

**Annual Address:**

**State of the Judiciary**

October 30, 2019

Great Hall, John Adams Courthouse  
Boston, Massachusetts

*Remarks by*

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Chief Justice of the Supreme Judicial Court

I have learned many things since I first became a judge twenty-two years ago, but perhaps the most important lesson is that justice is a team effort. If we bend the arc of the moral universe towards justice, one case at time, we do so because a wise and patient judge presides over a courtroom that is well organized by an experienced clerk; that is kept calm and safe by a savvy and good-humored court officer; that is supported by probation officers who care deeply about the success of the persons under their supervision, and the safety of the public; that sits in a courthouse that is kept functional and clean, often despite its old age and deteriorating condition, by a committed facilities staff. And let us not forget the persons who are not employed by the judiciary but who are indispensable to the quality of justice we provide: the attorneys who advocate on behalf of their clients; the self-represented litigants who have to advocate for themselves because they cannot afford to retain an attorney and have no right to appointed counsel; the witnesses, including victims, who offer evidence; and the jurors who put aside their daily responsibilities to be the judges of the facts in approximately 4,000 jury trials each year in our courts.

Likewise, since I became Chief Justice of the SJC five years ago, I have learned how much teamwork is required to improve our justice system. Collaboration is the key to accomplishment. And so I am thankful for the wise counsel of my colleagues on the SJC and for the leadership, energy, and dedication of Chief Justice Mark Green in the Appeals Court, Chief Justice Paula Carey in the Trial Court, Court Administrator Jon Williams, and the departmental chiefs and deputy court administrators.

I am grateful for the engagement of the leadership and members of the Massachusetts Bar Association, the Boston Bar Association, and the other regional and affinity bar associations, and for all their volunteer work on court committees and in pro bono service.

I deeply appreciate the support we receive from our partners in the Legislature and the Executive branch. Not many Supreme Court chief justices in other states across the country can truly speak of the leaders of the Legislature and the Executive branch as their partners in justice, but I can, and I am thankful for that privilege. That partnership rests on three legs: mutual respect for the role each of our co-equal branches plays in a healthy government under a rule of law; confidence in the good faith and dedication of each of the leaders of our branches; and the recognition that the problems that come to our courts are often the same problems our Governor and legislative leaders are committed to address, and that none of us can solve these problems alone. I thank Speaker DeLeo, Senate President Spilka, Ways and Means Chairs Michlewitz and Rodrigues, Judiciary Chairs Cronin and Eldridge, and our many other friends in the Legislature, for their support, for their devotion to improving the laws that guide so much of our work, and for giving us the resources we need to do that work. And I thank Governor Baker, Lieutenant Governor Polito, Legal Counsel Robert Ross, and their staff, the Judicial Nominating Commission, the Joint Bar Committee, and the Governor's Council for their commitment to selecting and confirming wise, fair, and compassionate judges and clerks.

### Lawyer Well-Being

In last year's State of the Judiciary address, I announced that the SJC had formed a Steering Committee on Lawyer Well-Being, led by our retired, but tireless, Justice Margot Botsford, to explore ways to reduce stress on attorneys, increase professional satisfaction, improve work-life balance, and better support those who are confronting mental health and substance use disorders. We did so for two reasons: first, because the SJC's superintendence authority includes the superintendence of the bar; and second, because lawyers are so fundamental to our legal system

that when lawyers are under stress, our legal system is under stress. The Steering Committee and its eleven subcommittees represented different stakeholders in the legal community, including bar associations, large firm lawyers, small firm lawyers and solo practitioners, corporate in-house counsel, prosecutors, criminal defense lawyers, civil aid lawyers, bar regulators, judges, law schools, and lawyer assistance programs. Hundreds of lawyers and judges participated in this effort, and they have done their job well. Together they produced a comprehensive report, issued this past July, that offers many thoughtful and detailed recommendations to improve the working life of lawyers in whatever setting or area of law they practice and to address the aspects of our legal profession that contribute to preventable stress, to isolation, to mental health challenges, and to alcohol and substance use disorders. If you have yet to read it, please take the time to do so.

