

State of the Judiciary
Chief Justice Leigh I. Saufley, Maine Supreme Court
Message to the Maine Legislature
February 1, 2005, in Augusta, Maine

Governor Baldacci, President Edmonds, Speaker Richardson, esteemed members of the 122nd Maine Legislature, members of the Court, friends, and family, it is an honor to present this report on the state of Maine's Judiciary.

As I begin this report, I draw your attention to the foundations of American and Maine government. Our nation and our state were founded upon a fundamental promise to the people who have given the authority to each of us to be a part of their government.

That fundamental promise is the Promise of Justice.

The demand for a government that delivers justice dates back to our earliest recording. The Preamble to the Maine Constitution begins with these words

We the people of Maine, in order to establish justice . . .

While the goals of the Constitution go on to include the insurance of tranquility, a mutual defense, and the promotion of a common welfare, the first thoughts in the minds of those who created this brand new state in 1820 were to secure justice.

This Promise of Justice is inherent in everything that the Legislature, the Governor, and the Judicial Branch undertake every day. In fact, every time that this Legislature is convened, you are working toward the goal of securing justice for the people of the State of Maine.

In this report, I will explain what the Judicial Branch is doing to keep the Promise of Justice while struggling constantly to make ends meet, and I will also tell you what you can do to help keep that promise alive.

Judicial Branch Efforts to Make Good on the Promise

I am proud to tell you that during this past year, the men and women of the Judicial Branch have accomplished near miracles while endeavoring to keep the Promise of Justice.

More Efficient Scheduling and Regionalization

In September 2002, the Supreme Judicial Court created the Judicial Resource Team (JRT) to "assess the workload and judicial resources of Maine's trial courts and generate a new model for scheduling courts and allocating judicial resources."

Throughout its work, the JRT focused on four defining principles:

- Developing a regional structure so that Maine's trial courts would work together with an integrated system of case scheduling and judicial resource allocation based on a regional structure.
- Using objective measures, such as case completion standards for different major case-types; statutory deadlines; and the priorities, including matters involving violence, families and children, and serious criminal offenses, established by the Supreme Judicial Court, to manage schedules.
- Consolidating trial court resources to increase efficiency and eliminate unnecessary duplication of judicial and clerical effort within a regional structure.
- Reducing the cost of case completion by working toward the goal of having every scheduled case event occur when scheduled.

In September 2003, the JRT presented its report, entitled A New Model for Scheduling Courts and Allocating Judicial Resources, outlining a new model for court operations, and consisting of over forty recommendations for improvement. The JRT's report is available through the Judicial Branch's website at www.courts.state.me.us (click on "Rules, Forms, Fees & Publications"—Publications).

Following the acceptance of the report, the court system was divided for scheduling purposes into 8 regions, which coincide with the District Attorneys' Prosecutorial Districts. Beginning in 2003 and continuing throughout this past year, the trial court staff has been hard at work in an effort to implement the ambitious New Model. Clerks' offices, in conjunction with regional judges, have developed trial lists that take into account statewide standards in order to maximize notice to the parties, lawyers, and witnesses; minimize scheduling conflicts between courts; allow for an adequate amount of time to resolve the cases scheduled; and maximize the likelihood that cases that appear on a list will be resolved.

Because available resources, geography, and case mixes vary throughout the state, the regions are experimenting with different methods to maximize the use of resources and to reach all cases in a timely manner. All regions have found that the New Model resulted in more timely and higher quality work within our limited resources. Those involved in the scheduling are working to develop regional procedures that cause fewer headaches for parties and make for more satisfied litigants and witnesses.

The New Model has resulted in:

- A reallocation of resources so that families and matters involving personal violence have received our highest priority.
- An enhanced emphasis on timely permanency planning in child protection cases so that children will be returned safely to their families or placed in adoptive families.
- An expanded Superior Court single justice assignment program that is in place in all counties; as a result of this program, all civil cases and cases involving a charge of murder are

automatically assigned to one judge who manages the case from start to finish.

- The coordination of scheduling of the District and Superior Court dockets.
- A regionalized approach to sharing resources with groups outside of the Judicial Branch, including sheriffs' offices and county government.

