

The State of the Judiciary  
Chief Justice Leigh I. Saufley, Maine Supreme Court  
Message to the Maine Legislature  
February 5, 2008

Thank you President Edmonds. Good morning Governor Baldacci, Speaker Cummings, members of the 123rd Maine Legislature, members of the Maine courts, including our colleagues from the Probate and Tribal Courts, and, as always, my family.

It is an honor and a privilege to stand before you today to present an update on the State of the Judiciary in Maine. Today, we are here to describe the improvements of the past year, to lay out the challenges that face us immediately, and to share our plans for continued improvement in access to justice in Maine.

#### THE PAST — 2007

I begin today mindful of the very difficult budget challenges you face and prepared to work with you in a collaborative effort.

Here are the basics on the Judicial Branch budget.

The budget constitutes less than 2% of General Fund expenses. In Fiscal Year '07, the Judicial Branch budget consisted of:

- \$45 million for all Judicial Branch expenses;
- \$12.8 million for Constitutionally Required Counsel;
- totaling \$57.8 million, just 1.92% of the State's budget.

That \$45 million compares to \$59 million spent by the State of New Hampshire, a full \$14 million more than what we spend. Measured per capita, Maine spent \$34 per capita for its system of justice last year, New Hampshire spent \$45 per capita, and Vermont spent \$48 per capita.

Among the New England states, we have the fewest courthouses per square mile, the fewest judges per capita, the smallest account for Constitutionally Required Attorneys, and the second lowest judicial pay in the nation. The latest National Center for State Courts study discloses that, adjusted for cost of living, Maine judges are 50th in the nation, with only Hawaii ranking lower.

In Fiscal Year 2007, 278,088 new cases and traffic violations were filed, again, more per capita than either New Hampshire or Vermont. Yet, in the highest priority dockets, the family and criminal cases, disposition rates ran on average at close to 100%.

Without belaboring the obvious, this was accomplished on a small budget, with judges and staff whose salaries are lower and whose workloads are higher than their colleagues across the country, and for whom the resources to deliver justice are always restricted.

The Maine Judicial Branch does a lot with those limited resources.

We are able to accomplish so much because of the extraordinary men and women working in our system of justice. On the Supreme Court, my colleagues are extensively involved in working toward improvements throughout the system.

In the trial court leadership, we are fortunate to have Chief Justice Tom Humphrey, Chief Judge Ann Murray, and Deputy Chief Judge Charlie LaVerdiere. These unsung heroes have worked tirelessly to streamline procedures, support the critical work of trial judges, and collaborate across branches of government to make the entire system work better for the public.

Through their work, Fiscal Year '07 brought a number of improvements in the delivery of justice.

### Case Processing

The most impressive aspect of these improvements lies in the trial courts' successes in reaching cases more promptly. Consistently over the last five years, the judges and clerks have reduced the amount of time it takes for families, children, and victims of violence and sexual assault to find justice. In family matters, for instance, cases that used to take nearly a year to complete are now resolved in just over 6 months on average. There is a reason for the old maxim that justice delayed is justice denied. Eliminating those delays makes all the difference.

### The Business and Consumer Docket

2007 also saw the launch of the brand new Business and Consumer Docket. Although the court has only been in operation for a few months, more than 50 complex civil business disputes have been placed on the docket, including 2 class action suits. The BCD judges, Justice Nivison and Chief Justice Humphrey, who have continued to work on other dockets as the BCD geared up, are now quite busy. All three branches came together to create the Business and Consumer Docket, and our goal of providing prompt and predictable resolution of disputes for Maine's businesses, small and large, is well underway.

### Efficiencies Already in Place

At the same time that we have been working to improve service to the public, we have strived consistently to create new efficiencies. Through Justice Alexander's skills, we have replaced the multiple copies of the 45 bound volumes of Maine Revised Statutes Annotated in our courthouses to a paperback compendium contained in just 7 volumes, saving much in publication costs. In addition, we now have:

- Eleven consolidated clerks' offices;
- A long-standing collaboration with the Executive Branch for payroll services and benefits management;
- A new agreement for collaboration with the Bureau of General Services; and
- Expanded use of video equipment throughout the State, reducing

Sheriffs' transportation costs, saving money for counties.

## Collaboration

2007 was also a year of other expanded collaborations among the branches of government.

### Infrastructure Advisory Group

One of the most productive collaborations had a name that would put you to sleep before the first meeting began: The Infrastructure Advisory Group. What could be more exciting than holding a bunch of meetings about Infrastructure?

But it was all necessary. We have talked both formally and informally over the last several years about the difficulties your constituents face when they come into courthouses that are old, dilapidated, and disrespectful of the important events occurring within, and it was time to move ahead with comprehensive planning.