Now it is up to all of us to justify the Steering Committee's hard work by implementing many of the recommendations. The justices have begun by adopting the Steering Committee's recommendation to establish a permanent SJC Standing Committee on Lawyer Well-Being, co-chaired by Justice Botsford and Denise Murphy, President-elect of the Massachusetts Bar Association. In addition, under the leadership of Marilyn Wellington, the executive director of the Board of Bar Examiners, the SJC will be establishing a pilot mentoring program for newly admitted solo and small firm practitioners, which will seek to build on those mentoring programs that have proven successful and to learn from those that have not. The SJC mentoring program will supplement and seek to enhance the mentoring programs already established by various local and affinity bars. And we urge every legal organization of significant size, whether it be a private law firm, a prosecutor's or public defender's office, or a legal aid organization, to take a fresh look at establishing a mentor program in their legal community or, if they already have such a program, to explore ways to strengthen those mentoring efforts.

The Steering Committee report recognized that we have too little data about the composition of the Massachusetts bar: we do not know how many are in private practice or in other law practices, or the areas of law in which they practice, not to mention how many attorneys of color we have in Massachusetts. So, with the email database provided by the Board of Bar Overseers, I will soon be sending out a survey to all registered Massachusetts attorneys asking for this information, confidentially, so that we have a clearer picture of who our bar is and what our attorneys do, so that we can better meet the needs of all members of the bar. I urge you, when you receive this survey, to take the very few minutes needed to answer it, and to do so right away. Please don't put it in the electronic file of things you will get to when you have a chance.

The report recognizes that some of the stress of being a lawyer comes from incivility among lawyers, especially in certain practice areas. Our SJC Committee on the Rules of Professional Conduct is considering whether our ethical rules adequately address the behavior of those few attorneys who have engaged in a pattern of abusive conduct towards their fellow attorneys that can fairly be characterized as bullying. And I am pleased that MBA President John Morrissey has pledged to address the broader issue of civility in the practice of law by working with county bar associations to hold regional meetings on this issue with the bench and the bar.

The report also recognizes that judges can improve the well-being of lawyers by imposing reasonable filing deadlines, granting reasonable extensions of time when needed and when consistent with the interests of justice, respecting planned vacation schedules and family and health emergencies, and reducing needless waiting time through staggered court scheduling. Sometimes these requests can be in tension with fairness to another party, or with the interests of a defendant being held in custody awaiting trial, or with applicable time standards, or with the efficient use of scarce judicial resources. But often they are not, and I have asked our court departments to engage

in robust discussion to see if we can do better to balance the wellness needs of lawyers with the interests of justice.

Lawyers Concerned for Lawyers is the non-profit entity supported by bar dues that provides support and counseling, not only for those addressing the challenges of alcohol or substance abuse, or mental health issues, but also for those confronting challenges in establishing or managing a private law office or in learning the technologies they will need to succeed in a small or solo practice. We have begun to explore with LCL whether more can be done to ensure that lawyers know of the range of services provided by LCL, whether LCL should have a stronger statewide presence beyond Boston, and whether its current level of funding is adequate to accomplish its important and potentially expanded mission.

#### SJC Working Group on Substance Use and Mental Health

Twenty-five years ago, in an address to the Massachusetts Bar Association, Chief Justice Paul Liacos declared, "Nearly every reputable study of the criminal justice system has shown substance abuse to be a significant factor in 80% to 85% of the criminal cases which enter the criminal justice system."<sup>1</sup> He also noted that substance abuse was involved at the threshold of almost all criminal cases and was a significant factor in the explosion of domestic and family violence, sexual and physical abuse and parental neglect.<sup>2</sup> The next year, a Task Force on Substance Abuse and the Courts, convened by the SJC and chaired by SJC Justice Francis O'Connor, produced a report entitled "A Matter of Just Treatment: Substance Abuse and the Courts." On the advice of that Task Force, the SJC adopted a system-wide policy that provided:

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<sup>1</sup> SJC Substance Abuse Project Task Force, *A Matter of Just Treatment: Substance Abuse and the Courts* 6 (March 1995).