Problem-Solving Initiatives

In addition to implementing a more efficient schedule for the courts, we have supported and expanded our problem-solving initiatives. We have only been able to do this because of our success in obtaining federal support and funding.

a. The Sentencing Institute

This fall, the Judicial Branch hosted the Criminal Justice Sentencing Institute, which brought together all state court judges; District Attorneys; and representatives of the Attorney General's Office, the defense attorneys, the juvenile justice system, law enforcement, corrections, and advisory and advocacy groups. During that two-day conference, the more than 300 participants discussed the most appropriate and effective methods of sentencing convicted offenders and adjudicated juveniles, with particular attention to diversion programs in cases involving defendants with mental health and substance abuse problems.

b. Mental Health and Behavioral Courts

Our efforts to establish new types of diversion from Maine's jails and prisons continue. Working with representatives from mental health service providers, law enforcement, District Attorneys' offices, defense attorneys, and community members, the Judicial Branch is helping to develop new ways to address those coping with mental, behavioral, or co-occurring disorders. Mental Health and Behavioral Courts are in the planning stage and may become a reality before the end of 2005.

c. Drug Treatment Courts

As General Barry McCaffrey, the former director of the Office of National Drug Control Policy has stated, "The establishment of drug courts, coupled with judicial leadership, constitutes one of the most monumental changes in social justice in this country" in the past 60 years. For most participants who graduate from the programs, drug use is eliminated altogether.

i. Adult Drug Treatment Courts

The success of the Adult Drug Treatment Courts has continued. In the last year, our Adult Drug Treatment Courts continued to offer an opportunity for diversion from incarceration for those individuals who were ready to accept personal responsibility for their actions and to take advantage of services available to assist them in obtaining and maintaining sobriety.

In 2004, a total of 111 new participants were admitted to Maine's five Adult Drug Treatment Courts yielding 126 active participants. Since its inception, 456 people have participated in drug court and 183 have graduated. Our graduation rate of 56% exceeds the national estimate of 48%. If it were not for resource limitations, we would be expanding this program into more than the five counties—York, Cumberland, Androscoggin, Penobscot, and Washington—where it now exists.

ii. Family Drug Treatment Courts

Similarly, our Family Drug Treatment Courts are beginning to make a real difference for families whose children have been affected by the drug or alcohol problems of their parents. Since 2003, the Family Treatment Drug Court in the mid-coast area, serving Waldo, Knox, and Lincoln Counties, has admitted 26 parents from 20 families. In total, 41 children in those counties have benefited from this additional focus on their parents' sobriety.

Based upon our early indications of success in the three mid-coast counties and increased federal support, we are expanding into other counties. We are in the process of expanding the mid-coast court to Kennebec County. As a result of additional grant funding, the Androscoggin Family Drug Treatment Court will begin to address its first clients later this month.

iii. Juvenile Drug Treatment Courts

Since their inception in 2000, these innovative programs have helped young people whose substance abuse problems have brought them into the criminal justice system. Each year approximately 65-70 young people are admitted; our graduation rate exceeds the national average. National statistics demonstrate that more than 80% of juvenile drug court participants have returned to or remained in school full-time as a result of participation in these programs. These programs give Maine youth a chance to succeed despite a mistake made early in life.

At this time, our Juvenile Drug Treatment Courts are threatened by the withdrawal of federal funding. Attention to juvenile adjudication, with or without drug court resources, is vital. Recidivism rates tell the story. Between 1998 and 2001, the rates ranged from an average rate of 13% in Cumberland and York Counties to averages of 31% and 24% in Kennebec and Penobscot Counties respectively (Department of Correction's Juvenile Recidivism Report 1998-2001, pages 15-16). We are hopeful that the impending reduction in federal funding will not result in the loss of progress we are making in the courts.

d. Youth Court

The Lewiston-Auburn Youth Court, primarily funded through a grant obtained by the Auburn Police Department, and funds, goods, and services donated by local banks and businesses, was created in October 2001. Since its creation, the Youth Court has used the peer judgment process to teach young people about restorative justice by giving youth respondents a second chance following the commission of misdemeanor offenses. All Youth Court officer positions are held by youths who hear and decide the disposition of cases. Those found responsible for criminal activities are often required to pay restitution for any damage done or to provide a set number of

community service hours. If a respondent fails to complete a sentence imposed by the Youth Court, the District Attorney may refer the matter to Juvenile Court. Of the 39 young respondents who have come through the Youth Court system, only three have re-offended within 20 months of the disposition of their cases. We are encouraged that the Youth Court is having such a positive effect in the Lewiston-Auburn area.

e. Domestic Violence Responses

In 2004 alone, of the 19 reported homicides, 10 are alleged to have resulted from domestic violence. In response to these tragedies, we have increased our efforts to enhance the State's response to domestic violence. We have been successful in securing additional federal funds and have expanded the Domestic Violence Courts into a new region, so that they now exist in five locations: York, Portland, Springvale, Skowhegan, and Waterville. We are also in the process of pursuing grant funding to expand into additional courts.

