

The State of the Judiciary
Chief Justice Valerie Stanfill, Maine Supreme Court
Message to the Maine Legislature
March 15, 2022, in Augusta, Maine

Introduction

Governor Mills, President Jackson, Speaker Fecteau, distinguished Members of the 130th Maine Legislature, and people of the State of Maine.

I am grateful for the honor of addressing you today for the first time on the State of the Judiciary as Chief Justice of the Supreme Judicial Court. I appreciate that you have taken the time to hear from the Judicial Branch. I only wish that I could speak to you in person and look forward to doing so in the brighter days that will most assuredly come.

I begin by thanking the Judicial Branch leaders who have provided indispensable guidance, support and wisdom from day one in my new role.

First, I want to recognize Senior Associate Justice Andrew Mead who served as Acting Chief Justice from April 2020 until June 2021. He led us through some of the most uncertain times of the pandemic, and we are all indebted to him for his service. I also want to recognize my extraordinary colleagues of the Supreme Judicial Court:

Associate Justice Catherine R. Connors

Associate Justice Andrew M. (Mark) Horton

Associate Justice Thomas E. Humphrey

Associate Justice Joseph M. Jabar

And last but certainly not least, Associate Justice Ellen A. Gorman, who is about to retire at the end of the month as our longest-serving active jurist and whose counsel will be sorely missed by all.

I am also grateful to the Trial Court Chiefs who do the difficult work of overseeing the day-to-day operation of the trial courts:

Chief Justice Robert E. Mullen of the Superior Court,

Chief Judge Jed French of the District Court, and

Deputy Chief Judge Rick E. Lawrence also of the District Court

They have provided wise and steady leadership upon which I continue to rely.

I would be remiss if I did not also offer thanks to the incomparable James “Ted” Glessner who retired at the end of 2021 as State Court Administrator after serving our state for almost 30 years. And, I must recognize our dedicated administrative team, including Amy Quinlan who has now succeeded Ted as State Court Administrator. They have also worked tirelessly to help steer the ship during the pandemic and this period of great transition for the Judicial Branch.

Most importantly, I want to recognize and thank our hardworking Judicial Branch employees who have welcomed me into this role. Their commitment to serving the citizens of Maine has remained steadfast, even in the face of great adversity.

In this address I will outline:

- The challenges the Judicial Branch continues to face during this pandemic;
- An update on the backlog of pending cases;
- The critical need for additional Judicial Branch resources; and
- Some of the innovative solutions we have deployed to fulfill our mission.

The Pandemic Challenges Continue.

In my first address as Chief Justice, I wish I could report that the Judicial Branch has returned to “business as usual.” But two years into this pandemic, the needs of our citizens for critical access to justice together with the operational and budgetary pressures on the Maine Judicial Branch have never been greater.

From the beginning of this pandemic, we were determined to keep our doors open, and we have. But courtrooms are not designed for social distancing.

Our usual way of conducting proceedings by bringing large numbers of people together in courtrooms before a judge was simply not safe during this public health emergency. Court systems, in general, are not designed to change quickly: we look to precedent and processes developed over time to ensure that justice is fair, deliberate, and guided by constitutional mandates. But, in the face of the looming public health crisis, we had to rethink nearly every aspect of our operations.

Over the first six months of the pandemic, the Court issued a number of orders to guide our response to the pandemic and to prioritize matters involving life and liberty interests, such as child protection cases, protection from abuse petitions, and cases involving individuals incarcerated while awaiting trial.

We implemented remote proceedings with the goal of returning to full pre-pandemic operations as soon as possible. With modified processes and very strict protective measures consistent with guidance from the CDC in place, we resumed some jury trials in September 2020. And then, you will recall that coronavirus cases started to increase alarmingly, dashing our hopes of returning to full operations in November and December of 2020.

