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**A Comparative Analysis of Funding for
Judicial Services in Maine:
Levels and Trends, 1996-2010**

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**Muskie School of Public Service: Capstone Project
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June 28, 2013**

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Executive Summary

This project is a thorough study of funding for Maine's judicial and legal services. The final report for this study consists of a full review and analysis of literature relevant to the financial administration of Maine's court system, as well as findings of a comparative financial analysis for judicial and legal services spending in Maine between 1996 and 2010. Additionally, a regression analysis was conducted to develop a statistical model to estimate a benchmark level of spending for Maine's judicial and legal services.

The research and analysis found in this report reveals that Maine's court system is severely underfunded. Court leaders here in Maine, as well as around the country, have been voicing a message of concern and urgency when it comes to funding judicial and legal services. This study found that all of Chief Justice Leigh I. Saufley's¹ recent annual addresses to the Maine Legislature have highlighted the need for additional financial resources. Nationwide, the National Center for State Courts (NCSC) recently commissioned and conducted a study to compare the budget situations of state courts and the effects of reduced funding. The study revealed that, of the state court systems that responded, 70% believed that their budget situation would stay relatively the same over the next few years, and 11% expected their situations to worsen (NCSC, 2012 Budget Survey Summary).

Furthermore, this research discovered that the problem of underfunding our judicial and legal systems in Maine and around the country has been happening for a while. Nearly a decade ago, the Conference of State Court Administrators adopted a white paper that discussed how dangerous underfunding state court systems was becoming to the public's daily access to justice. The financial expenditures data collected from the U.S. Census Bureau also indicates that

¹ Chief Justice Leigh I. Saufley has been Chief Justice of the Maine Supreme Judicial Court since 2001.

spending for judicial and legal services in Maine has consistently fallen below U.S. levels of spending, as well as other areas of crime and justice spending, such as funding for fire and police services and corrections. The Census data shows that spending for judicial and legal services in Maine as a percentage of personal income was 47% below U.S. spending levels in 1996, and 37% below in 2010. Spending levels in Maine between 1996 and 2010 remained under U.S. levels for all fourteen years.

This study found that as a result of consistent underfunding, as well as a changing landscape in the types and complexity of cases being filed with the courts, Maine's justice system was struggling to provide a legal system that met the public's demands. A 2013 report from Maine's Judicial Compensation Commission found that Maine judges have the lowest salaries in the nation. Additionally, another study conducted by the National Center for State Courts (2012) found that Maine employs about two judges for every 100,000 people, compared to the U.S. median level of 2.8 judges per 100,000. According to statistics reported by the Maine Judicial Branch, the state court system saw a 3.9% increase—or nearly 11,000 cases—in total cases filed between just 2003 and 2009. The same data also shows that of the 11,000 new cases filed, 19.8% were increases in Superior Court filings; which tend to be more complicated cases. NCSC data also indicates that, with fewer judges and more complex cases, Maine's court system is experiencing backlogs. In 2010, Maine's judiciary was not able to process-out as many cases as it took in for both criminal and civil case types.

One of the most important pieces of evidence that this study brings to light, is how far off Maine's spending for judicial and legal services was in 2010 compared to a statistically derived estimate. Using multiple regression analysis, a statistical model was developed to estimate a level spending for judicial and legal services in Maine as a percentage of personal income in

2010 given a set of conditions. According to the model developed, Maine's spending in 2010 was \$12.5 million less than what it should have been.

Chapter 1

Introduction

1.1 Maine's Judicial and Legal Services Funding in Context

Maine's judicial system was chosen for this study, because it has a significant place among states for its funding of judicial and legal services. A recent report to the Maine Legislature's Joint Standing Committee on the Judiciary exemplifies this very notion. The Judicial Compensation Commission² (JCC) reported that salaries for judges and justices on Maine's bench are devastatingly low (2013). The JCC report (2013) cited the results of a recent National Center for State Courts study on judicial salaries that found Maine ranks 50th in the nation for judicial compensation (when adjusted for cost-of-living).

Furthermore, Maine's Chief Justice has consistently made the case, year after year, that Maine's judiciary is dangerously underfunded. She noted in her 2010 State of the Judiciary address to the Maine Legislature that underfunding posed a serious threat to Maine's justice system. Chief Justice Leigh Saufley (2010) continued by stressing, "if justice fails, democracy fails." Similarly, state court affiliated organizations around the country echoed Chief Justice Saufley's concerns. At a meeting of the American Bar Association, President of the National Conference of Chief Justices Margaret Marshall (2009) claimed, "our state courts are in crisis." In a Maine Law Review article outlining how the Maine Judicial Branch budget is structured, Chief Justice Saufley (2010) highlighted some of the effects of underfunding and hinted that the

² The Judicial Compensation commission is an independent 3-member commission. The Speaker of the Maine House of Representatives, the President of the Senate, and the Governor each appoint one member. Members serve four-year terms and the membership cannot consist of more than two members of the same party. The commission must report to the Legislature on a biennial basis.

judiciary's budgeting process in Maine is not structured in a way that would benefit the branch, nor its funding goals (p. 681). She pointed to an independent commission report that recommended the Judiciary present its budget directly to the Legislature, rather than to the Executive Branch to be included in the Governor's overall budget proposal. Notwithstanding possible remedies to these circumstances, Chief Justice Saufley (2010) continued to argue that, "the actual dollars allocated to facilitate our citizens' access to justice have been, and continue to be, insufficient. There are simply not enough dollars allocated to provide enough clerks and court security personnel to ensure safe and readily responsive courts for Maine citizens" (p. 686).

Unfortunately, the trend of underfunding judicial and legal services in Maine has been on-going for several years. Back in 2003, the Conference of State Court Administrators (COSCA) adopted a white paper explaining that courts are "especially vulnerable" during economic downturns (p. 2). A lack of funding for judicial and legal services—particularly during a financial crises such as the recent "Great Recession"—stems in part to an unmindful citizenry and policymakers who prioritize spending on other budget components. Unfortunately, whatever misplaced priorities exist have detrimental economic effects on the delivery of justice and society in general (COSCA, 2003).

Alexander Aikman (2007) conveyed a clear description of the differences between how people perceived the judicial branch of government, and the realities of the modern court system. Aikman (2007) wrote in *The Art and Practice of Court Administration* that the public rarely interacts with the multifaceted layers that comprise a court system. He argues that most individuals' interactions with the judiciary stem from minor traffic infractions or simply civil cases in which it is even unlikely that they will have to attend court and they tend to base their overall general perceptions on a small number high-profile cases (Aikman, 2007, p. 1). In

contrast, Aikman (2007) explains, “People’s perceptions about courts...ignore a critical component of what it means to be a ‘court.’...Courts have employees, budgets, complex computerized information systems, jurors, and facilities to be managed. They interact with scores of government, nonprofit, community, and volunteer entities in countless ways that are largely invisible to everyone who ‘knows’ courts and judges” (p. 1). Thus, Aikman (2007) concedes that, other than those who work with and in the court system, rarely understand all of the intricacies of judicial administration and management. Therefore, with an ambivalent public that has very little interaction with the judicial and legal system, it should be of no surprise that funds are prioritized to other public services.

1.2 Purpose and Scope

The purpose of this study is to thoroughly review the funding trends for judicial and legal services in Maine. The time period for this study focused on the years 1996 through 2010. The analysis is meant to display funding trends and levels, to draw attention to potential drivers of underfunding, and to discuss effects on Maine’s justice system. This study also utilizes complex methods of statistical analysis to estimate a benchmark level of funding for judicial and legal services in Maine.

This study compares spending levels and trends in Maine to US levels and trends, as well as other state and local spending components. However, the scope of the comparison was limited to quantitative measures that are comparatively equitable. Maine’s funding for judicial and legal services were not directly compared to levels of other individual states due to a variety of differentiating factors that disqualify such comparisons; although, some empirical evidence and other background literature was used to compare Maine with other states.

1.3 Questions I Want to Answer

The purpose and scope of this study aims to answer a range of questions that address judicial and legal services funding in Maine. The questions range in themes from funding trends to the effects of underfunding. Some of these simple questions include:

- What was Maine’s level of funding for judicial and legal services in 2010?³
- How has that level of spending changed in recent years? What are some of the longer term historical trends?
- What may be causing underfunding for judicial and legal services in Maine?
- What are the effects of underfunding Maine’s justice system?
- Given a set of conditions, what should Maine be spending on judicial and legal services?

Chapter 2

Methodology

2.1 Data Collection

Several resources were used to collect data for this study. First, a variety of relevant literature was reviewed that discussed funding for judicial services, court financial administration, as well as historical trends in judicial budgeting and funding. Additional resources that specifically identified funding levels and trends for Maine’s judiciary were collected and reviewed. Examples of some of the literature that was utilized includes the Maine Judicial Branch Annual Reports, Maine Chief Justice Leigh Saufley’s State of the Judiciary Speeches, NCSC publications on judicial funding, and other studies that analyzed judicial and legal services funding.

³ The recent Census data for state and local expenditures is data for fiscal year 2010.

The primary resource for financial data on judicial and legal services expenditures was the U.S. Census Bureau's Annual Survey of State and Local Finances. The Census expenditure data was available in three formats: spending in dollar amounts, spending per capita, and spending as a percentage of personal income.⁴ Additional expenditure data was collected from a variety of other resources including the Annual Maine Compendium of State Fiscal Information, the Maine Judicial Branch's Annual Reports, and the National Center for State Courts.

The data used to benchmark a specified level of judicial and legal services funding for Maine was compiled by Dr. Josie LaPlante, P.h.D. as part of her "Compare States" dataset. The dataset is a compilation of a large and diverse group of variables (for example, the unemployment rate in 1996 and female incarceration rates) for all 50 states. For this particular study, data for Alaska was excluded due to irregular circumstance in that state that make comparisons and analysis statistically insignificant.

