

MASSACHUSETTS BAR ASSOCIATION

ANNUAL ADDRESS

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CHIEF JUSTICE

SUPREME JUDICIAL COURT

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Thank you, President McIntyre for the honor, and great pleasure, of addressing this annual meeting.

Fair and independent courts need dedicated lawyers. The rule of law needs both. That is why, among so many reasons, I am delighted to be here: to thank this Bar Association, to thank each of you, for partnering in justice with our courts.

This has been a turbulent year. In politics. In terms of climate change. And now, a financial crisis of unparalleled dimensions. The cataclysm on Wall Street reverberates on Beacon Street. Revenue sources for state government are fast declining, and predicted to decline further.

Drastic times require drastic measures. Governor Deval Patrick has called for sweeping cuts at every level of State government. On October 1, the Governor met with Chief Justice Mulligan and me to outline the severity of the crisis, and to request that the judicial branch reduce its spending this fiscal year. The Governor's request was urgent. His deadline breathtakingly short, as befits the circumstances. We stepped up to do our part; we made a commitment to bear our equitable share of the heavy burden that will ultimately fall on all residents of the Commonwealth.

Immediately, and with the guidance of our experienced fiscal staff, judicial leaders poured over our budget for the remainder of this fiscal year to plan for the coming shortfall. We identified millions in cuts for the remainder of Fiscal Year 2009. Thankfully, these did not involve layoffs, furloughs, or payless days for court personnel, many of whom are already reeling financially. We have in place an across-the-board hiring freeze. We have toughened

restrictions on travel, and we have strengthened other cost-saving measures. We formed a Fiscal Task Force, headed by Chief Justice Lynda Connolly of the District Court Department and Chief Justice Steven Pierce of the Housing Court Department, to identify cost saving measures and efficiencies across all court operations.

The measures we have taken are strong. You will see evident strains on the system. But there is one thing on which we will not economize: our core mission to do justice. The cruel irony is that in difficult economic times the demands on our courts intensify: more people file for divorce or to modify support obligations. The criminal docket swells; foreclosures, evictions, and debt collection matters escalate. We are committed to shouldering our fair share of budget cuts while safeguarding the essential functions necessary to maintain our mission and constitutional imperatives.

The Governor in turn is committed to the full transferability of Trial Court funds that we have long urged as essential to the fair and efficient administration of justice. We welcome and applaud that commitment, which is essential to making sure that the difficult measures we take today will forestall even more drastic measures in the future.

Our courts have weathered economic distress before. We must, and we shall, manage our way through this current crisis. I ask for your patience. I ask for your understanding. And as always, I ask you to join in partnership with judges, clerks, registers, court staff, probation officers, and security officers to keep our justice system, and our hard-won institutional reforms, moving forward.

In times like these, we are especially thankful for the touchstones: the people whose steadiness of purpose reinvigorates our own. For five years, Chief Justice Robert Mulligan has

been the touchstone for deep institutional reform of our trial courts. As the Justices and the Legislature have directed, he has brought transparency, accountability, and expedition to the work of the trial courts, and to his own work as its leader. He has toiled punishing hours in the glare of public scrutiny. And he elected to continue his arduous assignment when someone less dedicated might gladly have relinquished it. Chief Justice Mulligan's appointment to another five-year term at the helm of the Trial Court Department assures a steady hand through this financial crisis, and an unbroken journey on the path to excellence in judicial administration.

We know of his exemplary service to our courts. So does the rest of the nation. Today Chief Justice Mulligan received the Distinguished Service Award from the National Center for State Courts, one of the organization's highest honors. The basis for such recognition? The Center cites Chief Justice Mulligan's "impressive abilities not only as a jurist, but as an innovative court manager." He has, and again I quote, "established a record of dedication to the justice system and has worked diligently to improve the public's confidence in the courts." Well said. And well deserved. Thank you, Chief Justice Mulligan.