Fast forward to spring of 2021. COVID-19 case numbers were falling, vaccination rates were increasing, and the state of emergency was ending. Jury trials were resuming again. I was nominated in May and sworn in as Chief Justice in early June, 2021. I thought I was coming into office at, frankly, the perfect time. Judicial Branch leadership had worked tirelessly for 15 months to steer us through the pandemic. Our staff, and especially the judges, clerks, and marshals on the front-lines had been nothing short of heroic. We had pivoted to Zoom, figured out how to conduct jury trials with people spaced throughout the courtroom, addressed issues like remote depositions and the ability to file for a protection order electronically. Acting Chief Justice Mead had led efforts to do the hard work. Now the task was simply to resume normal operations and get caught up.

Or so I thought.

We are in challenging times with respect to indigent legal services. Before the pandemic began we were having significant discussions about bail and criminal pretrial and sentencing reform. Systemic racism and bias, gender and cultural barriers, and a myriad of access to justice issues cannot be ignored. The opioid crisis, poverty, intrafamily violence all continue to wreak havoc on Maine's families and tear at the very fabric of so many people's lives. I looked forward to working on these critical issues and assumed that they would be my primary focus unfettered by the prior pandemic restraints.

And yet again, I was wrong.

Efforts to find solutions to these issues continue. We cannot stop moving forward. But progress has been complicated by the backlogs, uncertainties, anger, and stresses created by the pandemic. We have been challenged at every turn to move with breakneck speed to innovate and summon all available resources to meet our core mission.

As fall 2021 approached, more contagious and dangerous variants of COVID-19 hit our state. Community transmission and hospitalization rates soared to previously unseen levels. Once again, we had to impose limits on courthouse capacity and reinstitute masking mandates for employees and the public entering our facilities.

This time, however, the Judicial Branch had tools at the ready. While the pandemic surged last fall and into 2022, high vaccination rates in many areas meant that courts could continue in-person proceedings, including jury trials in many locations. We had the technology and procedures in place to conduct remote proceedings, although they remain more time intensive. But it just wasn't and isn't enough to keep up with the demand.

An Update on the Backlog of Pending Cases.

As I offer these remarks, large numbers of pending cases have not been heard and must move forward. We have been working hard to schedule cases and hearings. We are making progress, but we have not been able to significantly reduce the backlog, particularly in some case types.

We have reached out and listened to attorneys and members of the public who have been frustrated by suspended dockets and delayed trials. We are mindful of the demands on our system partners who are also dealing with changes and scarce resources as a result of the pandemic. It is a "Catch 22" scenario played out across the justice system as matters are scheduled and rescheduled again and again as a result of requests to continue cases by attorneys who themselves are overwhelmed by the backlog and trying to figure out how to be in 3 counties at once. For every person who advocates that due process requires in-person court proceedings, there are an equal number who do not want to go to court and request to appear remotely.

Despite concerted efforts to implement new ways of processing cases remotely and safely, court operations slowed dramatically. Simply put — while we are current on some dockets, many are significantly backlogged.

If you would like more detailed information on the extent and distribution of the backlog and pending cases over the last few years, that is available from the Judicial Branch. But consider the following:

- Pending cases overall have increased about 45% since pre-pandemic levels.
- Some dockets are fairly current or only modestly increased, such as family and child protective cases.
- Juvenile dockets actually have decreased by about 25%.
- The number of civil and real estate cases as well as small claims have increased markedly because they necessarily were a lower priority than cases involving life and liberty interests.
- Priority is always given to those being held in jail in lieu of bail. Nonetheless, our criminal case load has increased by more than half, with thousands more cases pending than before the pandemic. On a hopeful note: it may be too early to tell, but so far the numbers seem to be trending down – slowly - in 2022.

Many cases are taking longer to resolve, and we worry that justice delayed is truly justice denied. There are many reasons, from court capacity and slowed processes, to delays with litigants not able to attend court or not having reliable internet connections, to attorneys' schedules and overwhelming caseloads. Our justice system is interdependent. When one part of the system is delayed, the impact is felt systemwide.