2.2 Data Analysis

The sole method of analysis for this study—with the exception of standard literature review and research—was a quantitative methodology. All of the data collected was analyzed using a consistent quantitative fiscal analysis to ensure the validity of the findings. Primarily, expenditures were analyzed using the Census data that was reported as percentage of personal income. Using this measure of expenditure data also ensures the highest reliability and validity of the results. Comparisons across states using other measures, such as national averages or spending per capita are very unreliable due to the extreme differences in governmental structure, spending systems and other cultural and environmental factors. For example, Maine's crime rate is relatively low compared to other states in the Northeast, and spending for judicial and legal

⁴ The data was broken down further by level of government and by state.

services in Maine is centralized in state government rather than county or municipal court systems.

In a well-known report on Maine government, Alan Caron et al (2010) explicitly point out that “States differ in practically an infinite number of potentially important dimensions” (Reinventing Maine Government, p. 75). The authors also reiterate using a financial analysis based on figures as a percentage of personal income (Caron et al, 2010) to avoid the pitfalls of other financial analysis techniques. Due to significant differences across states in how much citizens voluntarily (or involuntarily) choose to spend on services, measuring spending as a percentage of personal income alleviates any prospective pitfalls (Caron et al, 2010).

Lastly, my research design incorporates a correlational analysis methodology using multiple regression. This is a complex method of statistical analysis used to explain or predict the outcomes of another variable. For this study, an assortment of independent variables were analyzed against judicial and legal services expenditures to build a statistical model used to predict a benchmark level of spending in Maine.

2.3 Limitations

As can be expected with any research project, there were some limitations to this study. First, the census dataset was not complete for all of the years identified in the scope of my project. There was no data available for 2001 or 2003. Additionally, as was mentioned above, it is nearly impossible to reliably compare spending across states. This fact hindered some potential avenues of analysis that otherwise may have proven interesting, yet ultimately would have been invalid. Furthermore, some of the analysis was conducted using manual data entry. This technique is inherently subject to human error. Lastly, this study did not employ any qualitative research methodologies, as it was not an intended method for this project. However, if this

research project were to be updated and expanded to incorporate a more comprehensive design, qualitative methods such as interviews with key informants or the use of focus groups may prove fruitful.

Chapter 3

Contextual Framework for Judicial and Legal Services Funding

3.1 Underfunding Thwarts Current Needs

As previously noted, judicial and legal services funding in Maine has been underfunded and remains below an adequate level of spending needed to provide the services Maine's public expects. In a 2012 survey of State Court Administrators⁵, Maine reported that the current fiscal year budget did not provide enough funds to adequately provide the technological services being demanded by the public and other users (National Center for State Courts, 2012 Budget Survey). For example, the judiciary currently uses an antiquated case management system that was developed in the 1990's. The system does not allow for services that are commonly expected of the public or other stakeholders, such as e-filing, or the generation of a variety of statistical reports. Fortunately, the survey did indicate that Maine's judiciary would be seeking additional funding in its next biennial budget request to replace its current system with one that addresses the needs and demands of its users (NCSC, 2012 Budget Survey).

Additionally, the budget survey highlighted three areas of need that have suffered during the current economic crisis. The first is staffing levels for the judicial system. Maine's court system is severely understaffed and the report indicated that, "Over the past four years, the number of judges, the number of trial court staff persons, the number of central office staff persons and spending on trial court operating expenses has remained the same and will continue

⁵ The survey produced three separate documents that were only published on the National Center for State Court's website. The documents published were: the 2012-2013 budget survey summary; 2012 budget survey analysis; and, all budget survey responses.

to remain the same in FY13” (NCSC, 2012 Budget Survey). Second, Maine reported that it has had to reduce services in a number of areas in order to compensate for underfunding. The survey cites reduced court hours and delays in filling vacancies as areas of reduced services that have had a direct impact on the public’s access to justice. Figure 3.1.1 shows that Maine is not the only state to reduce services as a result of underfunding. Third, judicial and court staff salaries have been frozen for the last two fiscal years, and remain frozen in the current budget. Figure 3.1.2 shows which states indicated in their survey responses that reduced compensation has been used as a method to address underfunding.

Finally, Maine reported that its justice system is essentially in the same position today as it was in fiscal year 2009 (NCSC, 2012 Budget Survey). Maine’s State Court Administrator expects the budget situation to stay the same over the next three years, as indicated in Figure 3.1.3 (NCSC, 2012 Budget Survey).

Figure 3.1.1:

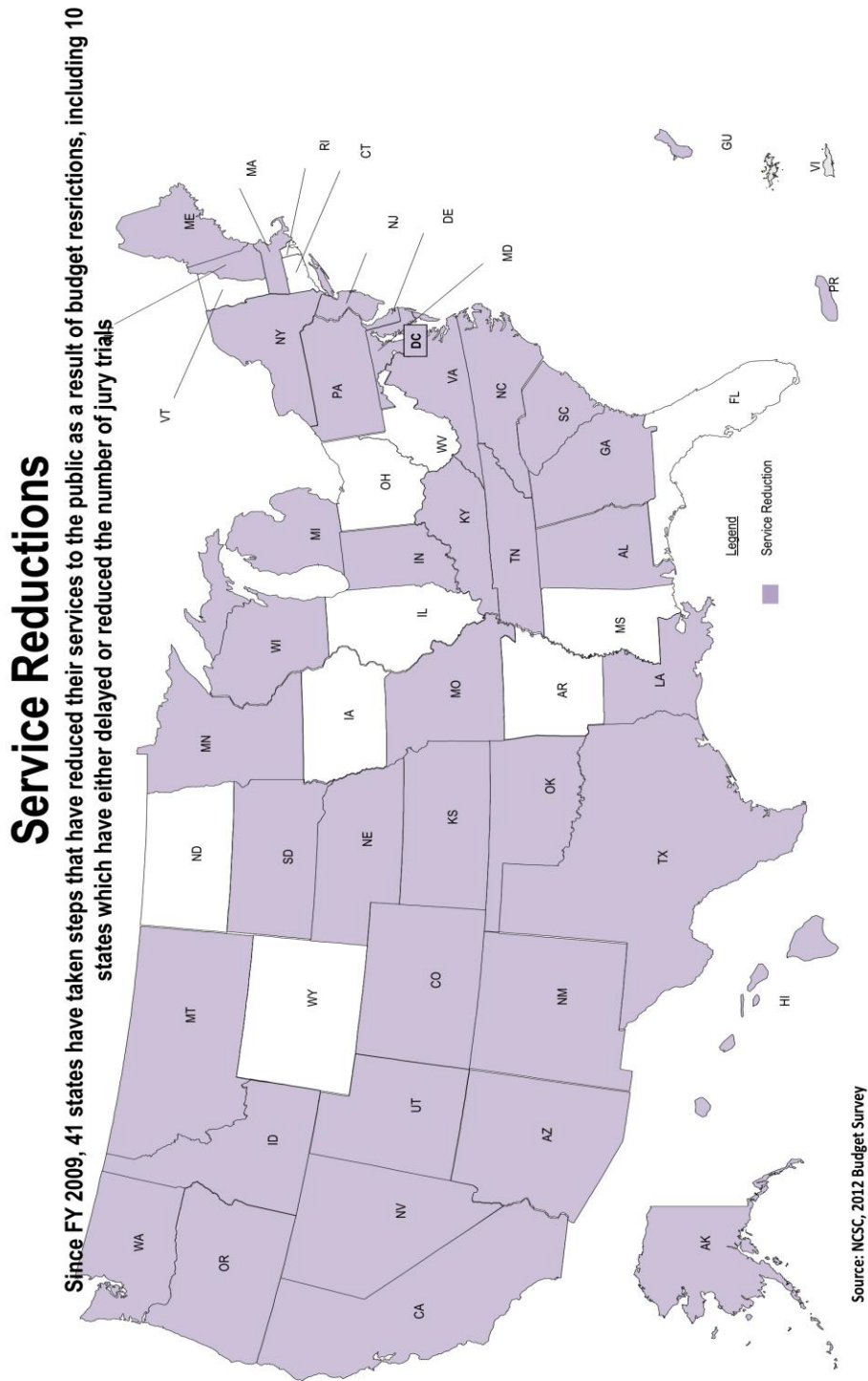


Figure 3.1.2:

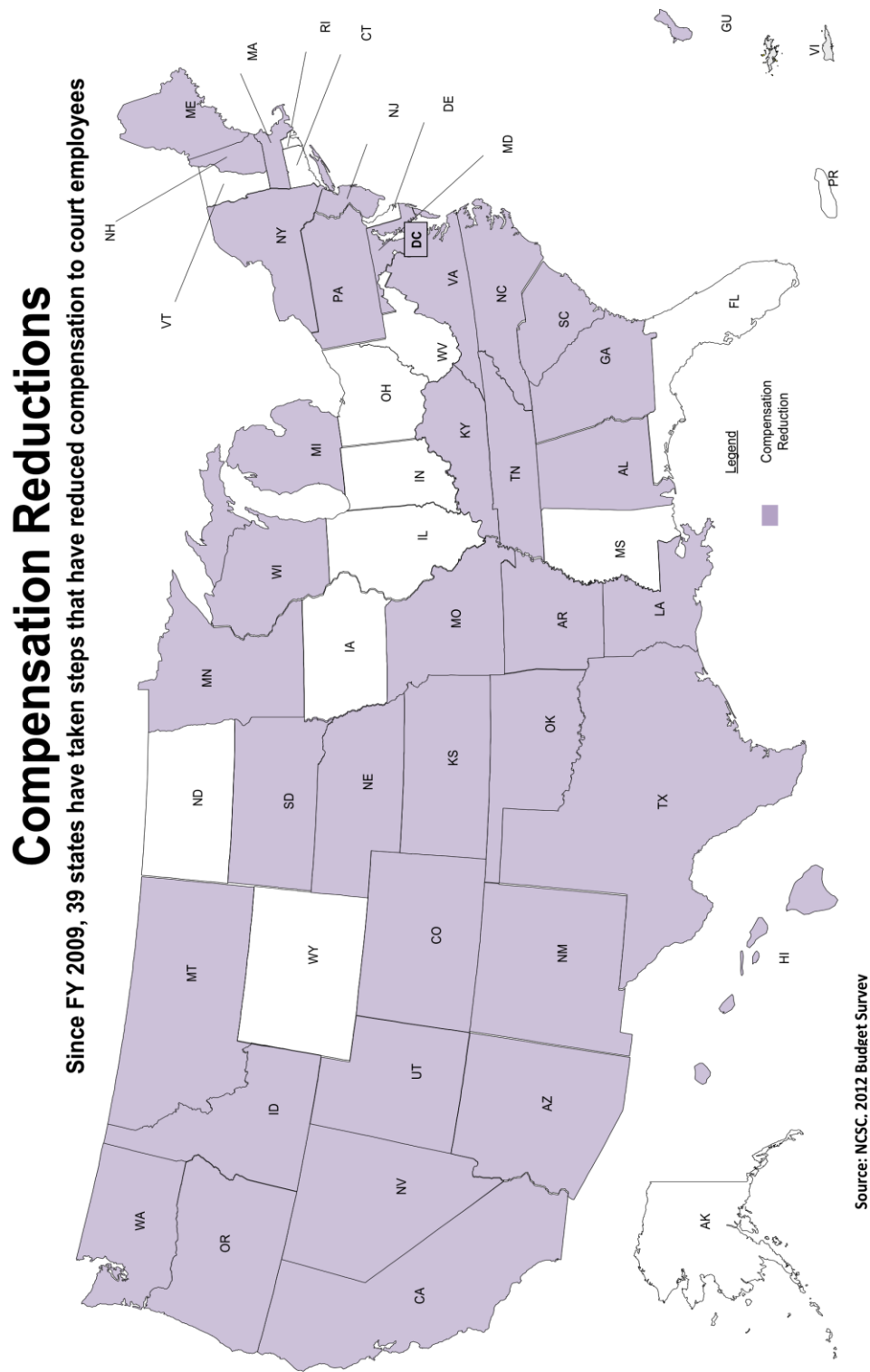
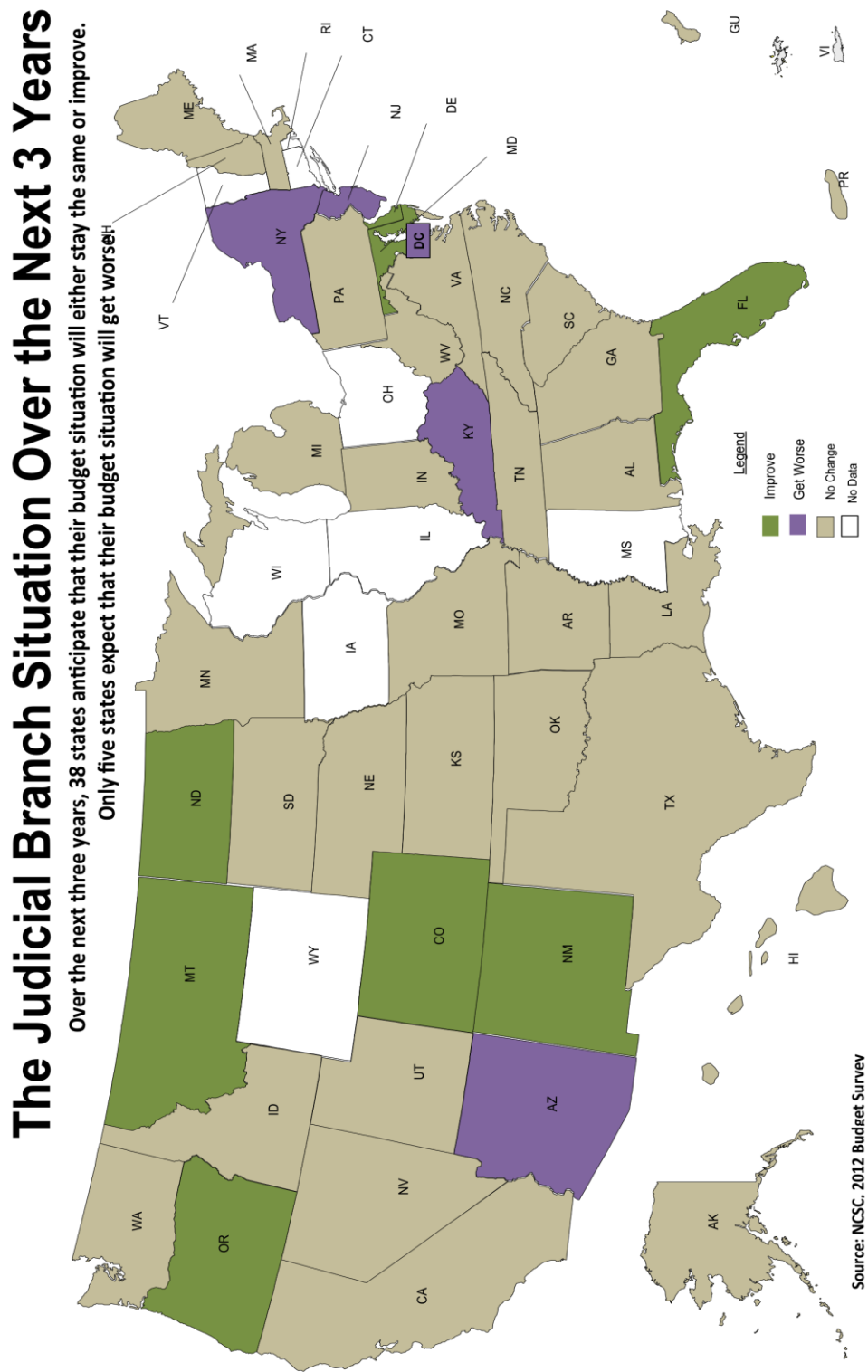


Figure 3.1.3:



3.2 Historical Trends of Underfunding

Moreover, not only is there a current need for increased spending on Maine's justice system, but there is evidence that judicial and legal services funding has been underfunded since Maine's modern judicial system was initially founded. Prior to 1975, Maine's court system existed as three distinct levels of judicial jurisdiction (Saufley, Funding Justice, 2010). These three levels—the District Court, the Superior Court and the Supreme Judicial Court—were not only administratively segregated, but were also funded separately by the Maine State Legislature (Saufley, 2010). In 1975, the Legislature consolidated and centralized Maine's justice system when it passed the “Act to Implement the Recommendations of the Trial Court Revision Commission.”⁶ Chief Justice Saufley (2010) candidly explained the end results of this landmark piece of legislation in her Maine Law Review article:

The Act created the Administrative Office of the Courts, which consolidated the administrative services needed to run all three levels of courts. The Act also provided for the Judicial Branch to be financed through the State General Fund. Among other administrative changes, the Act established a uniform personnel classification plan, consolidated budgeting, centralized oversight of facilities, and provided for flexible management of judicial resources to respond to the public's changing justice needs. The Act also provided for centralized funding of court security. (p. 679)

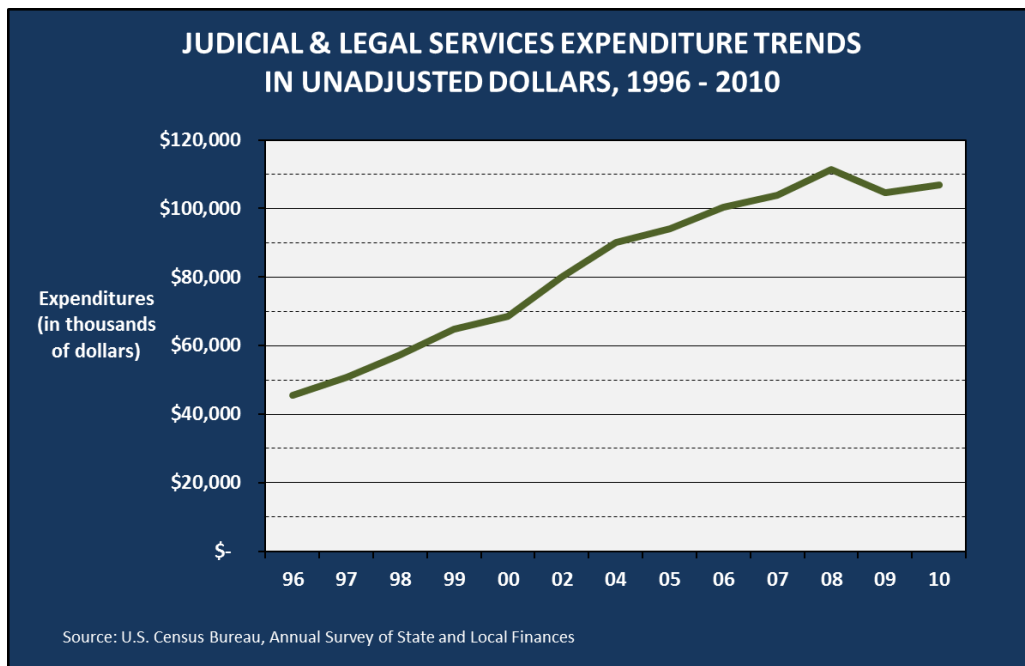
The Chief Justice (2010) continued by noting that, while the legislation was a major step in providing effective judicial administration, funding from the new law fell short of effectuating

⁶ The Trial Court Revision Commission was established by the Maine Legislature in 1973. Its mission was to make recommendations to the Legislature to streamline court processes, create efficiencies in court scheduling and consolidate and centralize court administration. The Commission was assisted by the National Center for State Courts, which also recommended centralizing funding through the State General Fund (Saufley, 2010).

other important recommendations made by the Trial Court Revision Commission, and the system continues to be funded at an insufficient level.