The Advisory Group met regularly through the summer of 2007. Justice Silver, Justice Clifford, Ted Glessner, and I were joined by Commissioner Wyke and Mike Mahoney, along with many Legislators, including Senate President Edmonds, Senators Hastings and Hobbins, Representatives Simpson, Dill, Gould, and Berube. We had representatives from the AG's Office, from the Maine Association of Criminal Defense Lawyers, from county and municipal government, and from several other stakeholders.

We worked hard and fast to review all of the state's judicial facilities. Some very good work has already come out of the Advisory Group. The ideas include:

- Reducing costs through collaboration with BGS,
- Review and consolidation of management contracts,
- A legislatively created reserve account for future building needs, and
- Planning for improved court facilities in Augusta and Machias.

The title isn't sexy, but the work of the Advisory Group will serve the people of this state long into the future.

### Family Division Task Force

Other improvements in '07 came in the form of streamlined procedures for children and families, particularly with regard to the family magistrate work. Representatives Mills and Tardy joined a broad based task force whose work led to the reduction of both the time and cost to families involved in the court system.

### Children's Justice Task Force

Also in 2007, the new Justice for Children Task Force has spearheaded the presentation of the upcoming two-day conference on cutting edge information regarding treatment and care for children. Funded through a substantial federal Court Improvement grant, this conference will bring together, at very little cost to the State: parents' attorneys, guardians ad litem, AAGs, judges, including Probate and Tribal judges, and others involved in helping children and their

families. I want to thank Senator Plowman and Representative Dunn for their willingness to work with us on these issues.

### Sentencing Summit

In December, we held the Criminal Justice Sentencing Summit, which included members of Legislative, Executive, Judicial, and County government. Many of you attended. The Summit generated energetic conversations regarding some of the most difficult aspects of sentencing.

The chairs of the Criminal Justice Committee have already taken the time to observe the results of recent sentencing legislation. Immediately following the 2007 summit, Senator Diamond spent a full morning in the busiest courthouse in the state. He had an opportunity to observe the Portland Domestic Violence Project in action, and, with Justice Warren in the Superior Court, sat through the calling of a felony trial list, observing the resolution of a number of serious crimes. Senator Diamond peppered me with Law Professor-like questions after his morning in court, and I understand the Dean of the Law School is holding a seat for him for this fall.

And Representative Gerzofsky, having previously attended an arraignment session, followed up with Judge Field to learn what happened with those he originally observed.

### Court Visits and Outreach

So many of you have visited the courts, and I do hope you will all continue to visit, announced and unannounced. There is much to be gained when we are all engaged in improving our system of justice.

While you have been coming into the courts, we have continued our efforts to take the courts into the communities by holding oral arguments in local high schools. I want to thank Senator Turner, Representative Valentino and Senator Hobbins, and Representative Tardy and Senator Plowman for arranging such hospitality in three high schools for the Law Court in 2007. We already have 2 schools lined up for this fall; Representatives Dill and Eberle have asked us to come to Cape Elizabeth, and Representative Flood has offered to arrange a visit to Winthrop. We have room for one more school. . . .

### Security

No review of the last year would be complete without a discussion of improvements in courthouse safety. This year, we have continued whenever possible to expand the presence of entry screening into our courthouses. Again, we have been stunned at the weapons that would otherwise have been brought into those courthouses. In 2007, more than 7,000 knives and lethal objects were stopped at the doors. More terrifying, however, were the number of guns that were prevented from coming into courthouses by entry screening—64 times, guns or ammunition were stopped at doors.

I encourage you to take a look at the display case that Mike Coty has set up outside this Chamber. It includes just a very few of the items that have been taken. It will curl your hair.

With your support from the last session, we will have five more entry screening teams beginning this July. Five teams cannot hope to cover our 39 courthouses, but every single day that entry screening is done in a courthouse, safety for your constituents improves.

## THE PRESENT

### Budget Challenges

As you can see, 2007 was a year of energy and forward movement in the courts. But it is time to turn and face the challenges of 2008.

There is, unfortunately, a budget item that is rising rapidly: the cost of Constitutionally Required Attorneys.

When a person who has little or no income is charged with a crime and is facing the possibility of time in jail, or is confronted with the potential for a child to be placed in foster care, the Constitution requires that the State pay for his or her attorney. Those attorneys receive payments far below ordinary professional charges, in essence, donating a great deal of their time.

In Fiscal Year '07 the budget for those costs totaled \$12,159,585. That budget was flat funded for FY '08 and '09, but we now estimate that an increase in criminal cases will cause the costs to rise to \$13,690,620, an increase of \$1,531,035 in '08 alone.

To put the issue in context, in Fiscal Year '07, a total of 73,039 new criminal charges were filed in the Maine courts.