The bottom line: Despite applying all available resources, technologies, and revamped processes, we have yet to be able to cut the backlog in any meaningful way. But we are holding steady. The pandemic has exposed the uncomfortable reality that we simply lack the capacity to just “catch up” or to schedule and hear more cases with our existing workforce.

Strained Resources and the Pandemic Response.

Our greatest barrier to fulfilling our mission is insufficient resources, all across the board. Before the pandemic, the Judicial Branch ran lean with our capacity stretched to meet the daily demands. We're Mainers. We made do with what we had. Our jurists have always been scheduled with full dockets all day, every day. They have little in the way of support staff. For our trial judges, it is a matter of have laptop, will travel.

But the pandemic has exacerbated those shortfalls. Disruptions and shortages in staffing together with judicial vacancies in an organization already working to capacity made it difficult to absorb the additional work required to shift processes and introduce remote proceedings.

Additionally, conducting court proceedings under pandemic conditions takes more resources. Court staff are called upon to assist members of the public with technology issues, and manage paperwork electronically, to figure out how to manage Zoom and hybrid proceedings on top of regular duties. Entry screening, always a critical function performed by our marshals, became the frontline in ensuring that public health safety measures were implemented and maintained. And like everyone else, our employees have struggled with their own health issues and disruptions to their personal lives, including managing childcare and attending to loved ones impacted by COVID-19.

We face the same hiring and recruitment challenges familiar to many employers. The Judicial Branch has not been exempt from the “Great Resignation”; we have more vacancies than before. There is greater turnover, fewer applicants for open positions, people out on extended leave, and people ill or quarantined because of COVID-19. In January, one Superior Court and four new

District Court judges were sworn in, and there are now several more nominations pending, all of which will almost bring us to full strength in judges. But, we don't have enough marshals or clerks or, indeed, any other position. We have had to close courthouses to the public because we do not have enough staff. There are times we have judges that we cannot put on the bench because we don't have the staff to do so. And all the technological innovations and changes have been pushing our IT department to the limit at a time when we are in the midst of implementing our case management and eFiling system known as Maine eCourts.

Creative Initiatives to Address Challenges.

Although the pandemic has upended regular court operations in unprecedented fashion, it also presents an enormous opportunity to reexamine how we do business – to seek solutions and new tools to better serve the citizens of Maine. We have been challenged to innovate. And we have!

Targeted supplemental budget requests to add capacity to process cases.

Over the past two years, we have reengineered our processes and operations. We now seek to institutionalize these changes. Our supplemental budget builds on past advances and continues our efforts to invest in personnel and the smart use of technology to provide a prompt, responsive, and effective system of dispute resolution. Specifically:

- Remote hearings are now common in many case types. They can result in savings to court users in time, expenses, fees, and travel. The availability of remote proceedings has meant that attorneys may represent clients in geographically distant locations and litigants may attend proceedings without making long drives to the courthouse. But the added demand on the personnel necessary to conduct and process cases remotely has strained our workforce.
- The pandemic underscored the need for more clerks, courtroom technology assistants, law clerks, and marshals. Our supplemental budget requests are targeted to address these staffing needs with some new and reclassified positions to relieve the unsustainable strain on existing staff and to build capacity to adapt to changing operations in an electronic world.
- As remote proceedings have become an indispensable tool to move dockets, we have worked to implement technologies to maximize these processes, including equipment and software to support remote operations. These include Citrix ShareFile, audio visual equipment, Adobe licenses, remote mediation hosting, TeamViewer software to allow for remote computer access and additional equipment purchases for monitors, printers, computers and polycom Zoom connectors so that we meet our mandate to create an official court record.
- Benefits include our pilot program using the Citrix ShareFile platform for submitting some filings instead of the US mail. The pilot started in early January 2022 for criminal pleadings in Alfred, expanded to all courts in York County on February 11, and we expect it will be rolled out to the rest of the state in the coming weeks and months.

