

The State of the Judiciary  
Chief Justice Leigh I. Saufley, Maine Supreme Court  
Message to the Maine Legislature  
March 9, 2016, in Augusta, Maine

Thank you. Thank you so much. Thank you, President Thibodeau. Good Morning, Speaker Eves and Honorable Members of the 127th Maine Legislature. It is always such an honor to present this speech to the Joint Convention, and I have to tell you that I am watching what's happening across the country and inter-branch relations and your invitation, which has been unfailing, to the court system to report on how things are going in the Judicial Branch is very much appreciated. I also have to tell you that this year I had cataract surgery, so I can see all of you in the back rows very clearly, but I can't see what I'm about to tell you.

With me today is my wonderful husband, as always, and I am accompanied by my colleagues from the Supreme Judicial Court and the Trial Court Chiefs. And I will start by telling you that it is an incredible pleasure to work every day with this dedicated group of judicial leaders as well as the extraordinary Maine trial judges, creative administrators, ever-patient clerks and court security who make up Maine's Judicial Branch. But I want you to look very closely at this group of judges. If things go really well with the plans for the next year, Chief Justice Saufley has done a heck of a job. If everything goes to heck in a handbasket, these are the faces I want you to remember. And they bear it well.

Also with us in the gallery, as President Thibodeau told you, are representatives of Maine's other court systems, and I'm very grateful that every year, they respond to my invitation. So, we're clear that there are multiple court systems in the State of Maine and today we have a representative of the Tribal Courts and of the Probate Courts, and I thank them very much for being here.

My plan today is to give you a summary update on infrastructure and case processing improvements. And I hasten to add that I have not attempted to provide details on all of the many projects and innovations underway in our system. You're welcome. Instead, and this is the hard part, I'm going to concentrate much of my remarks on the criminal docket, including an issue that worries every one of us—the horrific increase in heroin, OxyContin, oxycodone, and opiate addictions in Maine.

But, I begin with an update on the Supreme Judicial Court's plans to hold appellate arguments in schools around the State. So first, with many thanks to Senator David Burns, the Court will be at Washington Academy in East Machias this spring, and we will follow those arguments with the official ribbon cutting for the newly renovated Washington County Courthouse. This fall we will be back in the St. John Valley in Fort Kent where multiple high schools will have an opportunity to observe the Court's appellate arguments—and that is with many thanks to Representative John Martin. In October, we will sit in South Berwick, with thanks to the very, very persistent Representative Bobbie Beavers, who has waited for six years for appellate arguments at a high school at her district.

Now, in follow-up to my report to you last year regarding the court's infrastructure, we are, indeed, turning a corner. Some of you remember the days less than a decade ago when budget cuts were so severe that the public had to endure rolling court closings. It was bad—closed

courts and unsafe courthouses resulted in limited public access. With the Legislature's consistent help over several sessions, and the support of Governor Paul LePage, I am pleased to announce that the Maine courts are returning to solid ground after some very tough years.

Although the Judicial Branch consumes only two percent of the General Fund budget, that two percent is put to very efficient use supporting the people and buildings that provide justice in Maine. And as always, we put safety first. We now have entry screening for weapons 70 percent of our court days, and there is greatly improved safety for everyone in the court system. And we are in the midst of a long-term facilities plan that has resulted in the consolidation and updating of many of Maine's aging courthouses. We've reduced the number of court facilities from 48 to 38, and through those consolidations, we have eliminated the consequent need for heat and plowing and security in ten buildings.

Courthouses have been consolidated and updated in seven counties, most recently Washington, Piscataquis, and Kennebec Counties. Three more counties—Waldo, Oxford, and York—that badly need updated courthouses are slated for consolidation and modernization over the next four years. LD 1528 addresses the plan for all three counties. The Waldo County Courthouse was built in 1853. Just think of that for a minute. It was built before the Civil War. It was built before women had the vote—I'm not bitter. And it was built before Justice Alexander was even in high school. I'm going to go off-script for a moment if you will forgive me. Justice Alexander is the Senior Associate Justice for the State of Maine. He is the longest sitting judge that the State of Maine has ever had in its trial courts and appellate courts. He is the most supportive Senior Associate Justice a Chief Justice could ever ask for. He steps up every time I need help. And his reward for that is that I torture him mercilessly. So, he deserves your applause. So let me tell you about the other courthouses. The Oxford County Courthouse was built in 1895; although antiquated, it does have the capacity to be updated and expanded. And the York County Courthouse, which was rebuilt after a fire in 1934, is no longer capable of expansion or updating and is truly unworkable.