We are constantly monitoring programs to find those that work best to reduce lethality and recidivism. We have given protection from abuse cases a high priority. Our efforts to post conditions of bail on-line to allow instant access to law enforcement officials are ongoing, and we expect to be up and running by the fall of 2005. We have provided domestic violence training to bail commissioners.

But the tragic truth is that at this time, 37 murder or manslaughter cases await trial in Maine's trial courts. Of those, 11 incidents are alleged to have been a result of domestic violence. We must continue every effort to address this national and local tragedy.

The Department of Public Safety will be issuing the Report of the Governor's Advisory Council on the Prevention of Domestic and Sexual Violence and the Prosecution of Related Crimes in Maine in mid-February. We look forward to reviewing their research and recommendations.

A Voice For Children

In an effort to assure that children have a voice in judicial proceedings that will directly affect their lives, we have continued our efforts to recruit and train guardians ad litem. Two hundred eighty-two guardians (78% are attorneys and 22% are mental health professionals) are now on a roster and available to help some of the children of this state. In addition, the Court Appointed Special Advocate program trains volunteers to provide guardians to advocate for more children in difficult situations, and the remarkable Kids Legal program, run by Pine Tree Legal Assistance, has promoted a broad-based problem-solving approach to children's advocacy.

I am pleased to report that a Maine guardian ad litem, Toby Hollander, was recognized by the American Bar Association for his efforts to help children and families in crisis. As Attorney General Rowe aptly stated, "Toby Hollander has been a source of inspiration to Maine's justice system. The lives of thousands of children have been improved because of his efforts." Toby's work is echoed throughout the State of Maine by attorneys and other guardians ad litem who work to give children a voice within our judicial system.

Customer Service Everyday

The judicial officers, clerks, security officers, and other dedicated employees of the Judicial Branch who work in 41 courthouses across the State accept more than 280,000 new cases for Maine citizens each year. A small number of court administrators provide oversight, planning, and training within the statewide court system. In addition, they coordinate with other state and local agencies to ensure the collaboration necessary to insure efficiency in the provision of justice. They work hard to implement the Promise of Justice.

The Elusiveness of the Promise

A fundamental component of keeping the Promise of Justice must be providing Access to Justice to every Maine citizen. In many cases, individuals encounter barriers that we must work harder to remove. Providing meaningful Access to Justice requires turning our focused attention to several areas where more work must be done.

Safe Courthouses

The first component of access must be safety. We require litigants to come to the courthouse to obtain protection orders. But we cannot yet assure that those who are threatened with violence, and those who fear for their lives, will be safe inside the halls of justice. For many people who are in danger, this continuing gap makes the Promise of Justice hollow.

On every occasion that I have addressed the Maine Legislature, I have presented our concerns about the inability of the Judicial Branch to make our courthouses safe.

You have responded by helping us acquire the equipment to screen weapons out of courthouses, and by finding sufficient funds at the very end of the last session to help us fund the personnel necessary to provide random and unannounced entry screening several days a year in every county.

But our joint efforts have not yet been enough. We remain the only state on the eastern seaboard that cannot consistently assure people sitting in a courtroom that the person glaring at them from across the room is not carrying a gun. We are only able to provide entry screening on an average of 10 days each year for each of our 41 courthouses. That is simply not enough.

During that limited time, however, entry screeners have confiscated over 1400 knives or related weapons and 5 firearms. Imagine what has come through those doors during the more than 200 days when entry screening was not in place.

Last year, we were faced with several near misses. For example, one clerk was physically assaulted by an angry litigant because he believed she did not understand his concerns, another litigant attacked a court security officer who was badly cut and required medical attention, and a 12-inch knife was confiscated from an intoxicated defendant who was in court to participate in a protection from abuse hearing; he was arrested by the police for carrying a concealed weapon. We must complete our work before someone is seriously injured or killed.

I will continue to ask you to help me find a way to realize the promise of security.

Language and Comprehension Access

Another area where meaningful Access to Justice requires attention is the provision of interpreters for people with limited English proficiency.

Recently, the Justice Action Group, a coalition of Maine's State judges, federal judges, and lawyers, created a committee to review the services and responses available to those individuals who need language assistance in court proceedings. In their report, A Report to the Justice Action Group on Access to Maine Courts for Individuals with Limited English Proficiency, the committee emphasized that "there is no quick fix to this problem"; however, their hard work and detailed report will guide us as we improve our response in this area.