It can be concluded that courts can be described as being underfunded even when spending increases. In Maine, actual expenditures for judicial and legal services have increased over time. According to the U.S. Census Bureau's Annual Survey of State and Local Finances, current dollar⁷ expenditures for judicial and legal services in Maine increased by \$61.4 million dollars between fiscal years 1996 and 2010 as shown in Figure 3.2.1. That represents a 135% increase over fourteen years with an average annual percentage change of 9.6%.

Figure 3.2.1



Similarly, when expenditures are adjusted for inflation, they increase overtime by \$43.8 million.

That represents a smaller increase of 69% increase with an average annual percentage change of

⁷ When analyzing financial data, one of the most important considerations to make is to compare data that has not been adjusted for inflation (current dollars) with inflation adjusted data (real dollars). See Exhibit 3.2.1 for more detailed definitions of current and real dollars.

5%. Figure 3.2.2 compares current and real dollar expenditures for judicial and legal services from 1996 to 2010.

Exhibit 3.2.1⁸

Definition of “Current” and “Real” Dollars

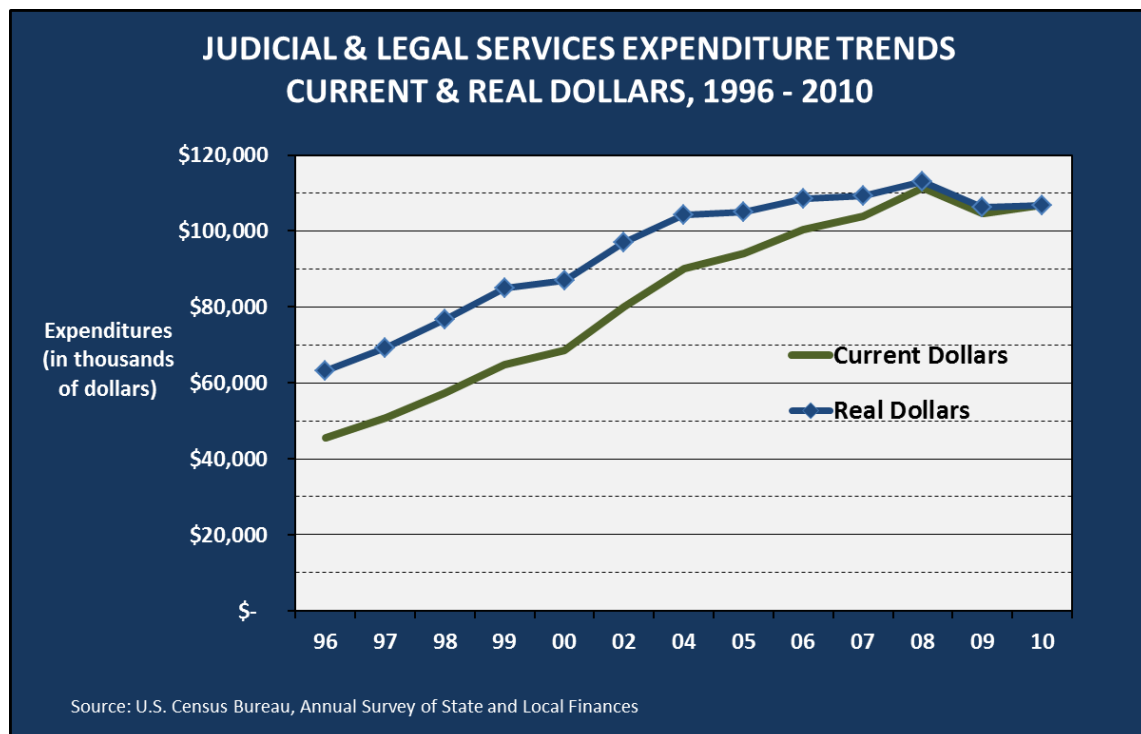
Current Dollars:

“Current” dollar trends have not been adjusted for inflation and reflect the purchasing power of the year in which they are measured. For example, “current dollars” from 1996 means the purchasing power of the dollars in 1996.

Real Dollars:

“Real” dollars refer to dollars that have been adjusted to net out the impact of inflation. The adjustments to current dollar values may either deflate all dollars to an older, common “base year,” such as 1996, or bring older dollars forward, to reflect what they could purchase in more recent years. Regardless of method, the real percentage change is the same.

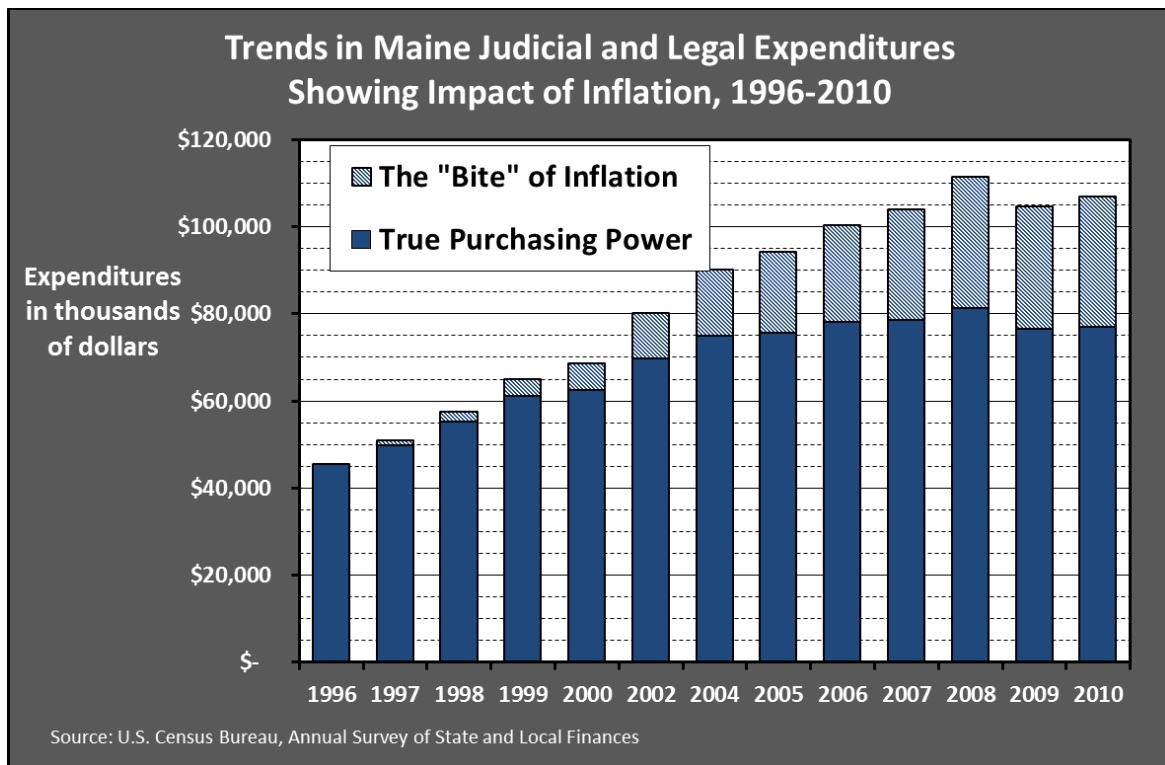
Figure 3.2.2



⁸ This exhibit was modeled after a similar exhibit that appears in Dr. Josie LaPlante’s (2006) report to Cumberland County, Maine titled “Corrections at a Crossroads” (p. 78).

Overtime, inflation can reduce the actual purchasing power of an organization, despite an increase in overall expenditures (LaPlante, 2006). Figure 3.2.2 indicates why adjusting for inflation is important. Figure 3.2.3 also shows the impact inflation had on judicial and legal services expenditures between 1996 and 2010 in Maine. The darkened areas of the bars represent the true purchasing power of judicial and legal services dollars. The patterned areas indicate the loss of purchasing power due to inflation. As Figure 3.2.3 shows, even though purchasing power increased between 1996 and 2006, so did the impact of inflation. On the other hand, while unadjusted dollars increased between 2006 and 2010 by \$6.4 million, real dollars declined by \$1.7 million, or -1.6%.

Figure 3.2.3



Thus far, the information and data has revealed that while spending for judicial and legal services in Maine has increased overtime, the levels of funding have been and are insufficient to support the needs of the justice system. The next section in this report will review some of the

measurements used to determine how well the justice system is performing and what possible effects underfunding may cause.

Chapter 4

Compounding Effects of Underfunding State Court Systems

4.1 Case Filings and Disposition Trends

The number of new case filings in the Maine court system varies from year to year for a variety of reasons (Saufley, 2011). Similarly, the ability of the courts to dispose of their caseloads changes overtime depending on both internal and external circumstances. In her 2010 address to the Legislature, Chief Justice Saufley reported that Maine’s judiciary experienced a significant increase in new case filings in 2009. In her own words, she described the increase as “more filings than the courts have seen in recent memory” (2010). Judicial Branch caseload data reflects the trends that Chief Justice Saufley referred to. Table 4.1.1 shows that between 2003 and 2009⁹, total Trial Court and Appellate Court annual filings increased by 3.9%, or nearly 11,000 cases. The most significant increase was in Superior Court filings where more complicated cases that are subject to jury-trials are filed. Between 2003 and 2009, Superior Court filings increased

Table 4.1.1: Maine Judicial Branch Case Filings Trend, 2003 - 2010

Caseload	2003	2004	2005	2006	2007	2008	2009	2010	% Change 2003-2009
Superior	15,586	15,381	16,605	18,140	19,151	19,272	18,667	17,560	19.8%
District	129,606	129,071	127,420	127,364	128,431	131,038	132,340	120,898	2.1%
UCD	-	-	-	-	-	-	-	11,735	
VB	135,407	138,673	137,352	134,742	129,732	139,328	140,580	135,374	3.8%
Law Court	764	753	685	760	774	755	733	684	-4.1%
TOTAL	281,363	283,878	282,062	281,006	278,088	290,393	292,320	286,251	3.9%

Source: Maine Judicial Branch, Annual Reports

⁹ Table 4.1.1 actually shows case filings through 2010; however, 2010 data is skewed due to the implementation of the Unified Criminal Docket—a new streamlined docket that consolidated Superior and District court criminal case filings—in Cumberland and Penobscot counties.