At the Justices' direction and with the advice of the Court Management Advisory Board, so ably chaired by Attorney Michael Keating, Chief Justice Mulligan and the Chief Justices of the Trial Court Department have brought to judicial administration the best practices of modern management. That very phrase, applied to the work of justice, makes some people cringe. That reaction is wrong. John Adams was a man who chose his words carefully. Not by accident did he locate judicial administration at the heart of government's duty to do justice. Article 29 of the Massachusetts Constitution, drafted by Adams, proclaims: "It is essential" – *essential* -- "to the preservation of the rights of every individual . . . that there be an impartial interpretation of the

laws, *and administration of justice.*" Adams knew that delay in the courts could take a heavy toll. In his day, it might have been the farmer seeking damages for the theft of his cattle, his only source of income. Today, we think of the small business owner whose sole asset, intellectual property, has been wrongly converted. Or the parent seeking holiday visitation, the crime victim seeking closure, or the elderly witness for whom just getting to the courthouse taxes his endurance, the police officer repeatedly pulled off the beat to give evidence in a matter endlessly postponed. In each case, slow justice is no justice. Adams's prescription? Article 12 of the Massachusetts Constitution: justice obtained "completely, and without any denial; promptly, and without delay."

I make no apologies for the revolutionary introduction of best management practices in all of our courts. Across the board time standards, case management, judicial professional development, rational staffing models, the collection and analysis of hard data -- these have one purpose and one purpose only: the prompt, fair and effective delivery of justice. The old methods -- obeisance too often to hidebound custom, diffuse and unclear lines of authority, lack of strategic focus -- simply were not up to the task. And the old methods offered no way to make the sober, rational decisions that our strained economic circumstances demand.

The Judiciary's groundbreaking management reforms could not have come about, and cannot be sustained, without the full cooperation of the organized bar. We often are called a nation of lawyers. In my view, this is a high compliment. For only a nation of lawyers could maintain a fierce commitment to the rule of law. More than 50,000 lawyers are licensed, active members of the Massachusetts bar. More than 50,000 lawyers. And active judges? About 400.

The conclusion is obvious: only when the bench and the bar work in partnership can our system of justice flourish.

I am optimistic, even in these challenging times, that the pursuit of excellence will continue because in Massachusetts the partnership between the bench and the bar has always been strong. The key to our successful collaboration? One certain component is good communication. Good communication founded on active, attentive listening. Judicial leaders are committed to soliciting your views, for that is central to our commitment to transparency and accountability. And good listening keeps us on course. For these reasons, we have opened the door on our operations to an unprecedented degree. We solicited your reactions on our master plan for administrative changes. As that plan moved from the drawing board to the courthouse, we invited you to scrutinize every aspect of its operation, down to the nuts and bolts. Quarterly reports. Interim reports. Annual reports. Widely distributed, available on the web. A running stream of hard data allowing you to gauge and weigh in on our progress.

We have created other new avenues for comment. In partnership with this Association and the Court Management Advisory Board, the Trial Court embarked on a statewide listening tour, *Open Dialogues on Court Practices*, to solicit your thoughts on the changes in court management. This first-of-kind endeavor has been a success. The session in Brockton drew 168 participants; in Lawrence more than 100 participants; in Boston some 200; in Springfield 193; and more recently in Worcester more than 200. Impressive numbers all. Your participation in these sessions was not wasted. *Open Dialogues* have launched a wide range of discussions leading to a more effective administration of justice. Practices to reduce unnecessary court trips of counsel and to provide more efficient court interaction are being pursued. A pilot project to

use teleconferencing within the District Court has been implemented in Western Massachusetts, and videoconferencing pilot programs are being pursued in the Sheriffs' offices in Essex and Worcester Counties. A pilot internship program to enlist college students majoring in foreign languages to expand interpretation services in clerks offices and probation offices is being developed.

To me, the greatest value of these Open Dialogues has been the literally hundreds of discussions that have taken place concerning ways to improve the many procedures found in everyday practice in all the courts. Before the end of the year each Trial Court Department will have identified changes to be implemented, drawn from the views of those who attended.