The growing diversity of the State of Maine demands our attention, and we must improve our responses.

Physical Access

Limitations on the physical accessibility of our courthouses have been a problem for some time. In order to determine the steps necessary to make the courthouses accessible to all, our State Court Administrator obtained the assistance of an architect and accessibility specialist with Alpha One in South Portland who prepared comprehensive reports detailing the necessary improvements that will make our courthouses accessible. We have submitted a bond package that will make those improvements possible. That bill, An Act To Ensure Compliance with the Americans with Disabilities Act, will go a long way in assisting citizens to enter the courthouse doors.

Representational Access

Another area of Access to Justice is sometimes called "Representational Access." That is a fancy name for the concept that people with legal problems need lawyers. No matter how user-friendly we try to make the justice system for people who can't afford attorneys, it is always better for citizens to have a lawyer's help. This is especially true for children who need an adult voice in an adult-designed system.

Far too many people in Maine cannot afford that help. Fully 40% of District Court litigants represent themselves.

You are all aware, I am certain, that there is a vast unmet need for legal representation for low-income Mainers. Legal service providers estimate that 58% of low-income households have unmet legal needs. In an effort to address some of those needs, Maine's Justice Action Group designed the Campaign for Justice. The Campaign for Justice is the legal community's statewide annual campaign to raise funds from lawyers and judges to help meet the need for civil legal

services to low-income Mainers. That effort raised more than a quarter of a million dollars from Maine lawyers and judges in 2004.

More than one-third of the lawyers registered to practice in Maine donated dollars to that cause. Those dollars were in addition to the funds donated to create the Coffin Fellows, who provide representation in family matters. Last year, Maine lawyers donated a total of \$360,000 to legal aid programs. Considering that this amount comes from a state bar of only 3200 lawyers, it is one of the highest per-lawyer giving levels for a statewide campaign in the country.

Moreover, those donations were in addition to the thousands of hours of free legal services that are donated by Maine lawyers every day. Last year, more than 800 lawyers donated more than 10,000 pro bono hours, valued at just over \$1.5 million. As a result of their commitment, more than 7750 citizens were represented.

I am extremely proud to be a member of Maine's legal community—Maine lawyers are among the top contributors in the nation, donating time and money to the cause of legal representation for low-income litigants.

But the lawyers cannot do it alone. Indeed, in several of our counties, there are simply not enough lawyers to help. We need to find a way to encourage young Maine lawyers to settle in those counties, and we must find a way to financially support the existing legal programs for low-income litigants.

Case Management in Family Litigation

Our inability to promptly reach family cases threatens the Promise of Justice. In particular, we must provide families with prompt, efficient access to Case Management Officers who set child support and assure that families have certainty and stability in the early months following parental separation and divorce.

We currently have only eight CMOs to serve the entire state. In 2004, they handled 15,000 cases. Children suffer from the inevitable delays caused by this bottleneck, and parents are not helped in reducing their conflicts. We simply must increase the number of CMOs in the state.

Business Litigation

Finally, we are failing to keep the Promise of Justice to Maine's businesses, small and large. Small claims cases, a necessity to small businesses, cannot be heard quickly enough. The numbers of filings are actually falling, I believe, because we are failing to provide prompt Access to Justice in small business matters. This occurs because these cases cannot receive priority scheduling given the press of family and violence-related cases that fill our District Courts.

We have also been unable to provide prompt access to regulatory dispute resolution and complex business cases. And finally, we have not yet provided a reasonable judicial method of resolving smaller business disputes that exceed the small claims jurisdictional limits. We have a plan to

address these problems, and our Part II budget contains a proposal that will finally allow us to create a Business Court and support small claims and intermediate cases.

Delivering on the Promise of Justice

Interbranch Cooperation

When I talk with Chief Justices in other states, I am reminded that our state's inter-branch cooperation is relatively unusual. Last year, more than 70 members of the Legislature took the time to visit courtrooms throughout the State to observe and educate themselves on the public's needs. During the summer and fall of 2004, many legislators attended gatherings in each region where lawyers, legislators, and judges discussed openly and creatively the challenges we face and the prospects for solutions.

Each month, I meet with the Governor. This year the Governor, understanding the effects on Maine people who need Access to Justice, has supported our Part I budget.

It is essential for us to continue to work together to solve the problems facing Maine citizens. As a prerequisite to the continued success of Maine's government, however, we must make concrete plans to restore justice in Maine.

