

The State of the Judiciary
Chief Justice Leigh I. Saufley, Maine Supreme Court
Message to the Maine Legislature
March 17, 2009, in Augusta, Maine

Thank you, President Mitchell, and good morning, Governor Baldacci, Speaker Pingree, Members of the 124th Maine Legislature, Members of the Court, friends, and my always supportive family, it is an honor to present this report on the State of Maine's Judiciary.

I am also pleased to be joined here today by representatives of other courts: Judge Kermit Lipez of the U.S. First Circuit Court of Appeals; Probate Judge Donna Bailey; Penobscot Tribal Judge Eric Mehnert; and Steven Brimley with the Houlton Band of Maliseets.

Before I begin the actual report on the State of Maine's Judiciary, I want to recognize the historic significance of this occasion.

This is the first time that any Chief Justice in Maine has been invited to address the Joint Convention of the State Legislature by a female Senate President, and a female Speaker of the House, at a time when we can look into the gallery to the Attorney General, who is also a woman. This is an historic occasion for the State of Maine, and it is such an honor for me to be a part of this day. I want to ask Senate President Libby Mitchell, Speaker of the House Hannah Pingree, and Attorney General Janet Mills to stand so that we can celebrate this wonderful occasion.

On a decidedly lighter note, today is St. Patrick's Day. You will see that I am wearing the green. Now, to be sure, my ancestry is almost entirely Scottish and English. I was told, however, that on St. Patrick's Day everyone is Irish. I was told this, you must understand, by the Irish Trial Chiefs—Chief Justice Humphrey and Chief Judge Murray. Even Deputy Chief Judge LaVerdiere is Irish. So in the spirit of the day, let me present to you my other colleagues: Justice Robert O'Clifford, Justice Jon O'Levy, and Justice Ellen O'Gorman. To all of our Irish friends, to all of our non-Irish friends, here's a salute to St. Patrick, who, the Governor informs us, was Italian.

Now to the serious matters confronting us.

Recently, I was honored when the Governor nominated me to serve a second term as Chief Justice, and I am forever grateful for your confidence in confirming me. But I confess that I feel the responsibility of our work more acutely as we watch the good people of this State struggle with the most serious economic downturn we have experienced in decades. And I know, from spending just a little time in the halls of this building, that you, too, are feeling the extraordinary responsibility of government to the people who are hurting. Our friends and neighbors are losing their jobs, their homes, their businesses.

Last week, Judge John Romei called me from the Calais courthouse. He had just learned that the Woodland Mill in Baileyville would be closing. Judge Romei, like so many other judges in Maine, has spent years working with people in the Adult Drug Treatment Court, helping them to maintain sobriety, find jobs, and regain their families. As we talked, he asked me a simple question: what are they going to do? Across the State, those quiet conversations are being

repeated. That question in government always evolves into another: what are we going to do to help?

Last Tuesday, Governor Baldacci gave us reasons to be hopeful about the future of Maine's economy. I am here today to tell you why, working together, with vigilance and creativity, we can be equally hopeful about the delivery of justice in the future, and why our vision of a justice system that is responsive to the needs of Maine people is both critical and achievable, even though the next two years will be very difficult.

ACCESS TO JUSTICE IS CRITICAL

Justice is not simply an important part of government; it is critical to democracy. If justice fails, democracy fails. The very first words of the Constitution of the State of Maine recognize this fact: "We the people of Maine, in order to establish justice...."

This concept is foundational to all three branches of government. Each branch, Executive, Legislative, and Judicial must be strong, independent, and capable of carrying out its responsibilities in order for democracy to survive. Make no mistake: democracy is a fragile thing. Coretta Scott King reminded us: "Democracy is never a final achievement. It is a call to an untiring effort."

That untiring effort occurs every day in these halls. As legislators, you work to assure that Maine laws reflect your vision of justice. When you are done with your work, the Executive Branch must be ready to effectuate the laws, and the Judicial Branch must be able to enforce them.