<sup>2</sup> *Id.*

Every judge in the Commonwealth should attempt to identify and appropriately respond to the indication of substance abuse by any party appearing before him or her in a court of the Commonwealth, where substance abuse is a factor in behavior related to the case. At every stage of the adjudicatory process, courts should provide access to substance abuse information and to referrals for screening, assessment and treatment for substance abuse.<sup>3</sup>

And in 1998, the SJC approved Standards on Substance Abuse that sought to provide guidance for the implementation of that policy.

Those standards were impressive in their foresight and wisdom. They recognized that drug and alcohol dependence are medical illnesses, that they are treatable, and that "[t]reatment does not always work the first or even the second time, so that relapse should not be a cause for giving up on a substance abuser."<sup>4</sup> But, as impressive as they were, these standards are now more than twenty years old, and much has happened since then. In 2000, 375 persons died from opioid-related overdoses in Massachusetts; in 2018, more than 2,000 died.<sup>5</sup> Much has also been learned about the brain science of addiction, about the prevalence of relapse, and about the effectiveness of different treatment regimens, perhaps most importantly, the effectiveness of medication-assisted treatment. The SJC has recognized that, in light of the latest advances in medical knowledge, it is time to reexamine our approaches to working with criminal defendants and other litigants who are wrestling with substance use disorders. And since persons with substance use disorders are so often afflicted by mental health problems, we cannot investigate one subject adequately without studying the other as well.

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<sup>3</sup> *Standards on Substance Abuse* 4 (April 28, 1998).

<sup>4</sup> *Id.* at 5.

<sup>5</sup> Massachusetts Department of Public Health, *Data Brief: Opioid-Related Overdose Deaths among Massachusetts Residents* (August 2019), [https://www.mass.gov/files/documents/2019/08/21/Opioid-related-Overdose-Deaths-among-MA-Residents-August-2019\\_0.pdf](https://www.mass.gov/files/documents/2019/08/21/Opioid-related-Overdose-Deaths-among-MA-Residents-August-2019_0.pdf) (showing 2,032 opioid-related overdose deaths in 2018, including 1,995 confirmed deaths plus 37 additional estimated deaths).

So this summer we created the SJC Working Group on Substance Use and Mental Health to revisit the 1998 Standards. The Working Group includes Chief Justice Carey, judges and staff from the affected Trial Court departments, representatives from our specialty courts, and Commissioner Ed Dolan and other staff from the Probation Service, supported by subcommittees within Probation and each of the participating court departments. We have held two very productive meetings so far, where we had the opportunity to learn from two medical experts, and have discussed particular challenges that the courts and Probation face in working with persons dealing with substance use and mental health issues. In the months to come we will continue to meet with more experts and outside stakeholders, such as sheriffs and police chiefs, district attorneys and defense attorneys, doctors and other treatment providers, to gather their insights.

We will grapple with challenging questions: When should drug abstinence and treatment be a condition of probation? How can we obtain the clinical support we need to conduct assessments of substance use and mental health? What role should a judge play in supporting or enabling medication-assisted treatment prescribed by a physician? How can we ensure that indigent defendants have the financial ability to see a physician who may prescribe medication-assisted treatment? And how should we deal with relapses or failures to comply with treatment plans? It is too soon to predict how we will answer these and other questions, but we will endeavor by 2021 to find those answers and prepare a report that will provide guidance as to how we can wisely, effectively, and humanely support those who come to us in court with substance use and mental health challenges in a manner that is consistent with public safety and fundamental principles of justice.