19.8%. Similarly, District Court filings and Violations Bureau¹⁰ filings increased by 2.1% and 3.8%, respectively. The Supreme Court (sitting as and referred to as the Law Court) was the only judicial jurisdiction that experienced a decrease in filings between 2003 and 2009.

Chief Justice Saufley (2010) attributes the increase in 2009 primarily to a jump in civil cases. She notes, specifically, that mental health commitment petitions were “up 36% over the last 5 years,” and that “Small claims, collections, and foreclosure cases reached an all time high” (2010). Furthermore, Chief Justice Saufley (2011) again reported an increased trend in civil filings in 2010. In that year, she reported that civil filings had increased by 48% over five years, including a 146% increase in foreclosure filings and a 56% increase in debt collections (2011). On the other hand, Maine’s criminal caseload decreased during the same period of time, while other caseloads such as divorce cases remained the same.

Comparatively, data from the National Center for State Courts shows that Maine’s case filings fall below US levels for civil and criminal case filings in 2010; however disposition rates point towards echoing a trend in increasing case complexity. Table 4.1.2 shows Maine’s incoming civil and criminal case filings compared to US levels. In 2010, according to NCSC data, Maine had 5,884 incoming criminal cases per 100,000 people. This number is only 116 cases below the US median, but 1,628 below the US mean. On the civil side, Maine had 3,557 incoming civil cases per 100,000 people filed in 2010 compared to a US median of 6,020 cases and a mean of 6,189. Thus, on either side of the caseload equation, the number of case filings in Maine fell well below US levels. To complicate matters, other data shows that Maine judges are also handling more complex cases. According to Maine’s Chief Justice (2011), new laws and

¹⁰ In addition to the three judicial jurisdictions that comprise Maine’s court system (Supreme Court, Superior Court and District Court), the Judicial Branch also houses the Violations Bureau. This entity processes all of Maine’s traffic infractions.

regulations in family matters and foreclosure cases, as well as new trends in drug and domestic violence related crimes have complicated caseloads to a point where additional court resources are necessary. These occurrences strain court funds and directly impact the judiciary's ability to process cases (Pearsall et al, 2012, p. 11).

Table 4.1.2: Comparing Caseloads and Clearance Rates, 2010						
	CRIMINAL			CIVIL		TOTAL ALL CASELOADS
	Caseload Clearance Rate	Incoming Cases per 100,000 adult Population		Caseload Clearance Rate	Incoming Cases per 100,000 adult Population	Incoming Cases per 100,000 adult Population
Maine	93%	5,884		97%	3,557	9,441
US Median	100%	6,600		97%	6,020	13,244
US Mean	97%	7,512		93%	6,189	13,667

Source: NCSC Court Statistics Project, 2010 (www.courtstatistics.org)

In the court system, one of the primary means to measure a court's ability to process cases is to review whether or not a court is disposing of as many cases as it takes in. This measurement is known as the caseload clearance rate, or CCR. The CCR is calculated by dividing the number of incoming cases in a particular year by the number of cases disposed in that same year. The resulting ratio determines how well a court is managing its caseload. For example, a 100% CCR means that in a single year, a court was able to dispose of as many cases as it took in, thus performing at an efficient level. According to data published by the NCSC, Maine was not able to dispose of as many cases in 2010 as were filed in the same year. Table 4.1.2 also indicates that Maine's CCR for both criminal and civil cases was below 100% in 2010. Additionally, Maine's 93% clearance rate for criminal cases in 2010 also fell below the US median CCR of 100% and the mean CCR of 97%. Comparatively, Maine's 97% clearance rate

for civil cases matches the US median level, and actually is 4% above the US mean CCR in 2010.

The above case filing and disposition data reiterates the prognosis that underfunding and variations in case complexity are having a detrimental effect on Maine's judiciary. Pearsall, Shippen and Weinstein (2012) explain that staffing reductions coupled with increasing case filings has a compounding effect on the justice system's ability to quickly dispose of cases (p. 11). Earlier sections of this report noted that reduced funding for judicial and legal services has caused the Judicial Branch to maintain vacancies and reduce courthouse hours of operation. Additionally, a National Center for State Courts (2012) report indicates that Maine has a critically low number of judges processing cases compared to other states. The report noted that Maine employed 53 full-time judges in 2010, or 2 per 100,000 people. The number of Maine judges per 100,000 people fell below the median level of 2.8. Furthermore, the report revealed that Maine judges processed 2,555 non-traffic cases per judge in 2010—well above the median number of 1,780 cases per judge.

4.2 Budgetary Burdens: Funding for Indigent Legal Services

In addition to the expanded case filings and increase in case complexity, specific areas of growth within the Judicial Branch's budget have led to funding problems for other spending components. Specifically, Maine's judiciary has experienced significant burdens in funding indigent legal services (hereinafter referred to as ILS) for many years. Spending for ILS is mandated by case law established by the United State Supreme Court, Federal law, as well as State constitutional and statutory requirements (Indigent Legal Services Commission [ILSC], 2009). The 1963 ruling by the US Supreme Court in *Gideon v. Wainwright*¹¹ held "that all states must provide legal representation to [criminal defendants] if they cannot afford to hire their own

¹¹ *Gideon v. Wainwright*, 372 U.S. 255 (1963)

attorney” (ILSC, 2009, p. 1). Pursuant to rulings in other federal cases, states must also provide representation for juvenile defendants and individuals facing involuntary commitment for mental illness.¹²

Along with these federal cases, both the Maine constitution and state law mandates state paid representation for indigent defendants. According to the ILSC report (2009), “In Maine, indigent defendants have a right to counsel pursuant to the State Constitution¹³ when imprisonment is imposed” (p. 1). Additionally, in Maine, state law requires that representation be provided to indigent parents in protective custody cases.¹⁴ Therefore, Maine is bound by multiple authorities to provide legal representation to indigent defendants in a variety of cases at state expense. In the last few years, those expenses have surged. Growth in ILS spending eventually convinced the Judicial Branch to move their authority to approve and fund these services from their budget to an independent commission within the Executive Branch. In 2009, the 124th Legislature passed and enacted L.D. 1132, “An Act to Establish the Maine Commission on Indigent Legal Services” (2009).¹⁵ The legislation established an independent commission to oversee and manage indigent legal services in Maine. The commission approves and process payments, screens defendants for eligibility, and oversees policy related to indigent legal services.

Prior to the creation of the new commission, spending for indigent legal services in Maine had grown exponentially, as noted above. From fiscal year 2007 to 2008 alone, spending in Maine increased by nearly \$1 million, or 12% (ILSC, 2009). Between fiscal years 2000 and 2009, ILS spending increased by \$4,611,435, or 54.5% over nine years. As Figure 4.2.1 shows,

¹² State paid representation for juveniles facing juvenile crimes was established in *In re Gault*, 73 U.S. 1 (1967), and *Vitek v. Jones*, 445 U.S. 480 (1979) for the mentally ill.

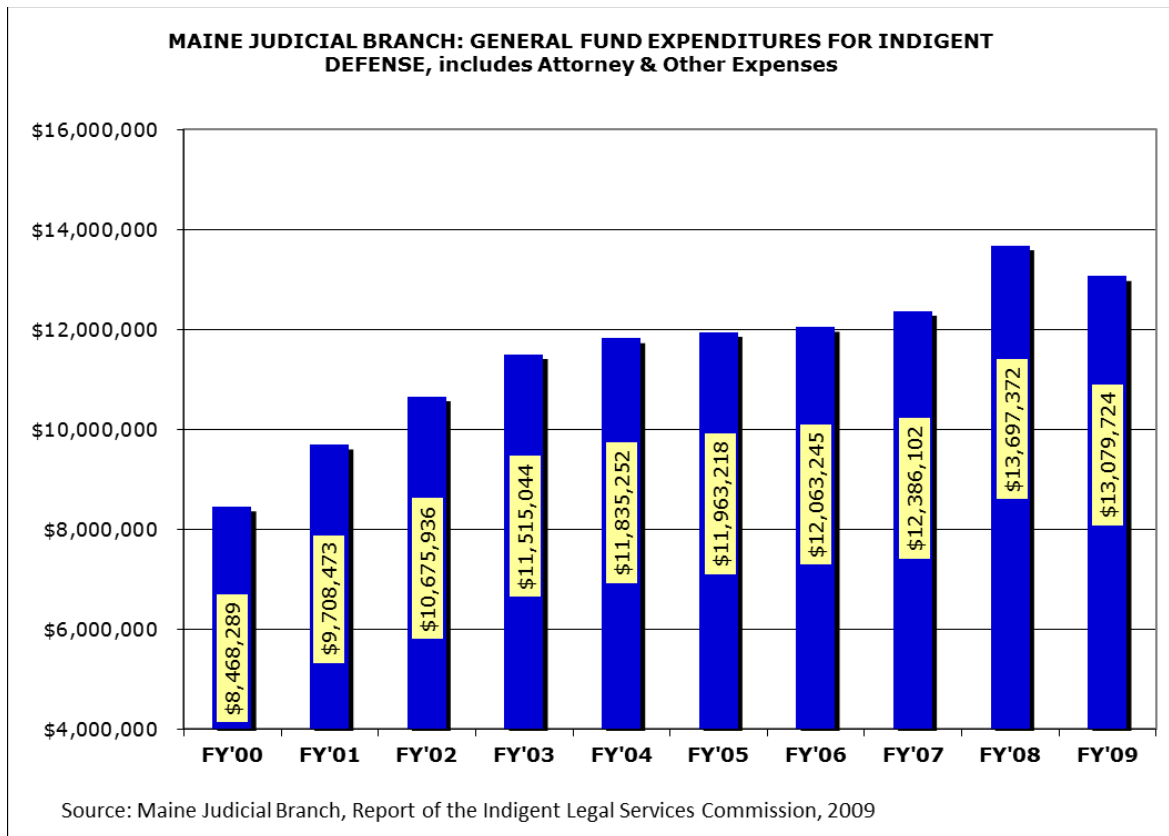
¹³ Me. Const. art. I, § 6-A.