Keeping our courthouses safe for our employees and the public.

Entry screening remains an important component of the Judicial Branch's pandemic response. Marshals screen for COVID-19 as well as weapons and other contraband. But the lack of marshals has limited our ability to keep all courthouses consistently open to the public across the state. Even before the pandemic, the Judicial Branch had requested additional deputy marshals to provide entry screening at every courthouse during the hours of operation.

We are grateful for the 10 new marshal positions in the last budget. But it is, unfortunately, not enough.

As with law enforcement agencies across the state and nationally, recruitment for these positions has been difficult. Although we have succeeded in filling most of the 10 newly created positions thus far, our Supplemental Budget request seeks to create 10 “court attendant” positions, whose duties will encompass some tasks now being done by marshals which do not require full law enforcement qualification. Most obviously, court attendants will not carry firearms. They will, however, support courthouse security by monitoring control rooms — essentially dispatch — in the larger courthouses. They will also receive training to act as jury officers, freeing more marshals to be allocated across the state. As you can tell, we are trying to be creative to increase recruitment and retention. The lack of marshals is currently our biggest impediment to opening courtrooms and hearing more cases.

Innovative referee pilot program to address the backlog in family and non-jury cases.

We are starting a referee project, where some recently fully retired judges (not active retired) will be appointed as referees and paid by the court to handle civil and family cases remotely. The program will be launched as a pilot with family cases in which both sides have an attorney, but we hope to expand it to family cases with unrepresented parties as well as other civil non-jury cases. The goal is to add capacity in the short-term to allow us to address the backlog without adding work to existing personnel. To that end, we intend to use a third-party hosting service to coordinate and run the remote hearings and create the court record.

Collaborating with system partners to improve processes.

We continue to work with system partners to develop and refine new ways of conducting business. We have reached out to the bar associations, the Prosecutors Association, the Maine Commission on Indigent Legal Services and civil legal services providers to problem solve and identify new possibilities:

- We are assessing how we schedule many of our dockets. There have always been too many cases and too few resources to schedule each case individually. Most cases settle and we never know in advance which cases will actually go to trial. Our prior practice – where we scheduled numerous cases at once for all kinds of proceedings in order to maximize limited court time — could not work during the pandemic. So, we reduced the numbers of matters scheduled at one time in order to protect the health and safety of everyone involved. By doing so, we were also more respectful of court users’ time - litigants, attorneys, and jurors. Our challenge in moving forward is to balance those competing priorities in the way in which we schedule matters. We can do better.
- Contested traffic trials from every region in the state are now held remotely from the Violations Bureau in Lewiston rather than in individual district courts. Court technology staff manage the remote proceedings involving scores of defendants and all of the corresponding law enforcement officers from across the state appearing in front of a District Court judge. It is quite a feat, moving so many people in and out of virtual waiting rooms and courtroom. And, generally the officers and defendants are happy to be able to take care of these matters from their homes or cruisers without traveling to court and taking time away from their duties. Our

experience has been consistent with national surveys showing court users prefer remote hearings in these kinds of cases.

- We are working on innovative ways to move civil dockets, which have necessarily taken a back seat to cases involving public safety, liberty, and children. Justices Mark Horton and Michaela Murphy are working with members of the bar to create a process for remote jury selection in civil cases. They have been working most recently with our IT department to identify the technology solutions needed to support the project. And Active Retired Justices Nancy Mills and Roland Cole are spearheading a statewide approach to identify civil cases ready for jury trial, have management conferences, arrange judicial settlement conferences, and work to get the cases scheduled.

The Judicial Branch automated case management and eFiling system is critical to long-term planning and is a key component to any future pandemic response.

