

The State of the Judiciary
Chief Justice Leigh I. Saufley, Maine Supreme Court
Message to the Maine Legislature
January 28, 2020, in Augusta, Maine

Thank you. Please have a seat. Thank you so much. It is good to see you all again. I just told the Governor that it is not fair for me to be required to speak so soon after she has spoken with poetry and passion. You've heard me before, there will be no poetry this morning.

So, good morning, Governor Mills, President Jackson, Speaker Gideon, Members of the 129th Maine Legislature and guests. As I begin this morning, I remember the first thing Bill said to me after last year's presentation; what were you doing with your glasses? So, here's the problem; I've hit that point where nothing is at exactly the right spot so, either I wear all of the peepers or this year I decided on a whole new approach, which is simply a nice, comfortable, 72-point font. It does work so much better.

Thank you all so much for the honor of this invitation to address you today on the State of Maine's Judiciary. I know how busy you all are and I very much appreciate your willingness to take the time to hear from the Judicial Branch. And I'm going to talk to you; I'll tell you first what we'll talk about this morning. I'm going to address three key issues affecting the delivery of justice. First, in recognition of this historic year, I will review the substantial improvements in the delivery of justice that have been accomplished with your help in this century. Second, I will address the need for funding within the Judicial Branch in two urgent areas to help us continue that progress. And, finally, I will address the need for continued cross-branch collaboration and persistence in our responses to the addiction and mental health crises that are affecting youth and adults throughout the State of Maine.

So, I can hear you now; she's going to bore us, depress us and then ask for money. Not so. Let me just tell you this; despite all of these challenges, my message today is that there is, in fact, great progress afoot. And I hope to leave you with a firm conviction that working together we've accomplished much and the prospects for even greater improvement in Maine are great.

So, before I get to a historic review of where the Judicial Branch is, a couple of introductions that you've already heard. First, I will begin by sending a long-distance hello to my parents, Jan and Dick Ingalls, who are at home in Cumberland County watching through the miracles of your modern technology. So, now I get to do what I've always wanted to do; hi mom! And, in the gallery, you've already seen my handsome husband, Bill Saufley. I have to tell you, we've been married 39 years this month, I've been thinking about that 40th anniversary that's coming up soon, and, you know, may think that 40th is silver, maybe rubies. Turns out, the 40th wedding anniversary is a pool table, which is something that I've always wanted. So, now you understand why people refer to him as the long-suffering Bill Saufley.

I want now to take this moment to introduce Maine's Supreme Judicial Court. Justice Gorman couldn't be with us today, there was a death in her family, and she sends her best, but I'm going to ask my colleagues to stand as I introduce them; Justice Donald G. Alexander, Justice Andrew Macdonald Mead, Justice Joseph Michael Jabar, did I get the middle name right? I got it right. And Justice Thomas, I never remember his middle name, Humphrey.

So, today, it's important for everyone to understand that Justice Alexander will retire from the Maine bench at the end of this week. On the day he retires, he will have served for 41 years, one month, and four days, or 15,010 days. He is the longest sitting active judge in the State of Maine, ever. And during his term on the bench, Justice Alexander was nominated and re-nominated by six different governors, including Governors Longley, Brennan, McKernan, King, Baldacci and LePage. He published innumerable books on the practice of law, he sat with the Law Court on 6,591 cases, and he continued to sit in the trial courts whenever he was needed. Justice Alexander has done more work in 41 years than most people could accomplish in a century and, in classic style, Justice Alexander will spend his last day on the bench, this Friday, doing exactly what he did on his first day on the bench; handling a criminal docket in Kennebec County. Please join me in celebrating this extraordinary career.

I'm in trouble. I've worked with Justice Alexander long enough to know the expression that he just gave me, so, you may need to look for me later in the week.

