

Annual State of the Judiciary Address

Chief Justice of the Trial Court Paula M. Carey
October 27, 2021

Good afternoon,

Thank you, Chief Justice Budd. It is a bit different that we are recording our remarks for this year's State of the Judiciary instead of delivering them in-person, but this should not surprise any of us given our experiences over the last 19 months.

Before I begin with my remarks, I would like to take a moment to reflect on the legacy of Chief Justice Ralph Gants. He was my Chief, my friend, and my mentor. His passing was a loss to many of us personally, but the loss to the system was acutely significant. Chief Justice Gants had an innate capacity to listen, and to listen well. He was strong, opinionated, and one of the most humble human beings I have ever known. He knew how to lift people up and inspire them in ways that only our most beloved leaders can do. He used his power to effect change, and he did so in a way that was clear and authentic. The Chief was not about self-promotion. He never did anything for the sake of receiving credit, and in fact, typically gave credit to others. It is hard for me to accept the loss of Ralph Gants. Since his death, I have often asked myself, "What would he want"? The answer is simple . . . "Carry out my legacy." He would encourage all of us to confront systemic racism and to work to make our system fairer and more just. He would ask us to right wrongs and to listen to one another. He would say, as he did in his 2015 State of the Judiciary, "In our courts, we seek to repair the world, sometimes even save the world, one person at a time. What that means is that our courts will step up to the plate and seek to address the challenging problems that come before us."

Another significant loss is that of Harry Spence, who was our system's first Court Administrator. His impact on the development of the court system and on me personally was immeasurable. Harry helped define the role of Court Administrator and left the Trial Court and the world a better place because he was in it.

Last, but certainly not least, was the loss of Craig Burlingame, our recently retired CIO. While members of the Bar may not have known Craig, his deep knowledge of state government and IT infrastructure was second to none.

The State of the Judiciary is one of few opportunities during the year where we speak with members of the Bar to discuss the issues that define our work. I am grateful for the strong collaboration we have in Massachusetts between the judicial system, our co-equal branches of government, and the members of the Bar. My gratitude is especially strong given the support we have received as a system over the last 19 months.

I will address five important issues today. First, is how we have pivoted as a system since March of 2020 when the pandemic began. I am incredibly proud of our system, as we did not miss a beat. We closed for two days in March and have been open and accessible to the public ever since. While our courthouses were physically open only for emergency matters for a period of time, we remained available to all members of the public virtually for non-emergency matters. Second, I will address the awakening that has occurred in our system relative to racism and the disproportionate experience of marginalized communities in our justice system. The events of the last 19 months have rocked us in many ways, including the need to face systemic racism directly and proactively. Third, I will address the significant uptick in the behavioral health and substance use issues present in the people who appear before us, and how we are working to adjust our system to address the needs of the 70% of people with these issues who appear before us, instead of the 30% who do not have such acute needs. Fourth, I will update you on the efforts that the Massachusetts Trial Court has undertaken to implement the Criminal Justice Reform legislation that was passed in 2018. Lastly, I will speak

about the Eviction Diversion Initiative (EDI), which has been a collaborative effort with the Executive and Legislative branches to prevent homelessness stemming from COVID-19.

In early 2020, COVID-19 permanently changed our world. I never imagined having to live through times like the last 19 months, either personally or professionally. Who knew that I would learn so much about plexiglass, PPE, air quality, and MERV-13 filters? I thought my professional life was busy before COVID, but I could never have anticipated how much busier it would become. On many days, I felt the weight of the world on my shoulders, as I had to make difficult decisions to keep people safe.

I am confident that I am not alone in saying that we have all undergone significant stress and uncertainty not only due to the pandemic, but also due to the racial reckoning that we have all experienced during the last year and a half. However, I believe that we have emerged stronger, more innovative, and confident in our resilience as a result of this experience.

Over the course of the pandemic, everyone working for the Trial Court rose to the challenge and learned to be innovative to get the work done. Was it perfect? No. But much of what we learned about how we conduct business will inform how we will move forward. But for the pandemic, I suspect we would not have moved as fast as we have to advance electronic filing, electronic introduction of evidence, virtual registries and so many other innovations.

As of September 7, 2021, we have resumed jury trials in all courts that held jury trials prior to the pandemic. We have done so with the health and safety of jurors, the public, and court staff foremost in mind, and with the guidance of and recommendations from the Jury Management Advisory Committee (JMAC) and the Trial Court Operations Committee.

Out of adversity comes resilience. More than ever, we need to collectively work together to ensure our system is the best it can be. I thank members of the Bar who have contributed so much to the stability of the court over the last 19 months.