### Increase in Procedural Amount

On the civil side, we are taking other steps to improve how our courts serve the public. Earlier this year, the SJC approved an increase in the procedural amount for civil damages actions in the Boston Municipal and District Courts from \$25,000 to \$50,000, effective as of January 1, 2020. As many of you know, we initially proposed such an increase four years ago, but deferred when leaders in the bar expressed concern that the District and Boston Municipal Courts were not prepared to absorb the anticipated increase in civil cases. Acting on their suggestions, District Court Chief Justice Paul Dawley and Boston Municipal Court Chief Justice Roberto Ronquillo made several changes to increase their courts' capacity to handle civil cases timely, fairly, and efficiently: they established dedicated civil sessions with designated judges; assigned a staff member to act as civil liaison at each court; expanded civil mediation and conciliation services; and are training personnel in the clerks' offices to prepare for the increased number of civil filings. And attorney voir dire, although not mandated by statute, is now available as a result of standing orders issued by the District Court and BMC.

This is a great example of how bench/bar collaboration can help us improve our court system. As we embark on the change in the procedural amount next year, we hope that the attorneys who handle civil cases in these courts will continue to give us input on how things are going, and let us know if they have additional suggestions for improvement. Our goal is to ensure that every civil case, regardless of the dollar amount at issue, can be resolved in a fair and cost-effective manner within our court system.

## Access to Justice

Turning to another important aspect of our civil cases, as co-chair of the Access to Justice Commission, I am ever mindful of the many challenges faced by litigants who cannot afford counsel to represent them. Our legal aid organizations do a superb job of representing the clients that they can take on, but due to limited resources they must turn away approximately 57 per cent of Massachusetts residents who come to them for help. Many private attorneys step forward to fill the gap by offering their services pro bono. But they, too, can only meet a fraction of the need for legal assistance. As a result, many litigants, especially in Housing Court and Probate and Family Court, must navigate a complicated legal system and advocate for themselves with no legal training, and often with limited English proficiency, in cases that can have life-altering consequences, such as eviction from a home or loss of child custody in a divorce.

In his Pulitzer Prize-winning book, *Evicted*, Matthew Desmond writes about the importance of residential stability and the "heavy toll" that eviction exacts on families, communities, and children. "Residential stability," he writes, "begets a kind of psychological stability, which allows people to invest in their home and social relationships. It begets school stability, which increases the chances that children will excel and graduate. And it begets community stability, which encourages neighbors to form strong bonds and take care of their block." Eviction, in contrast, causes loss. "Losing your home and possessions and often your job; being stamped with an eviction record and denied government housing assistance; relocating to degrading housing in poor and dangerous neighborhoods; and suffering from increased material hardship, homelessness, depression, and illness -- this is eviction's fallout."<sup>6</sup>

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<sup>6</sup> Matthew Desmond, *Evicted: Poverty and Profit in the American City* 296, 298 (2017).

Earlier this year, the SJC's opinion in *Adjarney v. Central Division of the Housing Court Department* discussed the many intricacies of summary process eviction cases, which we described as "complex" and "fast-moving." How complex? These eviction actions are governed by a web of applicable statutes, rules, and case law that are so difficult to understand that we wrote an appendix in *Adjarney* to serve as a guide to those litigants who were seeking to navigate the process. And because we could not be certain that this guide always reflected the way that the rules and statutes are applied by clerks and judges in every division of the Housing Court and in other trial courts with jurisdiction over eviction actions, we had to add the following caveat: "There is, perhaps, no better demonstration of the complexity of a summary process eviction action than our own recognition that this Appendix may not fully capture day-to-day practices at the trial court level."<sup>7</sup> How fast moving? The entire process from the landlord's initial service of a notice to quit to the tenant's final removal from the home can take less than seven weeks. And because more than ninety percent of tenants in Housing Court eviction cases are unrepresented, but about seventy percent of landlords are represented, we noted that, in most cases, "the landlord has an attorney who understands how to navigate the eviction process and the tenant does not."<sup>8</sup>

Under these circumstances, where so much is at stake, it is no surprise that there are various efforts across the country to broaden access to counsel in eviction cases. I know that there are legislative efforts afoot here in Massachusetts to provide legal counsel for all indigent parties in eviction proceedings, not only tenants but also indigent landlords who rely on the timely receipt of rent to make their mortgage payments and avoid foreclosure, and I hope that by next year these efforts may finally come to fruition.