- 80% of the charges, 58,330, were filed in the District Court
- 16%, 9,348, of those defendants received State-paid attorneys
- And the State-paid attorneys received an average of \$254 per case.
- 20%, 14,709, of the charges were filed in the Superior Court
- 7,602, 52%, of the defendants received State-paid attorneys
- And the State-paid attorneys received an average of \$490 per case.

Judges have no control over the charging decisions of the District Attorneys, nor should we. The stark reality is that criminal filings, and felony filings in particular, have increased substantially. It shows in our prisons and jails, and it shows in the Constitutionally Required Attorneys budget.

### Judicial Branch Response to the Shortfall

As soon as we identified the projected shortfall, we met with legislative leadership to discuss the problem. In October, Senators Hobbins, Diamond, Hastings, and Turner along with Representatives Fischer, Simpson, Gerzofsky, and Sykes met with us on short notice to begin to find solutions. The Governor and I have met and reviewed the shortfall. I have met with the Prosecutors and the Defense Bar. Both the Judiciary Committee and the Appropriations Committee have met with us.

If meetings were solutions, we'd have this thing nailed. But more meetings will not help. The increase in filings is not going away.

If the attorneys cannot be paid, criminal charges cannot be prosecuted. Trials can't be held. Alleged victims will wait. It is as simple as that. We must find a way to pay these bills.

We have already undertaken a number of steps to reduce demands in other accounts in the Judicial Branch budget in order to attempt to offset the shortfall in the separate Constitutionally Required Attorney budget. Because we have so few discretionary funds in the Judicial Branch, there is not much room for play. We have:

- Suspended much of the Attorney of the Day Program;
- Altered judicial assignments creating modest reductions in travel costs;
- Held the cap on the number of jury pools that can be called in; and
- Again instituted a hard line limiting any overtime.

Many of these efforts are actually likely to result in more costs down the line, but for now they will result in savings that may cover as much as \$200,000 of the \$1.5 million shortfall. Obviously, more action is necessary.

We will do our part.

- A new commission, led by Justice Clifford will undertake an updated review of all aspects of Constitutionally Required Attorney services and report back the Supreme Judicial Court this fall.
- In Portland, an innovative project unifying the District and Superior Court criminal dockets is being undertaken through the leadership of Justice Roland Cole, joined by Justice Gorman and Judge Eggert. Elimination of the administrative duplication in criminal process will save money in years to come.
- A greater focus on the Drug and Alcohol Treatment Courts may reduce recidivism and bring down the total rate of crime in Maine.

In addition, at the request of the Appropriations Committee, we will take the next steps to review the prospects for further reductions in the Judicial Branch budget. Because we are, in essence, people and buildings, thoughts have turned inevitably to our limited staff and to closing courthouses.

- On the people side, we have already begun the process of creating salary savings by holding vacancies open for longer periods on a rotating schedule, and we will review staffing levels once again.
- As to the prospect of closing courthouses, next week we will reconvene the Infrastructure Advisory Group. Reducing the number of courthouses available to people in rural Maine is not a happy solution to a problem created by the increase in criminal charges. But this will be a session where many hard choices will be made, and we have heard your concerns.

## Revenue Increases

There is one ray of sunshine to accompany this bad economic news. A combination of the improved Judicial Branch efforts to assure timely payment of fines, and the increase in the number of criminal charges has created a corresponding increase in revenue collected by the Judicial Branch and returned to the General Fund that is likely to exceed the previous estimates by more than \$1 million this year, bringing gross revenues from fines and fees to over \$48 million dollars.

To be sure that the courts place justice above all else, we must always separate the Judicial Branch budget from its role in imposing and collecting fines and fees. However, because payment to Constitutionally Required Counsel is not a discretionary choice, we hope you will work with us to allocate those funds to cover the remaining Constitutionally Required Counsel shortfall.

## THE FUTURE

Turning then to the future, I want to talk to you about three areas where planning and collaboration could make a substantial difference in the quality of life in Maine and our ability to deliver access to justice for all Mainers.

### Technology

First, it is time to talk again about technology in the courts.

Some of you are familiar with the electronic filing system in the Federal Court that allows attorneys and citizens alike to access appropriate information about individual cases from computers anywhere. It is a wonderful system. Of course, it cost millions of dollars to implement.

We understand that resources are tight, and this is not the year, but the patience of Maine's people with a Judicial Branch that does not have online services is wearing thin. We remain a paper-based system. Every month, I receive complaints from Maine's citizens, including the media, who expect to be able to locate information about cases and scheduling on-line.

We must plan for the future. Justice Mead is leading a group that will continue to explore the possibilities. We must begin to search for the resources to bring Maine's courts into the electronic age.