¹⁴ 22 M.R.S. § 4005(2) (2008).

¹⁵ Maine P.L. 2009, ch. 419

spending for ILS actually went down between 2008 and 2009 due to across the board budget cuts in the state, as well as other circumstances. If you eliminate this factor from the equation, ILS spending increased by approximately \$5.2 million, or 62%, between 2000 and 2008. According to the analysis and findings of the ILSC

Figure 4.2.1



(2009), the dramatic increase in ILS spending is attributed to changes in both the criminal code and court rules, as well as an overall increase in the number of defendants qualifying as indigent (p. 6).

In Maine, the Judicial Branch's budget is structured to provide maximum flexibility to courts to allocate funds across budget components. This report will go into further detail about this arrangement later on, but initially it is important to point out that ILS funds are not directly appropriated from the State General Fund. Instead, they are part of a "catch-all" line item in the

budget that allows the judiciary to allocate the funds to ILS that it requires (ILSC, 2009). The unfortunate drawback is that when spending for ILS unexpectedly increases, it negatively impacts other areas of the Judicial Branch's budget. The ILSC report (2009) explains, "This transfer of funds from the general budget of the Judiciary to pay court appointed fees seriously jeopardizes the Judicial Branch's ability to provide timely and efficient services across the entire spectrum of Maine's justice system" (p. 3).

Furthermore, despite the transfer of indigent legal services out of the Judicial Branch to the newly created Maine Commission on Indigent Legal Services (MCILS), the system has continued to struggle with underfunding. Part of the selling point to the Legislature in creating the new commission was that no additional appropriations were needed for the transfer. According to Ellen Hjelm, the Judicial Branch's Budget Director (personal communication, December 13, 2010), the courts transferred four positions—these positions totaled \$262,784 in the Judicial Branch budget—from the judiciary to the new commission in fiscal year 2010. These positions and funds were used to develop and organize MCILS before it officially began operations on July 1, 2010. Then, at the beginning of fiscal year 2011, the remaining six positions assigned to ILS in the Judicial Branch, as well as the \$10,462,841 in the ILS fund were transferred to the new commission.

Unfortunately, the MCILS has consistently run out of money and has required supplemental funding since it was initially established (Associated Press, Portland Press Herald, 2011). According to a 2011 Portland Press Herald article, MCILS required an additional \$400,000 in appropriations in fiscal year 2011 to cover costs for court-appointed lawyers. More recently, a Bangor Daily News article pointed out that MCILS had again fallen short of the funds needed to close out fiscal year 2012 and requested additional monies in the Governor's 2012

supplemental budget (Judy Harrison, 2012). Fortunately, MCILS has received additional supplemental funding every year it has requested it; although, if the Legislature and the Governor did not approve the additional funds, the State could face a potential lawsuit for not providing constitutionally and statutorily mandated services. In this case, underfunding comes with serious consequences.

Chapter 5

Analyzing Trends in Expenditures for Judicial and Legal Services

5.1 The Maine Judicial Branch Budget

A. Background of the Budgeting Process

Previously, this report briefly introduced Maine's Judicial Branch budgeting process and structure. To summarize, the budget is developed biennially and presented to the Executive Branch to be included in the Governor's budget proposal to the Legislature. The budget then works its way through the Appropriations committee in the Legislature with input from the Judiciary committee, until it is finally presented with the rest of the General Fund biennial budget to the Legislature as a whole for final approval before being signed by the governor. According to the NCSC's 2012 Budget Survey, approximately two-thirds of the 45 states that responded to the survey have an identical or similar budgeting process; although, it was not until the later-half of the twentieth century that most states began to centralize their judiciaries into a consolidated state court system with a single budgeting process such as this (Aikman, 2007). The transition to a central state system was due in large part to the financial and budgetary benefits of a unified funding system. Aikman (2007) explains that disparities in systems where local municipal, county and state courts operate independently of one another can have detrimental effects on funding for judicial and legal services. Courts across municipalities have different

sources of revenue (and politics), and thus appropriate court funding at different levels. This can have severe effects on the quality of judicial services across municipal and county lines. Rather, Aikman (2007) tells us, “state funding is seen as a way for state officials to begin to address and reduce the disparities” (p. 91). In a consolidated state court system, budgeting is conducted in a single process, messaging is focused, and the public’s access to justice is equitable.

One disadvantage in relying on the Legislature to appropriate dollars from the General Fund, is that policymakers must prioritize spending among the many competing state departments and agencies. From year to year, priorities shift, and the total amount of dollars allocated to various components in the General Fund budget fluctuates. Aikman (2007) explains that, “For courts that are state funded, the legislature can change its mind and de facto repeal a previous mandate by not funding the courts to perform that function or task during a fiscal year. So in state-funded systems, courts, legislatures, and governors may end up debating whether a statute is or should be regarded as critical to court functioning and thus ‘mandated’” (p. 11). One way to quantifiably measure if priorities have shifted over time is to compare expected budget growth with actual budget growth.¹⁶

B. Analyzing Budget Growth

An analysis of expected and actual budget growth identifies which budgetary components are growing and which are declining over a period of time. Additionally, this method of analysis conveys how much a share of the budget has increased or decreased compared to the amount of growth that was actually expected over the same period of time. For this report’s analysis, departmental components of the Maine State General Fund in fiscal year 2006 and 2010 are compared. The components included in the analysis include the budgets for the Department of

¹⁶ This type of analysis appeared in Dr. Josie LaPlante’s (2006) report for the Cumberland County Jail. The data in her analysis appeared in a Maine Department of Corrections (DOC) presentation and was intended to compare expected and actual budget growth for the DOC.

Corrections, Department of Health and Human Services, Judicial Department and Department of Education. All of the expenditure data was adjusted for inflation. Table 5.1.B.1 shows each departments inflation adjusted expenditures for 2006 and 2010, and indicates the amount of dollar change, as well as the percentage change. Further, Table 5.1.B.1 depicts what the expected growth rate is for each department, what the actual growth rate was, and the difference between the two measures. The results of this analysis reveal that the Judicial Branch's expenditures were expected to account for 2.5% of the overall growth of the summed departmental components. In contrast, the sum of the total departmental component expenditures decreased from 2006 to 2010 by \$240.5 million. The Judicial Department actually accounted for -2.2% of negative growth. This means that between 2006 and 2010, the Judicial Branch's budget actually decreased by 188.4% less than expected. Thus, despite an overall funding increase of \$5.3 million (or 8.7%, the largest increase of the four components) over four years, this analysis indicates that the increased spending was much less than expected. This is likely due to effects of the "Great Recession" when budgets in fiscal years 2009 and 2010 had to be severely reduced to battle declining revenues and surges in other budgetary components (such as DHHS).

Table 5.1.B.1: Example of Assessing different Growth Rates by Comparing Expected Contribution Toward Growth with Allocated Increases (real dollars)

Spending Trends Data as Reported in Maine State Compendium					Additional Computations to Facilitate Comparison		
Trends in Expenditure in Selected Components of the Maine State Government General Fund, FY2006-2010 ¹					Comparison of Expected and Actual Contributions to Growth		
Component of ME General Fund	2006 GF Expenditures Expressed in 2010 \$ Values	2010 Expenditures	Change in Real Dollars Expressed in 2010 \$ Values	Percent Change in Real Dollars	2006 Budget Share = Expected % of Growth	Share of Summed Growth = Actual % of Growth	Percent Difference Between Expected Actual % of Growth
ME Corrections	\$ 147,660,358	\$ 157,939,386	\$ 10,279,028	7.0%	6.0%	-4.3%	-170.9%
Health & Human Services	\$ 1,082,561,427	\$ 813,260,780	\$ (269,300,647)	-24.9%	44.2%	111.9%	153.3%
Judicial	\$ 61,405,166	\$ 66,734,932	\$ 5,329,766	8.7%	2.5%	-2.2%	-188.4%
Education	\$ 1,157,785,939	\$ 1,170,918,193	\$ 13,132,254	1.1%	47.3%	-5.5%	-111.5%
Total for Included Departments	\$ 2,449,412,891	\$ 2,208,853,291	\$ (240,559,600)	-9.8%	100.0%	100.0%	N/A

^{1.} This data is adjusted for inflation and dispalyed in "2010" dollars.

Source: State of Maine Compendium for FY'2010. Table GF-2

5.2 Spending as Percentage of Personal Income

A. Analysis of Personal Income and Expenditure Trends

Now that previous sections have reviewed some of the spending trends in Maine's Judicial Branch, we will turn to analyzing the trends for judicial and legal services spending in Maine. This section will also compare levels and trends to U.S. expenditures for judicial and legal services, as well as other areas of state and local spending. First, let us review the methodology used to analyze spending in these areas. Earlier sections of this report discussed the difficulty in comparing dollar amounts for expenditures across states. Similarly, it is also difficult to compare Maine's spending levels to U.S. averages. Cultures and political attitudes vary across state lines, as do population sizes, government structures and socio-economic conditions. The combination of all these factors make comparing expenditures for judicial and legal services in Maine to other states unreliable—even against states with similar variables.