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<sup>7</sup> *Adjarney v. Central Division of the Housing Court Dept.*, 481 Mass. 830, 850 (2019).

<sup>8</sup> *Id.* at 838.

But if we are committed to residential stability, to reduce the number of evictions, and to avoid homelessness, we must do more than provide legal counsel. Few landlords wish to commence an eviction action; they simply want the rent that they are due. Most are amenable to search for a solution other than an eviction. The likelihood of avoiding an eviction is magnified if the search for that solution begins at or before the notice to quit and does not wait until the eviction complaint is served. And efforts to avoid eviction are most likely to succeed if funds are available through government or community programs either to pay a temporary shortfall in rent or to find alternative housing within the community. Counsel, communication, and collaboration, supported by adequate state funding, can save homes, communities, and lives.

Until we create a world in which all who need counsel in civil cases have access to counsel, we must do all we can to make the court system more understandable and accessible for the many litigants who must represent themselves. Over the last several years we have established court service centers to assist court users in six of our busiest courthouses. Court service centers offer information about court rules, procedures, and practices; one-on-one help in filling out court forms and help with legal research; access to online resources and interpreter services; and help to connect litigants with community resources, legal assistance programs, and social service agencies.

In an ideal world, we would have a court service center in every courthouse. But we have 99 courthouses in this Commonwealth; we cannot possibly afford to have a court service center in all of them. So we need to develop a virtual court service center that is available to everyone online. Over the last three years, the Trial Court and the Massachusetts Appleseed Center for Law & Justice have partnered together to study this idea, and just this month Appleseed issued its resulting report, entitled: "Turning on the Lights: How the Massachusetts Trial Court Could

Deploy a Virtual Court Service Center to Assist Self-Represented Litigants." As envisioned in this report, a virtual court service center would collect the Trial Court's existing self-help materials at a centralized, easily navigable website; offer "LiveHelp" options such as phone lines and chat services that give users direct, individualized guidance; and provide guided interviews and document assembly programs that enable users to fill out and e-file court forms and documents. Over the next few months we will be carefully studying the proposal for a virtual court service center and begin mapping a path forward to assist those who need help navigating our court system. I would like to thank Judge Dina Fein, Special Advisor to the Trial Court for Access to Justice Initiatives, Sheriece Perry, Co-Director of Support Services for the Trial Court, and Appleseed Executive Director Deb Silva for their leadership on this project, as well as the Appleseed staff who contributed to the report.

Since I became Chief Justice I have tried to visit at least one of our courthouses every three months, where I have the opportunity to speak with judges, clerks, court officers, probation officers, and other court staff about the work they do and the challenges they face. I always return invigorated by these visits because, in every courthouse I have visited, I see dedicated public servants committed to our mission of delivering justice with dignity and speed, and to doing their job with skill and compassion. When I hear complaints, it is mostly that there is some obstacle, usually a lack of resources, sometimes a court protocol, that is preventing them from doing their job as well as they would like to do it. This commitment to justice, to excellence, to innovation, is what defines our court family. It is shared by our judges, our clerks, and our staff, our court management and our unions. It reflects an ethos that we speak up when we see something wrong, that we listen, really listen, that we respect each other and every person who walks into our

courthouse, and that we strive to make our justice system better than it was last year, and second to none in the world. Thank you.

And speaking of second to none, I now turn the microphone over to Chief Justice Paula Carey.