We want to learn from *every* group of court users. Administrative efficiency means little to those who feel alienated from, or have no meaningful access to, our courts. As part of its Access and Fairness Survey Project, the Trial Court solicited the views of court users of all kinds – lawyers, jurors, probationers, litigants, police officers, witnesses, criminal defendants, and others – on their experiences in our courts. By the end of last July, when Chief Justice Mulligan published his interim report on the Access and Fairness Survey (which you may find on the Trial Court's website), a total of 3,313 court users across the Commonwealth had completed the client-satisfaction surveys. Today some 8,000 court users have completed those surveys in more than ninety courthouses in every county of the Commonwealth. The surveys measured the performance of our courts on such key issues as whether the respondents felt they were treated with courtesy and respect, felt safe in the courthouse, were able to complete their court business in a reasonable amount of time, and had an overall satisfactory experience in the courthouse.

The results, I am pleased to report, were overwhelmingly positive. Examples: 80.8 % of participants agreed or strongly agreed that their overall courthouse experience was positive; 87.9 % agreed or strongly agreed that they were treated with courtesy and respect; 66.5% agreed or strongly agreed that they were able to complete their court business in a reasonable amount of time – a clear majority, but we can do, we must do, better on that score. By the end of 2008, user surveys will be completed for all 106 courthouse locations in the Commonwealth. And published for all to see.

The results of these surveys will not gather dust. The Boston Municipal Court Department was the first to pilot the Access and Fairness Survey Project. Chief Justice Johnson has formed operational committees to visit each of the court divisions to meet with judges and staff to determine which ideas emerging from the surveys can be implemented. The other Trial Court Departments will take similar steps.

Judicial evaluation. Another listening tool. Phase II of the judicial evaluation process was completed during the summer, meaning that evaluations have been completed in each county twice. To date we have received 98,500 attorney evaluations, 23,400 employee evaluations, and 11,900 juror evaluations. On average, each judge has been evaluated by approximately 120 attorneys alone. Phase III of the evaluation process is currently underway in five southeastern counties.

Many of you have completed evaluations more than once. You may be feeling a touch of evaluation fatigue. In fact, we have noticed a slight drop-off in the rate of evaluations by attorneys. I urge you to keep responding. Each response adds to a more complete picture of a



judge's judicial performance, and consequently to more appropriate judicial professional development.

Judicial professional development. We recognize that every judge, no matter how stellar of reputation, has room for development and growth. Justice Margot Botsford, herself a model of judicial excellence, heads a newly convened working group of Trial Court Chief Justices or their designees and senior court administrators tasked with studying and making recommendations for developing a comprehensive program of professional development for all trial court judges. Let me be clear. For years the Trial Court Departments have engaged in continuing education and professional development for judges. This new program will look to successful models that can be implemented across all courts, and to identify new ones. New comprehensive training for every new judge, customized for each department; videotaping; peer observation; teaching best practices; and mentoring are just some ideas the group is considering. The Justices are looking forward to the working group's report and their concrete recommendations.

I know from first-hand experience that candid performance evaluation can be immensely helpful. Recently, I undertook to have a specialist review my performance at oral argument. Others of my colleagues have done the same. It was challenging to hear a critique of everything from my style of questioning to my posture and nonverbal cues, challenging but valuable. Justice and the perception of justice are conveyed in ways both large and small.

Also on our radar: looking for ways to make your work more manageable. In November, 2005, then Massachusetts Bar Association president Warren Fitzgerald forwarded to the Justices a resolution unanimously approved by the House of Delegates seeking the

appointment of an Advisory Committee on Massachusetts Evidence Law. We listened to you. The Justices appointed a hard-working Committee that has embraced its challenging mandate of compiling existing Massachusetts evidence law into one user-friendly document, organized similar to the Federal Rules of Evidence. The result? The Massachusetts Guide to Evidence, which will be available next month from the Flaschner Judicial Institute and on the websites of the Supreme Judicial Court, Appeals Court, and Trial Court. I particularly want to acknowledge the superb leadership of Appeals Court Justice Marc Kantrowitz, the chair of the Advisory Committee and editor-in-chief of the Guide; Superior Court Judges Peter Agnes and David Lowy, the Editors; and Appeals Court assistant clerk Joseph Stanton, the Reporter.