Let me also introduce Maine's Trial Court Chiefs; Superior Court Chief Justice Bob Mullen, District Court Chief Judge Susan Sparaco and Deputy Chief Judge Jed French. Now, I'm going to let them sit because I want to talk to you for just a minute about these extraordinary people. Chief Judge Sparaco will retire in just two months. She was first appointed to the District Court in February of 2008 and she's served as the Deputy Director and then Chief of the District Court, coming into those roles at very challenging times and she has done an extraordinary job with her direct and effective leadership style. It's been a boon to the Court and she will be missed.

And today, it is my honor and pleasure to announce that Judge Jed French has agreed to step in to the demanding role of Chief Judge as CJ Sparaco retires. So, let me tell you a little bit about the incoming Chief of the District Court. Judge French is a proud graduate of the University of Maine School of Law. During his 21 years in private practice, he served on many committees, he received numerous awards, he was elected to the Yarmouth Town Council, he served as the council's chair. Judge French served on active duty in the United States Army and later as an Air Force officer with the Air National Guard and Air Force Reserve. In support of the United States Mission to Strengthen the Rule of Law, he was deployed to Iraq and Afghanistan and was awarded the Bronze Star. He was instrumental in the creation of the first-ever Juvenile Court in Afghanistan. He obtained the rank of Brigadier General and he currently serves in the Air National Guard. But what Judge French really wants you to know about him, is that approximately 20 years ago, he appeared twice on the show "Who Wants to be a Millionaire." He also wants you to know that he is not a millionaire. Please join me in thanking him for stepping up to this new job.

I also want to thank all of the people who serve the public in Maine's Judicial Branch who are not judicial officers. Approximately 450 state employees who cover the entire State, from the clerks who form the backbone of the courts to the marshals who keep the public safe, to the administrators on whom we rely for constant improvements. We could not provide access to justice in Maine without their commitment and dedication to public service. And, as always, a great deal of gratitude goes to Maine lawyers, who, in 2019, reported providing nearly 8,000 hours of free legal services throughout the State. Separately, those lawyers and some of the judges contributed more than \$600,000 to the Campaign for Justice, which distributes those dollars to the providers to help them serve more people in need of legal help with housing, domestic violence, child-related problems and medical legal issues.

And, today, I also want to take a minute to thank the members of the Maine Legislature and Executive Branches. No matter how difficult the challenges of governing become, I am always proud of the collegiality in Maine government. Legislators, Governors, and Judges, and all of the people who work in public service always find ways to work collaboratively to solve problems. Recently, at the recommendation of Governor Mills, we held a brief but energetic Tri-Branch Criminal Sentencing Workshop where the Governor, along with 24 members of the Maine Legislature including most of the members of the Criminal Justice and Judiciary Committees and several judges participated throughout a morning in hypothetical criminal sentencing exercises. Members of the prosecutors' offices and the defense bar played themselves quite brilliantly, presenting impassioned arguments in support of their positions in these hypothetical cases. The exercise helped all of us think in a much more detailed manner about the way that addictions, mental health, and gaps in the availability of community-based services make crime and punishment a challenge in the State of Maine. And I was struck once again by the alchemy of smart, caring people coming together to think about the best ways to serve the people of this great State. So, right now, I'm going to ask those of you who came to the Capital Judicial Center for this very energetic exercise to stand and accept our thanks for your time and creativity that day. Everybody? Yes?

We hope to do more of those inventive exercises. I was happy to escape the morning without having been sentenced to the Kennebec County Jail.

As I update you today on the State of the Judiciary, I am mindful that we're entering the year 2020, in which we will celebrate 100 years of women having the vote, 200 years of Maine's Constitution, and many hundreds of years in which strong, independent, and hardy people have lived, loved and worked. So, it seems appropriate to frame this presentation by reflecting on the planning and collaborative work that brought us where we are today.