LD 1528 will provide authorization for dignified, efficient, and accessible court facilities in these counties. It requires no funding in this biennium, and it will result in substantially improved public service in all three counties. When those projects are complete, we will have reduced the number of courthouses from 38 to 33. We ask for your support for LD 1528. I brought stickies in case any of you wanted to write that number down: 1528.

So, moving on, I'm going to do something unusual because it has struck me how important the relationship among the branches are to our ability to provide real justice to the people in the State of Maine. So, I have a request: I am going to list off some events and ask you if you have done any of these things, to stand up. So, if, during any of your legislative terms, you have toured any of Maine's courthouses, would you stand? If you have spent a day in a court with a judge, would you stand? Perhaps, I should've phrased that better. I'm not looking for any felony confessions here this morning. If you have attended oral arguments in the high schools or at the law court, would you stand? I'm going to ask everybody to keep standing. Keep standing. If you have sponsored legislation on the part of the Judicial Branch, and if you have met with me and my colleagues to try to find the next important initiative for justice, would you stand?

Now, look at this. Look at this. This is why the public service in Maine's courts is turning the corner. Everything that you have done to try to determine what's actually happening for your

constituents in Maine's court system makes all the difference in the world. Thank you. Let's have some applause for you as we have a seat.

And for all of you who are waiting for needed court improvements in your own counties, in the next several years, we'll be re-evaluating the courthouses in three more counties. This is the long-term plan. Those counties are: Somerset, which was built in 1874; Franklin, in 1885; and Hancock, in 1931.

We will, next, with your support and the backing of the Governor, have a plan for digitizing court documents. We anticipate that a contract will be signed this summer, and the real work will begin to create electronic filing and a modernized data management system that will increase public access, create efficiencies, and help all three Branches obtaining much needed information to assist in policy and resource decisions.

There is a remaining gap in public service that the Legislature can help us correct. Years ago, as a cost savings measure, Judicial Branch staff hours were cut from 40 to 37.5. Over time, we have attempted to return staff to a 40-hour work week, but most of the court clerks, that is, the Judicial Branch's front line for public service, have been left with the shorter days, requiring the 4:00 pm closure of all courthouses. Even a half hour each day could improve public service, allowing expanded access to the clerks' offices and representing the difference between completing a case and having to put a part of the case over to another day, maybe even weeks later. If you've ever been involved in a court case, you know how horribly stressful that can be. There is a bill on the Appropriations Table right now, LD 1597, that will allow the clerks' office staff to return to the 40-hour work week that most of government employs. LD 1597 will provide a real benefit to your constituents, and we hope you will support us.

In addition to the infrastructure improvements and efficiencies I have described, we are constantly working toward improvements in case processing. Regarding the civil and family dockets, access to justice efforts continue. For language and hearing challenges, over the last several years, telephonic language lines at the clerks' offices and in the courtrooms made 127 different languages and dialects available for interpretation. Live interpreters were provided for more than 35 languages.

For challenges with the lack of legal representation, last year, lawyers across the state volunteered almost 15,000 hours of legal services—donating the equivalent of more than \$2 million in free legal help. Lawyers and judges also contributed over half a million dollars in cash to augment legal services for the poor. The Civil Legal Services Fund established by the Legislature provided over a million dollars for legal services for Maine's poor. The Maine Justice Foundation contributed to the provision of legal services. And Portland law firms donated enough money to continue the tradition of hiring two full-time attorneys to provide low-income families with legal assistance. All of these efforts will be topics for future reports to the Maine Legislature, as well as exploration of improved ways to provide dispute resolution for families, developments in the battle against domestic violence, human trafficking, and elder abuse.

But I turn now to the criminal caseload, where some of Maine's most challenging problems coalesce. First, let's do the numbers. The criminal docket constitutes nearly one-half of the entire non-traffic docket in Maine's courts. Just short of 54,000 new criminal cases were filed last year—54,000 new criminal cases. The District Attorneys and the defense bar report that the complexity of the cases is increasing, particularly regarding the involvement of addiction and

mental health challenges. According to Attorney General Mills, last year there were 25 homicides, of which ten were classified as related to domestic violence, and at least three have been identified by the AG as directly drug related.

The relentless influx of new criminal cases could overwhelm the system, but we have a plan. And, as they say, timing is everything. As you know, over the last four years, the trial courts in Maine have implemented a more streamlined and efficient process for criminal cases. We refer to it as the Unified Criminal Docket. The implementation is almost complete.

