the adult victim. Children suffer seriously when they are raised in an atmosphere of violence and pain, whether or not they are physically injured.

But there is some good news.

Working together with law enforcement, DA's offices, corrections and community providers, we now have two pilot projects that are holding convicted abusers accountable. Supported by Violence Against Women Act funds, the court projects combine civil abuse and criminal assault matters by bringing together the players and requiring the convicted offenders to demonstrate, during weekly court sessions, that they are completing appropriate treatment programs and complying with court orders.

In addition, Maine is fortunate to have an Attorney General who has focused on combating domestic violence by gathering the many different stakeholders to explore new ways of addressing the issues. Augmenting those efforts are 220 Attorney General sponsored school civil rights teams and projects sponsored by many others that work to prevent violence and harassment by changing the culture in which our children spend their school days.

In sum, our efforts to address domestic violence are improving. We have come a long way, but we have a long way to go.

Substance Abuse

I wish I could say that we have come a long way in our efforts to address substance abuse, but we are really just beginning.

In 1997, there were 34 deaths attributable to drug or alcohol abuse in Maine. That is far too many, but by 2002, just five years later, that number had more than quadrupled to 161 deaths.

Substance abuse is a critical problem affecting all aspects of Maine's government and economy. It breaks families apart, it compromises the workplace, and it fills our prisons and jails.

Statistics reveal that an estimated 85% of those incarcerated in Maine were using some type of drug or alcohol when they committed the crime. The Final Report of the Legislative Task Force on Substance Abuse concluded in 2001 that substance abuse is costing the State of Maine over one billion dollars per year in medical costs, costs of incarceration and crime, lost productivity, and social support costs.

For years, Maine's substance abuse treatment providers have struggled with this problem. Recently, the Legislature had the foresight to require collaborative efforts between courts and several state agencies to address the growing addiction crisis in a more comprehensive way. A system of adult and juvenile drug treatment courts resulted from these collaborative efforts. These problem-solving courts are making early progress in getting the demon under control. With a focus on frequent testing, intensive case management, increased judicial involvement, and an unflinching requirement of accountability, these programs have had many individual successes.

Success in drug court reduces the State's costs by decreasing the number of incarcerated defendants. More important, it reduces crime, restores participants to productive lives, and perhaps most important of all, returns participants to healthy involvement with their families.

Those who fail, however, find themselves in jail or in a juvenile facility.

The interim report of the successes and failures of the Adult Drug Treatment Court in Maine has just been published. That report makes it clear that there is much work to be done, that the program must be fine-tuned, and that greater efforts are necessary. But it also indicates that the Adult Drug Treatment Courts may be our best hope to turn this crisis around.

We have had similar successes in our collaborative efforts with the Juvenile Drug Treatment Court. We next need to bring the education community to the table in addressing juvenile drug and alcohol offenders. And we must focus on even more parental involvement in juveniles' rehabilitation plans.

Our experiences with these problem-solving courts have led to another exciting initiative. This fall, the Judicial Branch obtained a federal grant of over \$400,000 to undertake a Family Drug Treatment Court serving Belfast, Wiscasset, and Rockland area families where substance abuse has threatened to tear families apart.

With the cooperation of the Department of Human Services, local substance abuse providers, a case manager from the People's Regional Opportunity Program, and local defense attorneys and guardians ad litem, we are working through prevention and early intervention toward the goals of helping adults return to health and to keep their families together.

Planning ahead

Although there is no question that leaders of Maine's government must attend to the difficult budget situation that demands our immediate attention, we must not halt our efforts to engage in thoughtful long-term planning.

I am pleased to report that during the next month, the three branches of government will hold a summit to address long-range plans for improving government's response to the needs of Maine's people.

Among the issues that the Judicial Branch will keep in the forefront of our planning efforts are the following:

First, Children in the Courts

I told you last year of my hope to create a court system in which every child whose interests are at stake has a guardian ad litem. The Final Report of the Legislative

Commission to Study Domestic Violence hit the nail on the head a year ago when it found that courts "need the ability to obtain more information . . . in order to make reasoned decisions about the safety of children."