Looking back to my presentation to the 121st Maine Legislature in February of 2003, that explains this, I am older than I ever think that I am, I had been Chief Justice in that year for just over a year. The world was changing fast. Beverly Daggett was serving as the first woman President of the Senate. Governor Baldacci had recently taken office only to find that the State's General Fund budget was facing a substantial shortfall. In the courts, we were beginning to sound the alarm regarding drug and alcohol addictions. I told you that in 2002, 161 people died from drug or alcohol overdoses and 85% of the people incarcerated in Maine reported using some type of drug or alcohol in the commission of the crime. The lack of community treatment options for those suffering from mental illness was sending far too many people into our jails and prisons, domestic violence cases were growing each year, children's voices were not being effectively heard, and at the same time, the court's infrastructure was seriously challenged. Many of the State's venerable old Superior Court facilities were more than a century old and were falling apart around us. In many towns, the placement of the District Courts in smaller, separate buildings, detached from the Superior Courts, was straining staffing, confusing the public and adding unnecessary duplication of costs. Budget-necessitated vacancies made it hard just to keep the doors open, there was no entry screening in any courthouse in the State or in the State House. No business court existed, victims in criminal cases often waited months for the transfers between the courts, and it regularly took several years to resolve relatively straightforward disputes.

In that presentation to the 121st Maine Legislature, recognizing the budget restrictions and the concurrent need for improvements in so many areas, I referred to the old adage, when all is said and done, there is often much more said than done. And I promised you that working together with planning and persistence the three independent but collaborative branches of Maine government would get things done. You helped me keep that promise. Here's where we are eight Maine Legislatures later: Most aspects of the Judicial Branch infrastructure are on solid footing. Forty-five separate court facilities have now been consolidated into 35, clerks' offices for the Superior and District Courts have been consolidated in most courts, reducing public confusion, allowing efficiencies, cross-training and substantially improved public service. From Houlton, Machias, and Dover-Foxcroft to Bangor, Belfast and Augusta, courthouse improvement projects have benefitted the public. Last week, the newly-renovated Oxford County Courthouse in South Paris opened for business, improving accessibility, consolidating the Clerks' Offices, opening two new courtrooms, and providing the public with much more respectful space for dispute resolution. A second phase of construction in that courthouse will renovate the beautiful old jury courtroom to be ADA compliant, with updated technology, and a bonus; a ceiling that doesn't fall on the litigants. We don't want to talk about how often that happened over the last 10 years.

Two years from this fall, the brand-new Justice Center of York County will open for business and we are designing it to be the first net-zero energy courthouse in the State.

Regarding courthouse safety, entry screening equipment exists in every courthouse and staffing for entry screening is present on approximately 65% of the State's court days. The court's transition to the digital world is underway. The Violations Bureau, which processes about 75,000 traffic tickets a year, was converted from an unwieldy paper system to a more efficient online system last year. And approximately a year from now, the other case types; criminal, civil and family, will go digital in Penobscot and Piscataquis Counties. When that system goes live, parties in all proceedings and their lawyers, when they have them, will have no-cost access to their digital files from anywhere that has an internet connection. So, Governor, the broadband expansion will be a big help.

To prepare for that launch, an enormous amount of work has gone into the creation of rules that will determine when and how the public-at-large obtains access to digital court records. We'll be holding another public hearing on those rules in the upcoming months. One of the most promising aspects of the new system is the potential incorporation of a text notification system that will remind people of their upcoming court dates in criminal matters. Our doctors do it, our dentists do it, the librarians tell us our books haven't come back on time; it's time for the courts to help people remember to get to court. If that project is funded, we would expect to see a substantial reduction in the number of bench warrants and arrests that occur when people fail to appear in court. That system would improve public service. At the same time, it would reduce the strain on county jails. And all of that can be done at a very modest cost. We hope you will support it.

At the same time that these improvements have been occurring, case processing has improved substantially. On average, the business docket takes less than a year to resolve complex cases that often took three to four years. Criminal charges, with the exception of homicides, are now resolved on average in six to seven months after filing. The resources of the Court's Alternative Dispute Resolution Services helped people in more than 4,300 cases last year in family, small

claims, and housing matters. And interpreters are available through the language line, through certified in-person interpretation, and, in some cases, even through video interpreting.