Some of you here today have taken the opportunity to review and comment on the Committee's drafts, and I thank you for taking the time to offer your helpful suggestions. Having reviewed the Guide, I know that it will make the law of evidence more accessible and understandable to the bench, bar, and public. Justice Kantrowitz, Judge Agnes, and Judge Lowy have also generously agreed to lead efforts to monitor and incorporate future legal developments so that the Guide may be updated on a regular basis. I thank the MBA for its leadership in this important effort to advance the delivery of justice in Massachusetts.

The Guide will serve not only attorneys, of course, but it will be valuable to self-represented litigants. The number of self-represented litigants continues to rise, a trend that will surely continue in the present economic downturn. We must look for new ways to connect low-income individuals with attorneys. But even our most energetic efforts will still leave large numbers of litigants representing themselves. We are committed to ensuring that people understand the value of having counsel when they come to court, that litigants who want counsel

may obtain counsel, and that those who choose to represent themselves are treated fairly and with respect. I am grateful for your partnership in addressing this challenge.

Members of this Association have worked with the Supreme Judicial Court's Steering Committee on Self-Represented Litigants on its many initiatives. These include judicial guidelines for judges in civil cases where one or more litigants appears without counsel, and the limited assistance representation pilot project currently operating in three divisions of the Probate and Family Court. John Dugan of this Association was one of the two co-chairs of the working group that shepherded the Pilot Project from the drawing board to the courtroom. John is a worthy recipient of the Supreme Judicial Court's 2008 John Adams Pro Bono Publico Award. Many of you who did not work on designing the pilot project have qualified to use it in your practice. And the MBA referral line now informs callers of limited-assistance options. Your efforts have surely enhanced the quality of justice in Massachusetts.

The Steering Committee is currently working on a report to the Justices on the effectiveness of limited assistance representation in leveling the playing field for those who cannot afford full legal representation, and in unclogging our dockets. Anecdotally, I understand that the Pilot Project has received an enthusiastic thumbs-up from attorneys, pilot court judges and registers, and users of limited assistance representation. The Self-Represented Litigants Network, our nation's premier think-tank on matters concerning self-representation, identifies our Pilot Project on Limited Assistance Representation in its compilation of best practices. The Pilot Project would not have been possible without the partnership of this Association.

The increasing numbers of self-represented litigants is a thorny issue. But not the only one. The population of the Commonwealth will continue to age: it is estimated that by 2025,

nearly one in five Massachusetts residents will be more than 65 years old. Massachusetts is among the eight States with the highest percentage of foreign-born individuals, making for a rich diversity of languages and cultural traditions. There are pressing problems of poverty: by one estimate, in Massachusetts a child is born into poverty every 54 minutes. And globalization may soon make interstate and transnational legal practice commonplace.

These challenges for the courts, among others, are urgent. If we are to maintain the trust of the public, we cannot afford to play "catch-up" while everything changes around us. I look forward to continuing the courts' partnership with the organized bar in responding creatively to the challenges of doing justice in the 21st century.

Some of our joint discussions will take place here in the John Adams Courthouse. It has become the hub of law-related activities in the Commonwealth. Since May of 2006, more than 21,000 guests have visited this building: school children who watch plays about justice in collaboration with Discovering Justice; law students competing in moot court; members of bar associations gathering for board meetings, educational seminars, and special events; officials from other States; dignitaries from Albania, China, Israel, Russia, Canada, South Africa, Norway, and other countries studying our court system; and members of the general public curious to know more about the Massachusetts Constitution. John Adams rarely missed an opportunity for public debate and discussion. How proud he would be that the most significant public building bearing his name plays such an important role in perpetuating his legacy of reverence for the rule of law.

Jurists around the globe praise Adams's finest handiwork, the Massachusetts Constitution, for bringing to life the greatest engine for freedom humankind has ever known:

constitutional democracy. We have much to be proud of in Massachusetts. And to be thankful for. Yet, to borrow from New England poet Robert Frost there are "miles to go before we sleep." Our court system, with judges and clerks and court staff leading the way, have worked hard to bring an exemplary level of service to our courts. The bar has been a faithful ally. Excellence in court management was embraced as a strategic objective more than five years ago, in the midst of the last economic downturn. I am confident that even in these difficult times, especially in these difficult times, the bench and the bar will again join in partnership to fulfill our common mission: advancing the work of justice. What a privilege that is for all of us.

Thank you.