The economic development you and the Governor are working so hard to generate will require prompt resolution of the zoning, regulatory, and contractual disputes that inevitably arise during the process. Your efforts to protect children, defeat domestic violence, and reduce crime require a court system with the resources to carry out your vision of justice. We must, therefore, work together to assure that the Maine courts are there when our citizens need them.

PROVIDING ACCESS TO JUSTICE IN HARD ECONOMIC TIMES

How then, in economically devastating times, do we assure the continued viability of justice in Maine? We must look ahead to better times, and we must have the roadmap toward prosperity in mind. We must be clear-eyed, however, about the current challenges. There are three principles that will guide us through these very challenging times:

- Priority cases involving children and families, violence or sexual assault, and victims of crimes will continue to be scheduled first.
- Second, we must make every effort to maintain our basic infrastructure, so that, as the economy recovers, and the sun rises on Maine again, we can rebuild a strong justice system quickly.
- Third, we must take this opportunity to think creatively about the delivery of justice. Innovations that improve efficiencies, and position the courts for effective streamlined delivery of justice in the future, will be crucial.

THE STATE OF THE JUDICIARY

Keeping these principles in mind, I turn to the current state of Maine's Judiciary. I would describe it in one word: PRECARIOUS.

Much improvement has occurred in the last decade, and further improvements are in the works, but we are at a crossroads, and we must be vigilant if we are to emerge from the next two very challenging years with an intact system of justice.

Just a year ago, the State's system of justice was rebounding from years of underfunding. Many efficiencies had already been undertaken: our centralized administration eliminated duplication of personnel and administrative costs; 22 of our 41 clerks' offices had been consolidated into 11 streamlined offices; library costs were substantially reduced through electronic research capacity and local publishing; out-of-state travel has been restricted, and in-state travel has been reduced; video conferencing capacity was expanded throughout the state to save time and travel costs.

Accompanying those efficiencies, and with your help, we had made progress in several areas. Security had been substantially improved, the equipment was in place and you had authorized, but not yet funded, new positions to screen guns from the courthouses. A new consolidated courthouse was authorized to replace the outmoded and dangerous courts in Bangor. That environmentally responsible new courthouse will meet Maine Benchmark standards and will open on time and on budget. The Drug Treatment Courts had expanded into child protection cases, with an emphasis on reunifying families. The Business and Consumer Docket had been launched with very positive results.

Then the economy began its downward slide. Two problems combined to create the precarious circumstances now facing Maine citizens in need of justice. First, the State was unable to find new funds for the increased demand for constitutionally required services in criminal prosecution and child protection cases, and the money had to be taken from court operations. Second, across-the-board cuts further reduced the Judicial Branch budget. Last year, that combination resulted in the loss of approximately \$3 million from Judicial Branch operations and, given our previous efficiency efforts, left us with very few options.

The Judicial Branch does not have programs. We were, therefore, left with three stark options to manage that deficit: losing staff, closing courthouses, or violating the basic constitutional responsibility of the State in prosecutions.

Because, as jurists, we could not allow the Constitution to be violated, the end result had to be fewer courthouses or fewer staff.

Only the Legislature can close courthouses. We, therefore, reconvened the Courthouse Advisory Committee, with representatives from all three branches of government, to consider whether courthouses should be closed to save money. After multiple meetings, that Committee unanimously recommended that we should not further reduce the public's access to courthouses, especially in these very tough times.

The need for rural courthouses becomes clear when we consider the substantial recent increase in homicides in Maine. The Attorney General's Office estimates that more than 60% of those recent deaths were related to domestic violence. It is already difficult for many people to reach a courthouse to obtain protection from abuse. If we close our few rural courthouses, we may leave victims of violence with no options. Although the future may bring many better options for distance justice through technology, until those systems are in place, closing rural courthouses will rarely be a wise choice.

You can see where this leads. If constitutionally required payments for the representation of poor people charged with crimes cannot be reduced, and if we are committed to providing access to justice in rural Maine, the only area left to cut is the number of people who are providing justice.