Family matters, and particularly cases involving children, are also receiving improved attention throughout the system. We recently instituted a new one-judge/one-family process that will help families who are struggling with their own turmoil to find consistency and continuity in the courts. And, separately, the dramatic increase in child protection filings has created a great need for more guardians ad litem to provide the children's voice in court. The Judicial Branch has partnered with the University of Maine School of Law to create a class that will allow well-trained new lawyers to incorporate guardian ad litem work into their practices immediately upon graduation and licensing. And we are also very fortunate in Maine that so many people have stepped up and volunteered to help children. Court-Appointed Special Advocate volunteers, CASAs, gave a voice to 279 children caught up in the child protection proceedings in fiscal year 2019. Those volunteers who helped children during some of their most heartbreaking and disruptive times of their lives also saved the taxpayers more than \$566,000 just last year. If you, or someone you know, would like to consider being a CASA volunteer, the Judicial Branch website can connect you.

All of these improvements have been rolled out carefully and always with a close eye on the budget. Even with debt service remaining in the Judicial Branch budget, the Judicial Branch consumed just 2.2% of the General Fund last year. Reflecting on all of the improvements that have been accomplished in the 21st century, you can be very proud of the way that you and the Governors have responded to Maine peoples' need for justice.

So, now I move to the next issue, which is funding needs. Last year, I asked you focus available funding not on the Judicial Branch but on community-based services for adults and youths struggling with mental health challenges and addictions. In this second regular session, I make a similar request; please continue your focus on community-based resources. But within the Judicial Branch, there are two areas of funding that can no longer be put off. First, it's time to complete 100% staffing for entry screening in every courthouse. Recently, it was reported that the marshals at an entry screening station discovered an individual carrying two undisclosed loaded handguns, a .380 Colt semi-automatic in a cocked position, ready to fire six rounds, along with six additional rounds, and a loaded .357 Smith & Wesson revolver holding five rounds with two additional five-round speed loaders. Because of the presence and quick action of the marshals at the entry screening station, the individual was disarmed, no one was hurt. I ask you to think about that allegation just for a moment. If an individual carrying similar weapons had gone into one of the 35% of Maine's courthouses that didn't have entry screening that day, we could be having a very different conversation this morning. We estimate that 19 more marshal positions will be needed to achieve 100% entry screening and that the total staffing costs, which have been reduced by the consolidation of separate courthouses, will be just over \$1.5 million. It's time to finish the work that we started.

My second request for funding relates to the recommendation of the State's Compensation Commission. I ask you to increase the pay of Maine's trial judges. We're very fortunate in Maine to have a nonpartisan, merit-based selection system. Maine Governors have, with very few exceptions, maintained that nonpartisan system of judicial selection, nominating judges on the basis of their skills and humanity, and the Legislature has carefully vetted those candidates. When people come to court in Maine, they expect and receive fair, impartial and patient attention

from Maine judges. Those judges have to make some of the most difficult decisions that any professional is called upon to make and they do so day after day in more than 100,000 new cases every year, mindful of the need for prompt resolution and fair treatment of all involved.

For examples of the amazing people that have served as trial judges in Maine, you need go no further than the two trial judges who just retired on December 31st. Justice Roland Cole and Justice Nancy Mills served between them more than 66 years on the bench. Justice Cole helped launch the very first Drug Court in Maine. Justice Mills created the first Veterans Court as well as the Co-Occurring Disorders Court. They've both served as Chief of the Superior Court at some point and they served as a role model throughout the system. Just recently, Justice Mills established the Languishing Docket. It's a lovely name; people asked her to change the name and she declined to do so, and I think it speaks volumes about what's happening. That docket assures that people struggling with mental illness do not spend weeks and months in our jails waiting for the next proceeding. All of those efforts have changed lives and they've saved lives. It takes judges with courage and persistence to undertake these efforts and their work is reflective of the work done throughout the State. And yet Maine's trial judges are compensated for their work at the lowest rate in the country and far lower than their colleagues in New England.

Now, I'm not going to tell you that Maine judges will work harder if you compensate them more fairly. They already work as hard as anyone I know. But by making that compensation more commensurate with their colleagues in every other state, you will acknowledge the importance and value of that excellent work. Even more important, your decision will tell the public that you recognize the value to this democracy of an independent system of justice. I ask you to find the funding to address this long-term deficit in judicial compensation.