In order to compensate for these differences, an analysis of expenditures as a percentage of personal income¹⁷ can net-out the underlying anomalies. For that reason, this report uses that analytical technique to compare Maine's spending levels against U.S. levels and trends, as well as expenditures for other common functions spending.

First, data from the U.S. Census Bureau's Annual Survey of State and Local Finances was collected and reviewed between 1996 and 2010. The two pieces of data collected to calculate the percentage of personal income statistic are the amount of personal income and the expenditures for judicial and legal services. Figure 5.2.A.1 and 5.2.A.2 displays personal income trends for both Maine and the US from 1996 to 2010 in inflation adjusted dollars.

¹⁷ In parts of this report, as well as in various tables and figures, the words “percentage of personal income” may be referred to using the common abbreviation “percentage of PY” or “% of PY.”

Figure 5.2.A.1:

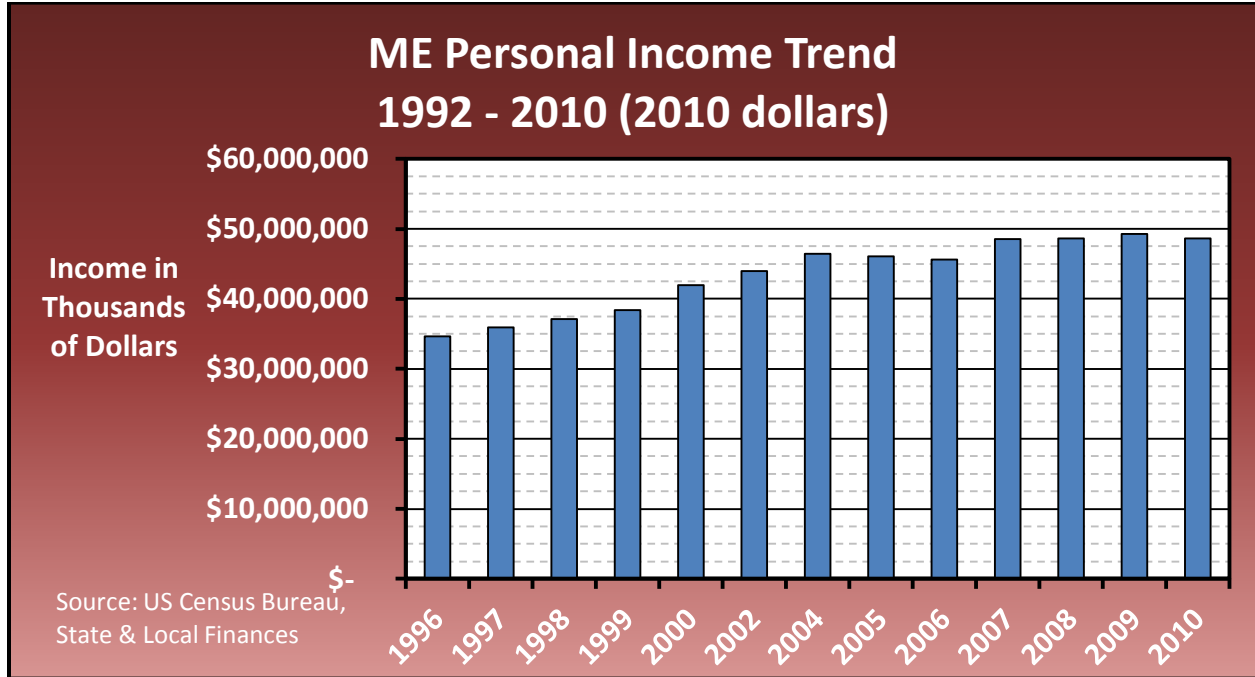
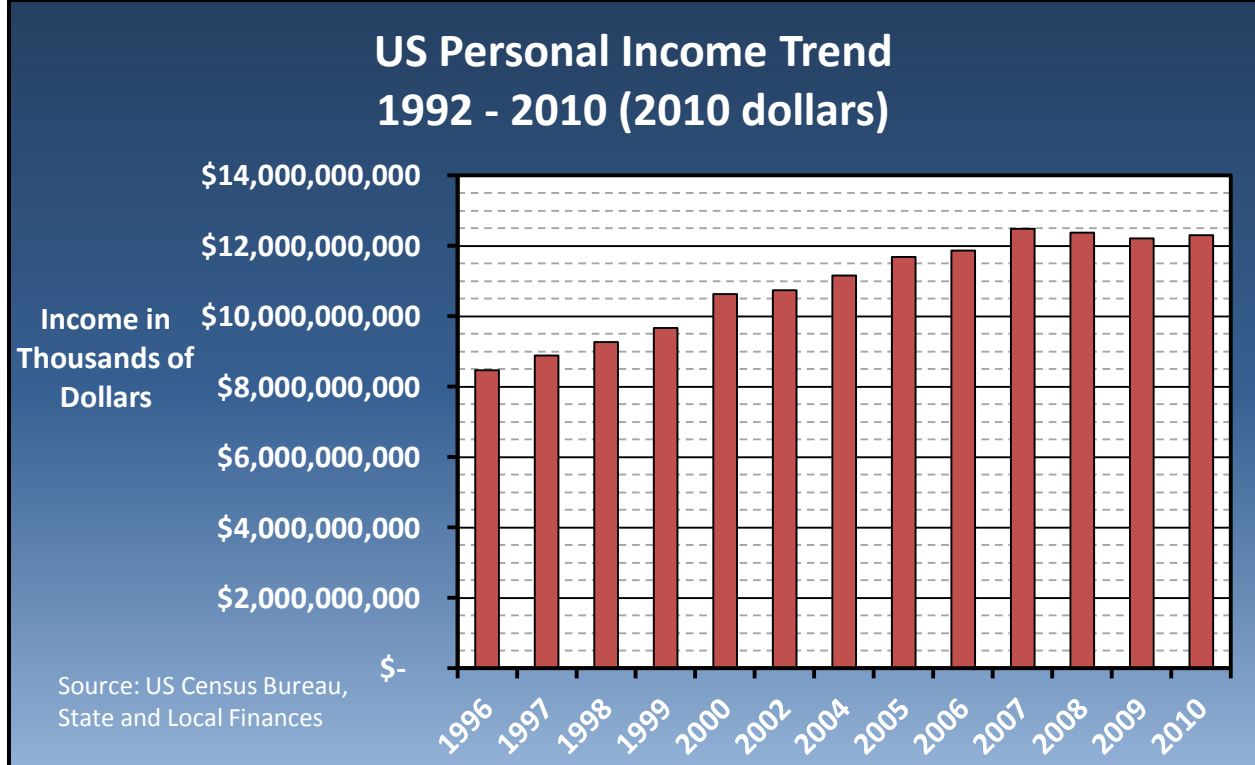


Figure 5.2.A.2:



Both figures show an increase in personal income overtime. Not surprisingly, the data also shows that income levels for both Maine and the US leveled off between 2007 and 2010 during the latest economic downturn. According to the Bureau of Labor Statistics, unemployment peaked at 9.6% in 2010 (BLS, Current Population Survey, 2013); which would reduce the amount of personal income. In Maine, income increased by 40.2% between 1996 and 2010 in inflation adjusted dollars compared to a 45.2% increase in U.S. income—a difference of 5%.

Furthermore, Table 5.2.A.1 also displays the total amount of personal income for each year, as well as the judicial and legal expenditures for the U.S. and Maine. Income and expenditures are conveyed in inflation adjusted dollars for 2010. The far right-hand column shows the percentage of personal income spent on judicial and legal services for each year. As Table 5.2.A.1 shows, spending on judicial and legal services as a percentage of personal income