I will now turn my attention to the systemic racism that is, in many ways, embedded in our system. As the Massachusetts Trial Court, we join the legal community in recommitting “to the systemic change needed to make equality under the law an enduring reality for all,” as urged by the seven Justices of the Supreme Judicial Court. Dedication to resources to acknowledge and address race in the justice system is not a new venture for the Massachusetts Trial Court, but we acknowledge that some of the efforts to-date have not done enough to move the needle. The number of black employees and employees of color in the judicial and clerk magistrate ranks is insufficient. Our numbers are not where they should be. It is our obligation to hire and retain people of color in leadership roles and do more to mentor our diverse talent and create pathways that enable them to move up in the organization. It is also essential that we identify, recruit, attract and develop lawyers of color to build the skills to obtain a judicial or clerk magistrate appointment and other positions within the court system.

As members of the Trial Court, we hold unique positions as leaders in the justice system, and we need to be comfortable with being uncomfortable, because this work will not be easy. We must be more introspective about the fact that what we do and what we fail to do impacts the lives of others who have experienced the indignities of racism and injustice throughout their lives. We need to listen to the experiences of Black people and people of color as we work together to change our system. The time is now, and it will take all of our collective efforts to eradicate racism in our justice system. We must achieve racial equality and justice for all, especially for those most disserved by our nation’s justice system for centuries.

So, what are we doing about it? As you know, we have a five-person Office of Diversity Equity, Inclusion & Experience (ODEIE). The Office has been instrumental in facilitating discussions in communities of color to obtain input on experiences with our system. ODEIE has also developed experiential trainings

geared toward impacting the views of court personnel, including judges, in areas of bias, racism, cultural competence and empathy. Our Office of Workplace Rights and Compliance is responsible for enforcing our Discrimination, Retaliation and Harassment Policy. This policy applies to all persons who work in the Trial Court and those who interact with our system, including members of the Bar and the public.

In September of 2020, we received a report from the Criminal Justice Policy Program at Harvard Law School, which was commissioned by Chief Justice Gants. We learned from the report that systemic racism existed in our criminal justice system at a variety of levels. We also received a report from the SJC's Steering Committee on Lawyer Well-Being, which described in a very powerful and painful way the experiences of individuals of our affinity bars. In many ways, both of these reports told us what we already knew or suspected, but they enabled us to better focus on the systemic aspect of the racism that exists in our justice system. These reports, as well as our community town halls and community forums on racism and the racial reckoning over the last 2 years have further focused our efforts.

Historically, the Trial Court has had multiple different groups including judges, clerks, security personnel and others, addressing the issues of implicit bias and racism. In July of 2021, Court Administrator Bello and I commissioned the Committee to Eliminate Racism and Other Systemic Barriers. The Committee is charged, among other things, with advising me and Court Administrator Bello regarding policies and initiatives to address institutional racism and systemic barriers based on race, ethnicity, gender, gender identity, sexual orientation, mental or physical disability, age, socio-economic status, or other matters of identity that may give rise to inequity among Trial Court users, judicial officers, or court personnel. The Committee members are a cross-section of Leaders in the Trial Court. The Committee has established working groups that are being populated with Trial Court colleagues at all levels, as well as external members of the bar and our justice partners. Along with my partner in justice, John Bello, we are working with this Committee and its Working Groups to address long-standing racial and systemic barriers so that all individuals are treated and believe that they are treated by our system equitably.

Behavioral health issues – namely substance use disorder, mental health conditions, and trauma – are present in many cases that come before our courts. We have recently implemented several large scale-projects aimed at supporting criminal justice-involved individuals who also have behavioral health needs and/or suffer from substance use disorder.

At the end of 2020, the Trial Court received its largest ever federal grant – a \$6 million award from the Department of Justice to expand court-based connections for individuals at risk of overdose in 12 local courts that serve 62 communities. The funding allows our courts to connect at risk individuals to behavioral health treatment, sober housing, and transportation services. The project, called Project NORTH (Navigation Outreach Recovery Treatment and Hope), offers enhanced services in courthouses located in 12 communities highly impacted by overdose deaths: Boston, Brockton, Fall River, Lawrence, Lowell, Lynn, New Bedford, Pittsfield, Quincy, Springfield, Taunton and Worcester. Additionally, Project NORTH provides court-based assistance to link court users to treatment and recovery support services, transportation to treatment and court-mandated programming, and up to six months of sober housing for 300 probationers over two years.

Earlier this year, we also launched the Boston Outpatient Assisted Treatment (BOAT) program, funded by a four-year grant from the Substance Abuse and Mental Health Services Administration (SAMHSA). The grant funds have enabled us to significantly expand services offered to people with serious mental health conditions who are justice-involved and need more comprehensive, intensive services than are currently available.

In 1998, the Supreme Judicial Court developed the Standards on Substance Abuse to provide guidance to the courts on addressing substance “abuse.” Chief Justice Gants recognized that the Standards needed to be updated. In the years since the Standards were developed, the research and science of addiction, mental health,

and trauma has grown tremendously. We now know that addiction is a chronic, relapsing disease of the brain which can be treated, and that without treatment it is often fatal. We now know that mental health conditions and impacts of childhood and adult life trauma often co-occur with substance use disorders and trauma, which also need to be treated. Individuals appearing in our courts often present with not only substance use disorders and mental health conditions, are often poor, have low educational attainment, housing instability and food instability. The presence of these “social determinants of health,” in addition to substance use and mental health disorders, increase the complexity and challenges of attaining positive outcomes.