And, now, I am going to step out of my lane, as the current phrase goes, but I love this State and I know how much you want my advice on something that's none of my business. So, I will ask you to watch the Governor's expression for this next piece. Here it is. Please effectuate the Compensation Commission's recommendation to raise the salaries of legislators and the Maine Governor. The incredible commitment to public service required of people in Maine's government should be recognized and the value of the willingness to take on these critically important jobs should be reflected in the compensation. Maine legislators work year-round, not just during the session, to find solutions to Maine's greatest problems. That work should be recognized. I fully understand that raising the salaries of the jobs in which you currently sit feels odd, but please do this for the legislators to come. And, regarding the Governor's salary; how's she doing? There we go, there we go. So, let me just say this; I want to suggest a slightly different scenario than the Governor recently predicted for 20 years from now. Yes, John Martin will be back in the Senate, I feel confident about that, and, yes, Sawin Millet will probably be running DAFS again, but the Governor of this great State, whoever she is, will be paid in bitcoin and she will be making more than \$70,000 a year. Please make that happen.

I turn now to my final topic; addressing the sadness and despair that drug and alcohol addiction and mental health crisis has created in the State of Maine. Just a year ago at this time, we all stood here and we pledged to expand the network of resources available to help people divert from a life of despair, crime and incarceration. During the intervening year, government responded. The Governor appointed Gordon Smith as the new Director of Opioid Response and created the Governor's Prevention and Recovery Cabinet. Many legislators served in bipartisan efforts throughout the year on multiple committees, task forces, work groups, Blue Ribbon

commissions, whatever you call them, there were groups gathering all the time to address the issue that we need to improve our criminal justice system, the juvenile justice system, and the State's overarching response to the addiction epidemic. And the Judicial Branch participated in the groups that were searching for improved process and resources and led the Pretrial Justice Reform Task Force. We were joined by people from all walks of life to find solutions; people in recovery, treatment providers, advocates, and grieving family members joined these groups. The groups met constantly throughout the year to brainstorm new ideas, find funding sources, and, most important, move quickly. As the groups have reported back, their message has been loud and clear. We must immediately move forward from all three directions. Prevention, including family support, early childhood education and engaged youth. Interdiction, including efforts to prevent and deter the sale of poison in Maine and help now; immediate, meaningful, just-in-time resources for addiction recovery.

With so much work underway, it was, admittedly, disheartening for all of us to learn recently that the number of overdose deaths appears to have increased in 2019, the AG's office reports 21 homicides in 2019, up from 2018, half of the children removed from their parents' care in 2019 were removed at least in part because of allegations of substance abuse, 20% of the children entering state custody were infants and babies who were alleged to have been drug-affected or substance exposed at birth. And recently five overdose deaths rocked the city of Portland in just 11 days.

However, we must not lose faith. There is so much progress that has recently been accomplished and there are, in fact, glimmers of hope throughout the system. So, let me tell you a little bit of good news. First and foremost, the number of drug-affected and substance exposed babies has continued its downward trend, from an all-time high of 1,024 in 2016 to 858 last year. Over 300 recovery coaches have been recruited and trained, \$2 million in federal assistance will, among other things, support recovery residences that are certified by the National Alliance of Recovery Residences and that will accept residents who have been prescribed medically-assisted treatment. There are now 10 recovery community centers in Maine, with more opening in Millinocket and Lincoln in the upcoming months. Medically-assisted treatment is available in more hospitals and in a growing number of jails, which will allow treatment and better transition back into the communities. And as you heard from the Governor last week, a new cross-branch effort led by Gordon Smith will help us review every overdose death to learn from those tragedies and continue to make improvements in our responses. Additional resources are newly available to help the Drug Courts. Through a new grant, the Judicial Branch will be able to expand several more Adult Drug Treatment Courts to include Veterans Tracks. This spring, Justice for Vets, a division of the National Association of Drug Court Professionals, will be providing Veterans Treatment Court Implementation Training for all six adult drug courts. DHHS has allocated nearly \$1,000,000 for additional Drug Treatment Courts including, and this I think is critical, funding for a thorough evaluation of Adult Drug Treatment Courts which is long overdue. We need to know if the money we are spending is actually helping people. The number of pending referrals to the Drug Courts increased 97% last year, which is a clear indicator of the need for the courts. The Drug Court saw an increase of 30 participants, or an 11% enrollment increase, with a corresponding 7.6 increase in the numbers graduating and 12.2 decrease in the number of people terminated from the program. That is a lot of numbers, so, let me just say this; when the pop quiz comes, here's what you need to know. In the Drug Courts, participation is up, graduation is up, and the number of people being terminated from those programs is down. All of that is progress.