In the same time frame, the Legislature and the Governor, working together, have allocated additional resources for the processing of criminal cases. Two new judicial positions were created, and the new judges were confirmed in February this year, augmented by additional resources for clerk and security, and the legislative authorization for the transfer of funds to support more jury trials.

So, what does all of this mean? With all of that support, we hope—for the first time in decades—to eliminate backlogs in the courts' criminal cases by the end of this summer, 2016. At the same time, we expect to be able to reinvigorate the existing Drug Courts and expand the Drug Courts into Penobscot County in the next couple of months.

None of this would have been possible without legislative support. And we greatly appreciate the increase in the number of judges and supporting resources. Nor would the streamlining of process and reduction of backlogs been possible without creative and energetic judges, patient clerks, responsive prosecutors, and defense attorneys who are willing to shift their schedules constantly. We have asked all of these groups to change the way they do business, and they've responded admirably.

Also in this last year, the Intergovernmental Task Force, led by Justice Robert Mullen, generated recommendations for the next steps in addressing Pretrial Justice Reform. I want to thank everyone from all three Branches and all of the other stakeholders who participated in that complex effort. The Task Force has recommended several statutory changes that can be found in LD 1639, just printed a few days ago. The Task Force also made recommendations for issues that can't be addressed in this session.

One of those items is bail reform. There is no question that Maine has an antiquated bail system that needs to be completely revamped. Two separate committees have now looked at the system and recommended substantial changes, and each time, anticipated costs have been a barrier to reform. But I have an idea. I haven't told these people to my left yet, so you'll see them getting very nervous at this point. However, I plan to put together a follow-up Working Group to look at the state of our understanding of risk assessment, and to explore the alternatives to our current bail system. We will need to be creative, but careful. Balancing liberty interests and community safety will be key. And I welcome legislative participation in the bail reform effort.

Also in follow up to the work of the Task Force, the Judicial Branch has established a working group to create a new set of expectations for fine collection that will be consistent, transparent, predictable, and fair. Justice William Anderson of Bangor is leading that group.

The Task Force also recommended a further legislative discussion of sentencing options. It is my hope that the Legislature will soon have the opportunity to consider forms of sentencing that are neither incarceration nor fines. Restorative justice, real restitution programs, community service

that is actually a service to the community—each of those hold promise in the right cases, and I hope the Legislature will have an opportunity to evaluate those ideas in upcoming sessions.

So let's move to one of the most pressing issues facing all of us: heroin, OxyContin, opiate addictions. The evidence is overwhelming that the addiction problem is growing. Just this past Monday, the Attorney General reported that 272 people died of drug overdoses in the year 2015—that's an increase of 31 percent in overdose deaths from the previous year. And, as AG Mills noted, that is, on average, more than five overdose deaths per week. 272 people. Thinking about that, look around this room. During a Joint Convention, this room holds 186 legislators. Imagine, a group of human beings nearly 100 people more than is in this room right now, all lost to drug overdoses—in one year. The loss of life represents staggering misery for so many families, and tragically, the number of drug-affected babies is rising consistently. Again, from the Attorney General's Office, we know that the number in 2011, which was far too high, at 668 drug-affected babies, has risen dramatically to 1,013 babies born in 2015 who were drug affected at birth—1,000 drug-affects babies. Eight percent of all live births involved drug-affected babies. And that, I have to say, is sad beyond words.

In addition, rough numbers from our imperfect database tell us that the convictions just for Schedule W drugs—that includes opiates and heroin—have gone from over 1,300 in the year 2013, to 1,500 in 2014, up to almost 1,800 last year. In other words, even with our blunt measuring capacity, the horror of heroin and opiate addiction in our youth, our middle aged citizens, and even mature Mainers is growing. This wave of drug addictions is eating at the heart of our beautiful state. And I know that you have almost certainly been asked the same question I have asked: What can we do to stop this affliction?

I also know that, entirely separate from the court system, you are addressing some of the big-picture and long-term answers. So I'm going to focus on a few resources that could make a difference right now when judges are faced with people struggling with addictions. We've seen the human costs of addiction in every docket: criminal, child protection, family, even foreclosure. What is all too clear to all of us is that, because the causes and cures for addiction are as varied as they are for any disease, no cookie cutter solution will work.

And, although we must expect that individuals will eventually be able to take personal responsibility for their own recovery, the first steps on the road to health require intense intervention and oversight. The Drug Courts, with their focused and intense oversight, hold real promise for specific individuals, but we should be clear-eyed about this. Drug Courts cannot do it all. Even if all of the Drug Courts, including Bangor, were up and running at full capacity, only about 350 people, optimistically, would have the opportunity to find a sober life through the Drug Courts.