We have made a small amount of progress toward this goal, but realistically, we cannot make great strides until new resources are available. However, planning and creative work must continue if children are to have a voice in the matters that affect their very lives.

Second, Business Courts

Next, children do better when their parents are employed.

You and the Governor are considering many methods of encouraging economic development in Maine. As you do so, don't forget that the best laid business plan can stall at the courthouse door. New and established businesses often have disputes, over zoning, regulation, or contracts. If those disputes cannot be resolved in a timely fashion, businesses may go elsewhere.

We must consider methods of creating business courts in Maine. Limited resources continue to constrict our ability to respond to this need. If the choice is between allocating judicial resources for the established priorities regarding families, violence, and substance abuse,

or setting up a Business Court, you know where our priorities must be.

Until we can assure the court's priorities will receive prompt, efficient attention, we cannot in good conscience divert scarce judicial resources even for a sorely needed Business Court.

And that is a shame.

As we move forward with our efforts to make the best use of judicial resources, we will continue to consider how we might address the need for a Business Court. Your support in not further reducing the number of clerks and other resources available to shoulder the enormous load of Maine's courts will help.

Mental Illness

In addition, we must not lose sight of the affect that mental illness has on our communities. I know that you have heard repeatedly from the county jails and the state prisons that treatment of people with mental illness in those facilities has become an enormous drain. I suggest that it is not just a fiscal drain, it is a drain on our humanity. We must find new ways of addressing people whose mental illness has caused them to end up in the court system.

Although this is an unlikely year for new programs, I ask that you not lose sight of this pernicious problem in your planning efforts.

Prevention

More generally, any long-range planning must contain an emphasis on prevention. I hope you will keep prevention efforts in focus throughout your discussions of budget changes. Every time a child can continue to live with healthy loving parents, that child's risk for juvenile crime, drug addiction, and dropping out of school are reduced. The best thing we can do for children in Maine is help their parents get and stay healthy.

Security

Finally, there is one urgent need in the court system that cannot wait for long-term planning. Security in our courthouses.

As I indicated earlier, we have made a bit of progress. The passage of the bond issue will allow us to purchase equipment to provide entry screening in each courthouse. But we cannot begin to provide that additional measure of security until we have the people to staff the equipment. Right now, we have only enough money to provide one security officer in each operating courtroom. We simply do not have the people to undertake effective entry screening.

This issue is so serious and has such potential for tragedy, that it truly must remain our number one priority.

Last year I told you that our courthouses are "flatly unsafe." That status has not changed. People coming into our courthouses seeking justice, seeking help against threats to their own safety, cannot even be assured that weapons have been stopped at the courthouse door. Although there have been outbursts in our courthouses this year, we have once again been fortunate that no one has been seriously injured, or worse. I do not know how much longer our luck will hold out.

We have submitted a Part 2 budget this session. You remember Part 2's The only thing in that Part 2 is a request for the resources to staff entry screening. Many of you have spoken to me personally about your concerns and your support, and to those who have, I thank you. I do know how hard is the challenge you all face to balance this budget. But I urge you, as you begin the hard work of finding the money to keep government going, to keep this need in mind.

Conclusion

In conclusion, the Judicial Branch stands ready to work with the Governor, the Legislature, and all other forms of government in Maine to be sure that access to justice is not lost in the midst of budget chaos.

I am proud to say that that work has already begun, and I invite you to come and see it for yourselves.

I hope that at the conclusion of this legislative session we will all be able to say to the people of the State of Maine, we made hard decisions, but we have used your money wisely.

As Alexis DeToqueville wrote in 1835

There is one universal law that has been formed or . . . adopted . . . by the majority of mankind. That law is justice. Justice forms the cornerstone of each nation's laws. I urge you today: Help us to assure that the cornerstone of Maine's laws is not allowed to crumble in the face of economic challenges.

I will sum up by recalling that old maxim, when all is said and done, there's usually a lot more SAID than DONE. Therefore, it is time to finish the speeches and get to the hard work before us.

My thanks to the Governor, to the first woman President of the Senate, to the first Rock and Roll Speaker of the House of Representatives, and to all of you for your support.