And in the Family Recovery Courts, for those cases involving an open child protection matter, there was a 23% increase in the families involved and a 136% increase in the referrals. I could go on, do you want to take a vote on that? I will not, but I want you to understand what is clear is that there is so much happening, we cannot lose hope.

There is, however, one basic need that I would ask you all to keep your eye on. People in recovery need housing. While it is challenging to plan for and fund bricks and mortar, we should all understand that without the fundamentals, housing and food, recovery is simply impossible. I heard this recently and I keep saying it as we're talking about the use of resources; no roof, no recovery. A continuum of housing types is desperately needed and I hope you will support those desperately-needed resources with new funding.

Briefly, now, I turn to a topic that's near and dear to my heart; resources for Maine's youth. Similar to the housing needs for adults, Maine must create a continuum of community-based residential and home-like facilities for our youth. It's the only way that we will be able to continue to move forward. I know that we can do this. We have accomplished so much already. In the decade that followed the Juvenile Justice Task Force Report in 2010, significant improvements have been achieved including a dramatic 68% reduction in the annual number of youth committed to Long Creek and a similar 56% reduction in the annual number of detained youth.

Now, I don't want to get ahead of the Juvenile Justice System Assessment and Reinvestment Task Force that will report to you and the Governor shortly, but I have received Representative Brennan's authorization to provide you with an advanced look at this one stark statistic. The assessment will report that, in the sample studied, half of the youth detained at Long Creek were there not to protect others from harm or harassment, not to ensure the juvenile's presence in court. Instead, it will be reported that in that sample, half of the individual adolescents that were detained at Long Creek were there to provide care or prevent harm to that youth. That presents this question; are we incarcerating our youth because we have nothing else for them? It's time to take the next step to create the community-based options that we all know are needed. So, moving forward, for adults and youth, we admittedly still have a lot to do but we are beginning to see the results of all of this focused effort and we can't allow ourselves to be discouraged.

One final thought on this topic. Maine incarcerates fewer of its people, adults and youth, than almost any other state in the nation. And Maine is one of the safest places to live. We must not take that for granted. As we make the changes that we believe will bring improvements in criminal justice and juvenile justice, we must first do no harm and we must assure meaningful racial equity in our laws, in our procedures and in our actions. We must work to assure that people in our LGBTQ community feel safe and we must provide critical resources to support our youth. If we do all of this thoughtfully and collaboratively, we will see the improvements we all hope for and we will welcome and benefit increasing health and diversity in all of our communities.

So, in conclusion, sigh of relief, we ask you to find the funding to make Maine's courthouses safe and to compensate trial judges who provide independent, fair and accessible justice. We invite you to visit a courthouse near you. We also have two slots open for the Law Court this fall to bring appellate argument to a high school near you. Talk to Julie Finn if you are interested in that. And, as I have done for the last couple of years, I'm going to take the personal privilege of reminding you, as I do to so many people that I am annoying, to get your annual checkups and

complete the tests that the doctors tell you to get. Ladies, get those mammograms scheduled. Gentlemen, get your PSAs. And, apparently, all of us over 50, get that test that none of us wants to talk about. I'm here today because they caught my cancer early. Just do it. Many thanks to all of you for caring about this amazing State. Thank you very much.