### Access To Justice

Second, we must work toward meaningful access to civil justice for people who cannot afford attorneys during times of personal crisis.

We are fortunate that the Maine Justice Action Group, known as JAG, sponsored a Statewide Planning Initiative on this very issue. Launched in October of 2006, it has evaluated the problem, brainstormed possible solutions, and created a blueprint for future action.

Colleen Khoury, who chaired the Planning Initiative, put it best when she explained:

The principle of equal access to justice is a central tenet of our democracy, and yet access to justice is far from a reality for Maine's neediest and most vulnerable citizens.

Justice Levy will lead the implementation planning as the new Chair of JAG. Through his energy, the first steps have already been taken. I understand that JAG is not seeking State funds at this time. But your understanding of the enormity of the problem will help your constituents.

The best efforts of Maine attorneys to tackle the needs have been impressive. Our attorneys' generosity puts Maine second in the entire country. In 2007, the Maine bench and bar raised \$400,000 for Civil Legal Services for the poor, and Maine attorneys donated more than 12,500 free hours of legal services.

Unfortunately, the problem reaches far beyond those efforts. It is estimated that in 75% of family and domestic violence matters, at least one party doesn't have an attorney. Similar problems exist in areas of medical, housing, and education disputes.

Alexander Hamilton said: "The first duty of the law is justice." Every day in these chambers, you struggle to find just the right words to bring that phrase to life. You have established 39 titles of laws intended to create a just society in Maine. Yet, if the poor and low-income people of this state receive no legal assistance when they are faced with crises, your work may be for naught.

We can and must all work together to make Maine a place where Access to Justice has meaning for everyone.

#### Problem-Solving Courts, Hope for Troubled Families

Last, but by no means least, we must continue to support and, where possible, expand the extraordinary work of the problem-solving courts. I am talking here about:

- The Adult, Juvenile, and Family Drug Treatment Courts,
- The Mental Health/Co-Occurring Disorder Court, and
- The Domestic Violence Projects.

Here are a few of the very encouraging results of the problem solving courts:

Independent evaluations indicate that, throughout these courts, costs of treatment, case management, and testing, were more than offset by a conservative estimate of the other savings to the State General Fund.

The Adult Drug Treatment Court has a graduation rate of 60%, substantially higher than the national statistics on Drug Courts at 48%. Participants who graduate are less likely to be arrested for felonies or violent crimes.

Within the week, the fledgling Mental Health/Co-occurring Disorder Court started up by Justice Mills and DA Evert Fowle will have sent six graduates back to their families who would otherwise have to be treated in Maine's expensive institutions. Cost avoidance in State dollars in this program is in the hundreds of thousands.



Juvenile Drug Treatment Courts also pay for themselves. The graduation rate of 42% exceeds the national rate at 29%. Many of these young people have maintained sobriety and are working or attending school.

In the Domestic Violence Projects, compliance with court-ordered treatment is substantially improved. We do not yet have enough data to know if the long-term behavioral changes hoped for are being accomplished. However, a bail link has been established between the Department of Public Safety and the Judicial Branch, and significant progress has been made in increasing victim safety and offender accountability.

### Family Drug Treatment Courts

Government's efforts to improve the lives of children and families can be found everywhere.

Attorney General Steven Rowe made an emphatic presentation to the Maine Bar Association last year, reminding all of us that the first years of life are critical, and that every resource, every effort aimed at improving the lives of infants and their families pays off in years of healthier, more productive lives.

And the Governor's Economic Summit on Early Childhood, championed by First Lady, Karen Baldacci, urges us all to take a new approach and consider investments in childhood as having broad social and economic benefits.

In the courts, we see the toll that poverty, despair, and substance abuse takes on the most vulnerable among us, but we also see real success stories.

The Family Drug Treatment Courts, brought into existence with the tireless enthusiasm of Judge John Beliveau, supported consistently by Senator Rotundo, have focused on helping parents get clean and sober. Children whose parents are participating in the Family Drug Treatment Courts spend less time in foster care, and parents participating in the most rigorous program are substantially less likely to test positive for drugs.

Here is the best news. Since the inception of the Family Drug Treatment Courts, nine babies who would almost certainly have been born addicted to drugs were born drug free.

Nine babies born into this world drug free. It's hard to put a price on that kind of success.

### Conclusion

In conclusion:

Maine Courts are constantly seeking better ways to serve the public and make the best use of our limited resources.

The collaboration of all three branches of government is a key factor in meeting these goals. Although we have little to spare, we will continue to work with you throughout this challenging session.

Amid all of the economic concerns, however, we must remember that we are Maine. We are resourceful and willing to work hard. We cannot allow fiscal shortages to stifle our drive to improve.

Great things are possible even in the toughest of economic times.