And that is what we have done. In the last year, we eliminated 9.5 positions, and we have had to maintain more than 40 vacancies, including the equivalent of two judges, and many marshals and clerks. These reductions have had a serious effect on our citizens.

- Public court hours have been reduced in six courthouses (the District Courts in York, Springvale, Portland, Biddeford, Belfast, and Bridgton, and the Superior Courts for Cumberland, Waldo, and York Counties);
- Both staff time and judge time in the Business and Consumer Docket have been cut in half;
- People seeking compensation for injuries or those trying to clear up zoning, contract, or land disputes, are waiting longer and longer for their day in court;
- Homeowners with nonpaying tenants cannot get their cases reached and may face foreclosure;
- Small businesses cannot get prompt resolution of their small claims cases; and
- Most distressing, courthouse safety has suffered. Last year, we were on our way to providing entry screening on 25% of the court days in Maine. This year, we have been able to staff that security need on only 5% of our court days.

The budget proposed for the next biennium results in approximately the same staffing shortages. We recognize and appreciate the Governor's efforts to spare Maine people an even greater loss of justice. But this current situation is—precarious. Only 462 people, including all of our judges, clerks, and marshals, are left to run an entire statewide court system that receives approximately 280,000 new cases each year.

And behind every court case is a disrupted life, from families in turmoil, or neighbors disputing boundaries or land use, to people injured in car accidents; from the relatively benign distress of receiving a speeding ticket, to the violent victimization by a professed loved ones; from small business owners struggling to obtain payment for their work, to victims of elder abuse or exploitation.

We hope that the shortage of people to provide justice is short-lived. But it is taking its toll already. Justice cannot be outsourced. People make the system work. Our staff is working harder every day under increasingly stressful conditions. We must look toward the day when we can re-staff the courts.

HOW TO DELIVER JUSTICE

How then do we find a way to deliver justice when resources are so limited? We have been fortunate to have a great deal of collaboration with the Legislative and Executive Branches. Many of you have come to our courthouses and served on various committees to help us find

creative solutions. The Judiciary Committee worked with us to review in detail the fiscal status of the courts and to make recommendations for improvements and innovation.

The public has also benefited from the generosity and assistance of Maine lawyers. Lawyers who work in Maine give of their time and their money for poor Mainers in need of assistance at unprecedented rates.

And despite the now-chronic staffing shortages, the men and women of the Maine courts have pulled together to keep the ship afloat. I cannot express fully my gratitude for the work that our judges, justices, and magistrates accomplish every day. And they could not accomplish what they do without the heart and soul of the system, the clerks, marshals, and administrators who keep the courts running.

It is because of the work of these fine people that we have continued to move forward in this last year, despite overwhelming demands.

- Through the efforts of Chief Justice Humphrey and Justice Nivison, we have been able to keep the Business and Consumer Docket alive;
- The consolidation of courthouses in Houlton and Bangor is almost complete. There will be two buildings where we once had to staff and secure four;
- Through the leadership of Justice Gorman, the creativity of talented trial judges, and the support of District Attorney Stephanie Anderson and the defense lawyers, we have launched the first of its kind Unified Criminal Docket to streamline the processing of criminal cases. Criminal charges are being addressed much more quickly, and we already have indications that the streamlined process will save substantial amounts of money;
- With the input and assistance of the Media and the Courts Committee, under the leadership of Justice Joe Jabar, we expanded camera access to Maine courtrooms, providing the public a greater opportunity to observe justice at work;
- To assure that the public can continue to place its trust and confidence in the legal professionals of this state, with the support of Maine lawyers, we have enacted a brand new lawyer code of conduct;
- Our staff held brainstorming sessions across the State to provide us with new ideas for efficiencies and cost savings, and many of their ideas are already in place;
- With everyone in the Judicial Branch pitching in, revenues from this Branch have not fallen, even in the face of the vacancies. The FY'08 revenue collection was 29% higher than 5 years ago, and the 2009 revenues are expected to reach almost \$50 million;
- Responding to Maine's growing diversity, we have improved our language interpreter services for the public, and we have created new responses to the growing ethnic and religious diversity in Maine's Courts. Rachel Talbot Ross, Director of the Portland Division of the NAACP, saw a problem in the way our criminal justice system was responding to issues of respect for religious attire. With Rachel's help, and assisted by