But you heard the numbers: 54,000 new criminal cases filed in 2015, 1,800 Schedule W drug-related convictions in just that one year, and that doesn't include any of the other crimes, like theft, assault, and burglary, that are alleged to have been perpetrated by people desperate to pay for their next fix. We must take this solution to scale.

So, how do we bring this all together in the courts? First, as I mentioned, eliminating the criminal backlogs will allow the Trial Courts to reach cases much faster. This has substantial benefits in both the alleged drug trafficking cases, and the cases where addiction is thought to be the root of the charges. Next, I suggest we have to create expanded options at every stage of the criminal

justice process, including pre-charge diversion, post-charge diversion, and sentencing, and we must be ready with dual-diagnosis treatment when the mental health issue plays a role.

There are many new and innovative treatment options that are being tested throughout the country, and I won't try to address all the good ideas that are emerging. But I'll suggest just a few basic resources that will go a long way right now in Maine courts with the cases that are pending. First, every trial judge in Maine will tell you that residential resources are a missing component in the system, for both adults and youth struggling with addiction. Maine needs options for graduated treatment housing that will allow people to seek recovery and to be diverted from incarceration, and in other cases to be transitioned from incarceration into treatment housing, including residential treatment, treatment-based step-down housing, and sober houses.

Some will need a long time in treatment housing, and others can graduate quickly to sober housing. The increased availability of ankle bracelets could allow greater flexibility while sentenced defendants are still in recovery housing. So first, housing. Next, the oversight providers need resources for constant testing. New evidence-based practices are emerging that indicate that consistent testing actually works in encouraging sobriety. And finally, because treatment providers and families cannot do it all, well-trained case managers to guide those in recovery are critical to this process. Individuals attempting to rise from the fog of addiction do not always exercise good judgment, and navigating the intertwined criminal justice and treatment systems can be difficult even for the healthiest of us. Case managers can be a bridge to treatment providers, can eliminate the wasted resources of missed appointments, and can coordinate with treatment providers to make the necessary adjustments that the plan for that individual is actually going to work for that person. We must understand and anticipate that the path to sobriety is not always a straight path. Case managers and skilled treatment providers can be ready to adjust treatment options while reinforcing personal accountability. The very successful Veterans Court, with its extraordinary case manager, TJ Wheeler, is a wonderful example of that model.

Finally, there is one thing that we must not do regarding this challenge. We cannot allow ourselves to be discouraged. This is Maine; we always find a way to collaborate when Maine people need solutions. We need to be creative and we need to stay on top of the latest research. Working together, we have successfully addressed so many challenges. In recent years, those efforts resulted in an increase in high school graduation rates, and the collaborative work over juvenile justice has been so successful that one entire facility is no longer needed for detaining our youth. So, do not lose hope. We can and we will find our way to similar successes regarding the horror of addiction.

Finally, I want to take a moment for a note of personal gratitude. This year, my seven-year term as Chief Justice came to an end. As with all other Maine State Court Judges, reappointment happens only if the Governor, the Judiciary Committee, and the Senate decide that the work of the Chief Justice should continue. The opportunity for other Branches of Government to change the direction of Justice and to reconsider previous judicial appointments is critical to Maine's constitutional structure.

I strongly support this method of selecting judges, and I often speak publicly about the stark contrast with other states or the federal system, where judges are either appointed for life, or the converse, where judges must run for office in partisan elections, and therefore must raise money from the very people who will appear before them. Maine's system is, I believe, the best in the country. So, what I'm here today to confess is, it's easy for me to say that today. I have, in fact,

been sworn in to another 7-year term. So, here is my thought about Maine's system. Today I think it is absolutely the perfect system. Two weeks ago, I really did think it was time for Maine to consider life appointments for judges. I also realized as I went through this process that all of you actually go through a similar process every two years, as you wait for voters to decide whether you will return to the State House. And it's possible that I have been insufficiently sympathetic to your worries and your efforts. If so, I apologize.

So, in closing, I want to take a moment to thank every one of you who went out of your way to say something kind and supportive to me in these last weeks. To all of the Judiciary Committee members who are so keenly interested in the future of justice, to the Maine Senate for your extraordinary and eloquent support, and to all of you, to every one of you, and Governor LePage, I thank you all for supporting our vision of an effective, efficient, and most of all fair system of justice. And I thank you for everything you do for the people of Maine every day. Thank you very much.