Both the American Academy of Addiction Psychiatry and the U.S. Substance Abuse and Mental Health Services Administration recognize that “the justice system is often society’s first and, many times, only opportunity to identify and provide treatment for individuals with substance use disorders.” As a result, judges are uniquely positioned to link these individuals to health professionals, evidence-based treatment programs, mutual-help groups, local specialty treatment courts and other related resources. We are committed to improving justice responses to individuals with behavioral health needs, including substance use disorders, mental health conditions and the impact of trauma.

In 2018, the Massachusetts Legislature passed legislation representing the most significant changes to the State’s criminal justice system in decades. Among many advancements, this legislation incentivizes good behavior in prison, diverts people to treatment and programming as an alternative to incarceration, and strengthens community supervision. Over the past three years, we have implemented numerous provisions of the legislation into our system, including DNA collection by the Massachusetts Probation Service (MPS), reduction of fines and fees in criminal cases, adult criminal diversion, criminal code revisions, bail reform, pretrial services, expanded sealing and expungement, along with several initiatives in the Juvenile Court, including data transparency, diversion, elimination of notification to Probation for overnight arrests, and raise the age.

Additionally, in January 2016, Massachusetts embarked on a data-driven justice reinvestment approach to reduce reoffending, contain corrections spending, and invest in strategies to increase public safety. To that end, key stakeholders have worked together to develop policies that will help (1) better align probation and parole supervision with best practices to reduce recidivism; (2) improve access to treatment for people in the criminal justice system who have serious behavioral health needs and are also at a high risk of reoffending; (3) make the parole release process more efficient; and (4) reduce the DOC population and increase the number of people who receive post-release supervision.

COVID-19 has created tremendous Housing and food insecurities across our nation. In August of 2020, under the leadership of Chief Justice Gants, and in collaboration with the Executive and Legislative branches of government the Eviction Diversion Initiative was established. From the Trial Court perspective, we made temporary changes to our eviction case processes to provide an opportunity for mediation on the first court date, rather than a summary process trial. We also made changes to account for the various iterations of the orders issued by the Centers for Disease Control and Prevention, and to meet the requirements established in St. 2020, c. 257, as amended by St. 2021, c. 20. We launched Zoom waiting rooms to provide information to litigants while they wait for their case to be addressed, and we established Zoom Rooms to expand access to virtual hearings for self-represented litigants. We also currently have 3 dashboards available that are updated each week, and that display data on filings by week and type, tier-1 and tier-2 event results by week, and executions issued by week and county. In addition, we have available a monthly report on filings, actions, and dispositions entered in summary process cases.

As local communities work to address the crisis, state courts hold an important place in providing a comprehensive response built on key partnerships between the justice system and treatment, health care, and housing systems.

I look forward to this State of the Judiciary every year. Those of you, who know me, know I love to talk about the Trial Court – the judges, clerks and incredible people who work so hard to make a difference every day – the people who make me so proud to be a leader in this organization – and to talk about my passion – the work of delivering justice. But the State of the Judiciary also gives me the opportunity to acknowledge the great work by the Bar and the many ways you partner with us to help us deliver justice with dignity. It is only with all of you – District Attorneys, Committee for Public Counsel Services, Attorney General, the Mass. Bar Association, Boston Bar Association, all the local and affinity Bar associations – with your individual representation, the programs you sponsor, staff and fund, and your advocacy for the Trial Court, that we succeed. We share a background of legal education, training and advocacy that allows us to do this important work. Please know that I never take the quality of representation or the good will of lawyers and the Massachusetts Bar for granted. I am profoundly grateful for the contributions its members make to the justice system each and every day.

In closing, I would like to thank Chief Justice Budd and the Supreme Judicial Court Justices for their incredible support, my Partner in Justice John Bello for his dedication and commitment to the Trial Court and for the knowledge and experience he brings to us, and my fellow Chief Justices and Deputy Court Administrators, judges, clerks, commissioners, and employees across the Trial Court who do such exemplary work every day.

As many of you know, I recently announced that I will retire in January 2022. I want to express my sincere gratitude for the support I have received during this time. As I stated to the Trial Court community, I made the decision only after a great deal of thought and reflection because I reached a point where I could not meet the needs of both my personal family and my Trial Court family without sacrificing my dedication to one. While this will be my last address as Chief Justice of the Trial Court, I want you all to know that I am going to remain connected to the court and justice systems, albeit in a different role that will allow me to meet the needs of my family. I will continue to work towards racial equity and access to justice for all. Retirement for me is not an ending, but the beginning of a different life committed to the same principles, just in a different way that permits me to attend to the imminent needs of my loved ones. I thank you all from the bottom of my heart.