Sheriff Mark Dion and Zack Heiden of the MCLU, the Courts and the Jails are changing their policies. These improvements are being accomplished without rancor or litigation, in contrast to the experiences in other states. It has been a terrific example of the way Maine works;

- This year, the Co-Occurring Disorders Court, which addresses the tragedies caused by the confluence of mental illness and substance abuse will, against all odds, expand into another county very shortly, using no new general fund dollars; and
- Overall, the Drug Treatment Courts have continued their extraordinary work, restoring lives, supporting sobriety, and, in the last year, helping seven more babies come into this world drug-free.

UPCOMING INITIATIVES

As you can see, much has been accomplished in this very challenging time, and there is much more on the horizon.

1. Judicial Branch Initiatives & Collaboratives

(a) Foreclosure Diversion

For example, within the month, through the tireless work of Justice Jon Levy, the Judicial Branch will establish a Task Force to create a Foreclosure Diversion program aimed at helping Maine people who are facing the loss of their homes. I am pleased to say that the Justice Action Group and Maine banks are working with us in this effort, giving us reason to hope for effective solutions.

(b) Juvenile Justice Task Force

Shortly, we will be convening a Juvenile Justice Task Force. This Task Force will represent a first-of-its-kind collaboration of the Judicial Branch, the Children's Cabinet, and the University of Maine School of Law. Working in a very short timeframe, we will launch a new era of coordination, and increased effectiveness and efficiency of early community response to children and families in crisis.

To be sure, Maine has made great strides in improving its youth-focused efforts. Great progress has been made with the state's juvenile correctional facilities. From a time when our Youth Center was frankly abysmal, to the recent national accreditation and recognition that Longcreek and Mountainview are among the best in the nation, we have come a long way. And the response to child abuse in Maine has also substantially improved. The number of Maine children in state custody has steadily dropped for the first time in decades, and the number of Maine children who are placed with family members has increased substantially.

But, despite all of these very important improvements, we still find too many of our youth are dropping out of high school, are disconnected from positive peers and communities, and are not coming out of adolescence with the skills necessary to become productive adults.

The Juvenile Justice Task Force will help us develop a coordinated process to identify youth and families in the beginning stages of distress. It should not matter whether the first identification of problems is by a school, the Department of Health and Human Services, the police, the courts, or

other community entities; the response should be consistent, swift, and effective. We must use the growing body of evidence about “what works,” and find a way to coordinate available services, provide direction before our youth become disaffected, and keep them in, or return them to, school. One of the strongest predictors for joblessness, criminal behavior, and illness, is the disconnection from school and peers. It is estimated nationally that 68% of the prison population never finished high school. We do not want to be building new prisons and jail cells in the future, and we must turn our attention to this enormous challenge for Maine youth. The potential for real, lasting, and effective change through this effort is very exciting.

Once again, several of you have committed to helping us with these Task Forces, and we are grateful for your assistance.

2. Initiatives Requiring Legislative Approval

In addition, there are three upcoming initiatives that will require your attention and have the potential for great improvements.

(a) Facilities

First, thanks to Senate President Mitchell, there is a bill before you, L.D. 882, that will create a single, modernized, LEEDS certified courthouse for Augusta, which is long overdue. The court facilities in Augusta are cramped, disrespectful of our citizens, and often dangerous. President Mitchell’s bill would consolidate three different facilities under one roof, streamline the provision of security and technology, and provide a community justice center in the state’s capital. Two other similar, though much smaller, projects will be proposed in Washington and Piscataquis Counties. These projects, which bring needed jobs, and create future efficiencies, could make a world of difference in each of their communities.