Judicial Branch Budget

In the last biennium, in an effort to cooperate with the Governor and the Legislature to make ends meet, the Judicial Branch accepted a temporary reduction in its personal services funds. Unfortunately, that reduction, which causes us to maintain as many as 25 vacancies in our staff, has resulted in our inability to keep all 41 of our courthouses open to the public each day. On multiple occasions, our smaller courthouses have been dark when an illness has eliminated the only staff member available to turn on those lights.

In our largest District Court in Portland, the vacancies, combined with inevitable illnesses, created a crisis this past summer. For an entire month, in order to avert further catastrophe, we were forced to close that courthouse to the public each day an hour early. We organized that closure at a time when we hoped it would have the least effect on the public and we announced it widely. I am gratified to tell you that we received the cooperation and assistance of the legal community in Portland. But the reality of a closed courthouse is a stark example of how we have not been able to keep our Promise of Justice.

Consolidations

We in the Judicial Branch have endeavored to be as efficient and effective as possible with the tax dollars entrusted to us. We are mindful of the State's fiscal situation, and with this understanding, we continue to be responsible to Maine's taxpayers. We must be attentive to budgets at all levels of government.

The age and varying leasing arrangements of the courthouses throughout the state make it difficult to provide similar appropriate surroundings in all regions of the state. We have outgrown some facilities, and in others, we struggle to find ways to keep accusers and the accused safe in the same small waiting areas. We have been working with the counties to use existing space more effectively, but in some areas we need extensive renovations or a new facility.

We have efforts underway in a number of counties to reorganize the use of county and state facilities to allow the cooperating entities to share space in ways that meet their current operational needs. Those efforts, focused right now on Cumberland, Sagadahoc, and Aroostook Counties, are possible because of the creative and cooperative approaches of county governments, and the willingness of all involved to work to save the taxpayers money while continuing to keep the Promise of Justice.

We are also in the planning phase to create a dignified and safe new courthouse in Penobscot County. This session we will be presenting a small bond proposal to move that process forward.

Lack of Resources

Despite our frugality and innovations in efficiency, we remain on the very lowest rung in the nation in the funding we receive to provide Access to Justice in Maine. We have the fewest employees per capita in our Judicial Branch and other judicial offices that serve Maine's people. National evaluations rank our system as 50 out of 50. We are ranked below all other states in the number of people available to provide justice to our citizens. This is a fact about which we should all be ashamed. It may be helpful to compare our Judicial Branch resources with those available to our neighbors in New Hampshire to understand that our court system is understaffed and underfunded. For your review, I provide a brief overview below:

Compiler's Note: Figure omitted.

When you consider the General Fund's 54-million-dollar allocation to the Judicial Branch, in light of the 38 million dollars in revenue that the Judicial Branch returns to the General Fund annually, the net appropriation is 16 million dollars. This is not enough to do justice throughout a state as large as Maine.

The Cost of Justice

Although the needs may seem endless, they are not. It will take comparatively little to keep the Promise of Justice in Maine. We have a plan to address the holes in the Promise of Justice, but we cannot follow through on that plan without your help. Here is what you can do to help us keep that promise:

- First, the courts must be returned to minimum staffing levels. We must be sure that we have the staff available to assist people who come through our doors.

- That need is addressed in the Part I budget and has the support of the Governor's Office.
- Second, we must shore up our Family Division so that priority cases receive the attention they deserve. We must not keep families, and children in particular, waiting for a resolution merely because we do not have a judicial officer available to review the matter and make a fair discussion.
 - That need is addressed through our proposal to add two Case Management Officers with the necessary staff. The proposal is funded by a two-thirds federal match, and requires no net new General Fund dollars.
- Third, our Part II proposal to add four judges and the necessary staff will allow us to assure that family cases are addressed promptly and to create a Business Court in the State of Maine.
- Fourth, I urge your support for the Justice Action Group's effort to expand the availability of legal services throughout Maine.
 - Remember that Access to Justice does not come easily to low-income Mainers.
- Fifth, continue your efforts to find the funds to make our courthouses safe.
- Sixth, support the bond proposal to make courthouses accessible.

I understand that you will struggle with many difficult decisions during this session and that many constituencies will seek your assistance. As you make these decisions, I know that you are mindful of the Judicial Branch's mission. We must work together to keep the Promise of Justice for Maine.

"If we do not maintain justice, justice will not maintain us." -- Francis Bacon (English philosopher, 1561-1626)