Keeping the court system operational without physical access to a courthouse means finding digital ways to do things that had primarily been done in person. One of our ongoing initiatives — our automated case management and eFiling system — is, perhaps, among the most critical tools. Despite pandemic pressures and the enormity of the project, we rolled out the system in Bangor for most civil and family matters and the statewide Business & Consumer Docket in the fall of 2020. It is also in use in the Violations Bureau. But the pandemic has taken its toll here too.

The initial rollout in Bangor and the Business & Consumer Docket was a pilot project. And as with all such projects, we encountered problems. Our IT department has worked hard to make the system work better for all involved. Hundreds of cases have been successfully eFiled in Bangor courts and the Business & Consumer Docket, but issues that have surfaced during the pilot have caused us to pause the next phase of implementation while we work to identify and solve these issues and review project goals and the necessary next steps to achieve project success.

To assist us, we hired BerryDunn's justice systems consulting group to conduct an assessment of the Maine eCourts electronic case management and eFiling system implementation project. They have worked with other states and similar electronic court projects across the country and are located here in Maine. We hope to have some results within the next month to help us identify strengths, weaknesses, and opportunities, and make recommendations to assist us in implementing the next phases of the project

Work continues to create safe and dignified courthouses

We have learned much about how to conduct business remotely. We are more prepared to tackle any future emergency that makes it difficult to get to a courthouse. But courthouse facilities will always be the principal place for the public to come to be heard on their important matters. We cannot lose sight of the major efforts started over a decade ago to make sure that our facilities are safe and dignified places that honor the importance of the work done within their walls. In this regard, I note the following:

- The newly renovated and expanded Oxford County Courthouse opened to the public in 2020. We created a video because we were unable to have a grand opening in person; a link to the video slideshow may be found on our website. The Oxford County Courthouse covers 25,510

square feet; boasts energy high-efficiency features; state-of-the-art courtroom AV systems; additional courtrooms and conference rooms; and expanded employee and security areas. The renovation restored the historic jury courtroom to its original grandeur.

- The York Judicial Center project remains on budget at just over 50% completed and is slated for occupancy in spring 2023. The building provides ample space for gathering and will take advantage of the latest technology, solar and geothermal energy sources, and allows plenty of natural lighting to provide an extremely energy and cost-efficient building for the public.
- We are looking at several other projects across the state to upgrade badly outdated and sometimes dangerous facilities. But that is a discussion for the future.

Courthouse Visits

There is no better way to truly understand the work we do and the challenges we face than to visit a courthouse. Any of our courthouses would welcome you should you want to come and watch a court proceeding or spend some time with one of our jurists to learn how we do what we do.

We are also going back to the schools. In this unique educational program the Supreme Judicial Court, sitting as the Law Court, holds oral arguments at Maine high schools at the invitation of local legislators. This gives the students a real-life view of the work of the Supreme Judicial Court. It also gives us the opportunity to get out into the communities that we serve and meet Maine's next generation. We will be visiting Biddeford High School in May at the invitation of Senator Deschambault and Speaker Fecteau. We hope to see the entire delegation from Biddeford and the surrounding area.

If you have any interest in inviting us to your community, please contact Amy Quinlan or our legislative analyst Julie Finn.

Conclusion

Much has changed since March 2020. Like so many, the Judicial Branch has been significantly impacted by the pandemic. Our mission is to provide a safe, accessible, efficient, and impartial system of dispute resolution that serves the public interest, protects individual rights and instills respect for the law. For two years now we have been struggling to carry out our mission and to serve the citizens of Maine, but our commitment to do so is unwavering.

There will come a day when the pandemic conditions end. That day cannot come soon enough! But the pandemic has also brought about a time for creativity and innovation — maybe even experimentation. And your ideas and input are critical and welcomed. The immense task we face, then, is one for which I seek your help. Maine's Judicial Branch cannot do it alone.

- Help us provide the effective and efficient delivery of justice.
- Help us restore public trust and confidence in the justice system.
- Help us provide access to justice deserving of all fellow Mainers.

Thank you for this opportunity to speak to you.