(b) Indigent Legal Services Commission

Next, does this sound familiar? “You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford one, an attorney will be appointed to represent you at the State’s expense.” Hopefully, it sounds familiar only because you have watched too many episodes of Law and Order. But the quotes are not just drama. They are drawn directly from constitutional law established by the United States Supreme Court. The State must pay for attorneys to represent impoverished Mainers who are charged with crimes or are the subject of child abuse petitions.

The Indigent Legal Services Commission, Chaired by Justice Robert Clifford, will create an independent system for constitutionally required legal services connected to the prosecution of criminal and child protection cases. As you have heard, the budget for those services in Maine is oddly placed in the Judicial Branch. Having judges responsible for the payment of one party’s attorney, and in no way involved in payment or decision-making regarding the other parties, creates the appearance of a conflict of interest that has become intolerable.

You would never think of putting the prosecutors, the District Attorneys and Attorneys General, within the Judicial Branch budget, and the defending attorneys do not belong there either. I cannot urge you strongly enough to support this proposal, which will not require any new funding. We must eliminate this intolerable appearance of conflict.

(c) Technology

Third, we cannot move the court system forward without real technological solutions. For several years, I have been talking to you about the need for improved accessibility through technology. The current information management in the courts is expensive; cumbersome; costly for staffing, mailing, and storage; and frankly outmoded.

There is an opportunity this year, through grant funding, to completely update the court's technology. We are collaborating with Commissioner Ann Jordan in the Department of Public Safety and several other Executive Branch Departments to seek the necessary grant and stimulus funds for technological improvements. In addition to creating good, high tech, short-term jobs, this initiative will substantially upgrade the technological infrastructure of the court system and our criminal justice system, and it will improve efficiencies going forward.

Perhaps more important than any of the efficiencies or dollars saved in the long run would be the improvement in both the public's access to court-related matters, and the improvement in community safety that would be provided through enhanced criminal justice information systems.

Maine has led the way nationally with technology in schools. You have created wonderful on-line access to the Maine Legislature. We must do the same in the court system.

What Can You Do to Assure that Justice is Meaningful for Your Constituents?

Finally, I come to the question that so many of you have asked this year. Given the current General Fund deficit, and the prospect of further reductions, how can you help us make sure that, when your constituents need help from the courts, there is a courthouse near them; there is a clerk who will answer the phone; there is a judge who can hear their case, and a marshal to keep them safe.

There are several concrete things you can do right now:

fund dollars. That budget is based on the recommendations of Governor Baldacci, and provides important management tools to help us to make the most of those dollars. Do not cut further into funding for justice.

1. Support the Judicial Branch budget, as recommended by the Judiciary Committee, which worked hard to find solutions without requiring new general fund dollars. That budget is based on the recommendations of Governor Baldacci, and provides important management tools to help us to make the most of those dollars. Do not cut further into funding for justice.
2. Support President Mitchell's bill, L.D. 882, which will provide much-needed courthouse improvements, and which, like the other infrastructure projects you are reviewing, will generate local jobs and create efficiencies for the future.
3. Support the recommendations of Justice Clifford's Indigent Legal Services Commission. It will be sufficiently funded from current resources, will not require a single new dollar, and will restore confidence in our criminal justice system.
4. Support the grant funding proposals for the technology that will make the courts more accessible and efficient, and will improve community safety.
5. Keep an eye out for the pot of gold that could be waiting at the end of a rainbow. If there is any opportunity, help us return safety and staff to our courthouses.

Finally, I pledge to keep working with you and your communities. It was a wonderful experience for the Court to sit in Eastport, Winthrop, Bangor, Augusta, and Sanford last fall. Consider inviting us to bring Oral Arguments to a school near you. We have the schools lined up for this fall, and we are looking for suggestions for the fall of 2010.

In honor of the day, I leave you with this brief Irish Blessing that seems just perfect for those of us in Government.

May you have the Hindsight to know where you've been The Foresight to know where you're going

And the Insight to know when you're going too far.

Happy St. Patrick's Day.