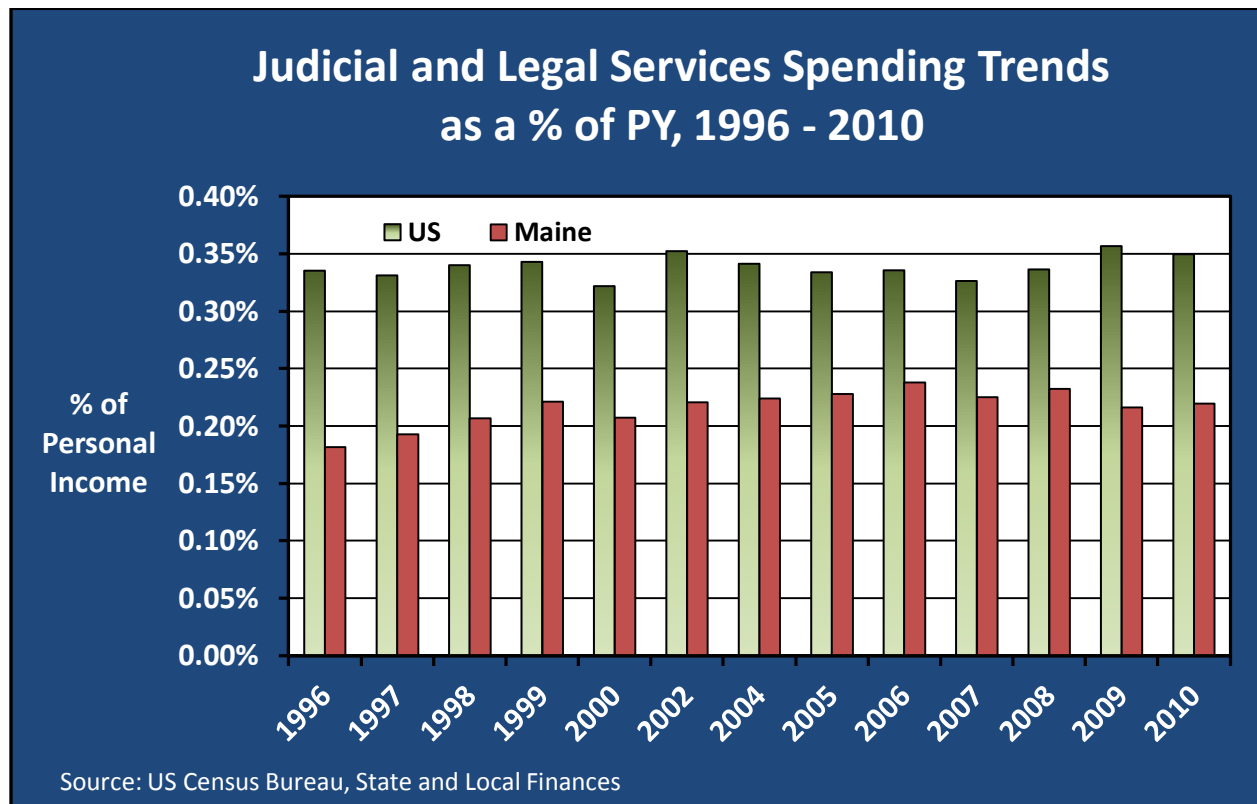
Table 5.2.A.1: Comparing Trends in Judicial & Legal Expenditures as a % of PY, 1996-2010								
<u>Personal Income (2010 Dollars)</u>			<u>Judicial & Legal Expenditure (2010 Dollars)</u>			<u>% of PY</u>		<u>Difference</u>
Year	US	Maine	Year	US	Maine	US	Maine	b/w US & ME
1996	\$ 8,474,827,742	\$ 34,684,663	1996	\$ 28,408,024	\$ 63,054	0.34%	0.18%	-0.15%
1997	\$ 8,882,695,251	\$ 35,913,348	1997	\$ 29,410,019	\$ 69,130	0.33%	0.19%	-0.14%
1998	\$ 9,269,068,262	\$ 37,155,137	1998	\$ 31,515,217	\$ 76,726	0.34%	0.21%	-0.13%
1999	\$ 9,664,209,199	\$ 38,418,954	1999	\$ 33,136,510	\$ 84,912	0.34%	0.22%	-0.12%
2000	\$ 10,635,661,886	\$ 41,934,087	2000	\$ 34,217,949	\$ 86,865	0.32%	0.21%	-0.11%
2002	\$ 10,749,180,215	\$ 43,993,574	2002	\$ 37,861,589	\$ 96,999	0.35%	0.22%	-0.13%
2004	\$ 11,165,073,317	\$ 46,478,020	2004	\$ 38,097,918	\$ 104,118	0.34%	0.22%	-0.12%
2005	\$ 11,689,496,475	\$ 46,088,754	2005	\$ 39,021,473	\$ 105,016	0.33%	0.23%	-0.11%
2006	\$ 11,863,709,841	\$ 45,646,822	2006	\$ 39,808,677	\$ 108,510	0.34%	0.24%	-0.10%
2007	\$ 12,496,235,016	\$ 48,536,131	2007	\$ 40,764,729	\$ 109,197	0.33%	0.22%	-0.10%
2008	\$ 12,381,913,094	\$ 48,607,813	2008	\$ 41,641,715	\$ 112,909	0.34%	0.23%	-0.10%
2009	\$ 12,212,622,965	\$ 49,235,791	2009	\$ 43,550,769	\$ 106,356	0.36%	0.22%	-0.14%
2010	\$ 12,308,496,000	\$ 48,620,161	2010	\$ 43,027,517	\$ 106,812	0.35%	0.22%	-0.13%
\$ Change 96-10	\$ 3,833,668,258	\$ 13,935,498	\$ Change 96-10	\$ 14,619,493	\$ 43,758	-	-	-
% Change 96-10	31.1%	28.7%	% Change 96-10	34.0%	41.0%	0.01%	0.04%	0.02%

Source: US Census Bureau, State and Local Finances

in Maine increased by 0.04% from 1996 to 2010. Comparatively, spending for the US total only grew by 0.01% during the same timeframe; however, the level of spending in Maine is significantly lower than U.S. levels. For example, in 2010 spending for judicial and legal

services in Maine as a percentage of personal income was 0.13% below the US level of spending. Figure 5.2.A.3 indicates that spending levels as a percentage of personal income in Maine have consistently been lower than U.S. levels overtime.

Figure 5.2.A.3:



B. Analysis of Common Functions Expenditures

Another way to analyze judicial and legal services spending in Maine is to compare levels and trends against other components of spending in the Census Bureau's State and Local Government Finance data. In order to ensure a reliable comparison, spending components need to be areas of state and local government spending that are comparable across states. For example, spending for K-12 education is a comparable component across all states, because education is almost exclusively a function of state and local government. By contrast, other states provide a considerable amount of state dollars for organizations such as hospitals, while Maine

does not. Therefore, the set of expenditure components (otherwise referred to as common functions) that were chosen for this analysis are: Judicial and Legal Services; Fire and Police; Corrections; Higher Education; K-12 Education; Highways; Natural Resources, Parks, Community Development and Housing; Sewerage and Solid Waste; Public Welfare; and Health (other than hospitals). It should also be noted that all of the common functions expenditure data that was collected and reviewed did not include debt service or capital expenses.

According to Table 5.2.B.1, which compares trends in unadjusted common function expenditures for 2006 and 2010, spending for judicial and legal services in both years comprised the lowest share of the sum of common functions expenditures at 1.3% in 2006 and 1.2% in 2010. In both years, spending for judicial and legal services also comprised a smaller share of the aggregate sum of common functions expenditures than the median share of 6%. Additionally, expenditures for judicial and legal services in unadjusted dollars only increased by 6% between 2006 and 2010. Among the other common functions, this area of spending experienced one of the smallest rates of growth. Only expenditures for Higher Education and Health saw lower growth rates over the same period of time. The 6% growth rate in judicial and legal services spending over four years also fell below the median percentage change of 9%.

After adjusting common functions expenditures for inflation and converting to 2010 dollars, the percentage change over four years for judicial and legal services spending continued to fall below other areas of spending. As Table 5.2.B.2 shows, judicial and legal services spending shrank by -2% between 2006 and 2010—only expenditures for higher education, highways and health did worse. Figure 5.2.B.1 shows percentage changes for all common functions expenditures in both inflation adjusted and unadjusted dollars.

Table 5.2.B.1: Recent Trends in Maine's Common Function Expenditures, 2006 - 2010 (Current Dollars)

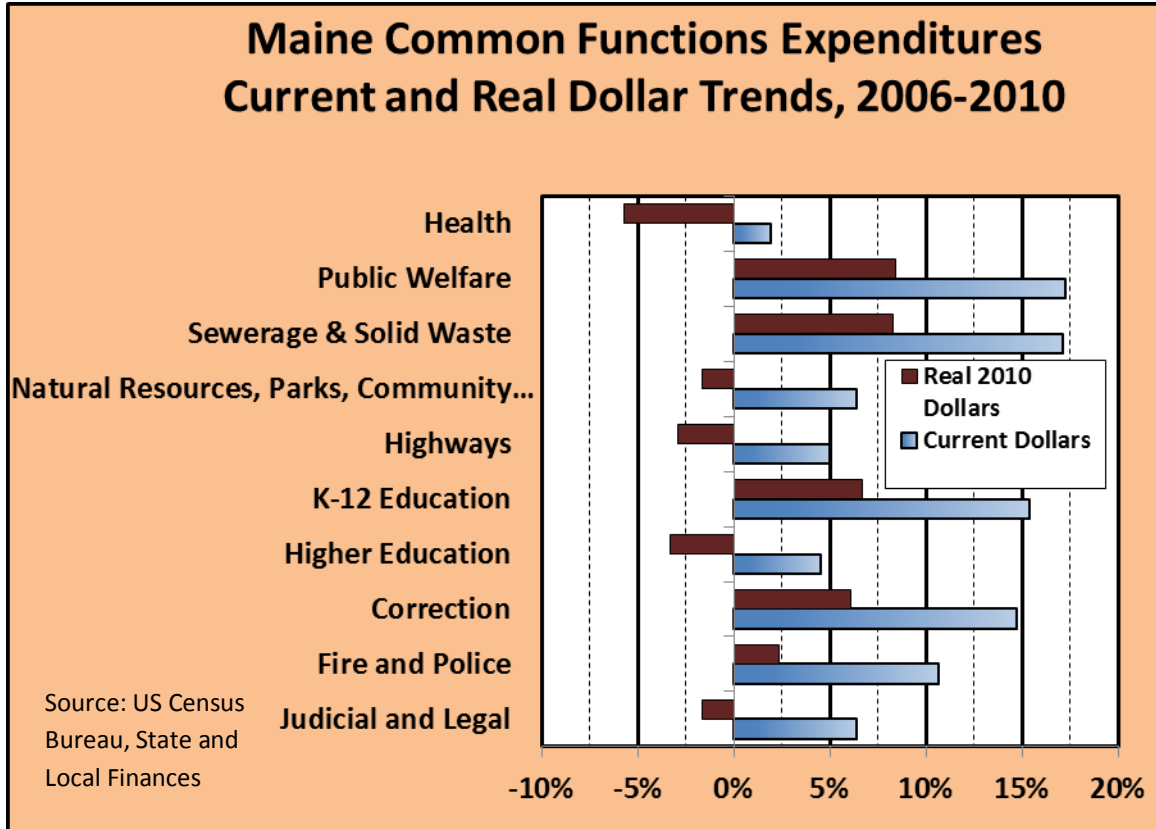
Common Function Component	2006	% of Total	2010	% of Total	Change, 2006 - 2010	
					Amount	Percent
Judicial and Legal	\$ 100,372	1.3%	\$ 106,812	1.2%	\$ 6,440	6%
Fire and Police	\$ 341,032	4.3%	\$ 377,548	4.2%	\$ 36,516	11%
Correction	\$ 182,639	2.3%	\$ 209,617	2.3%	\$ 26,978	15%
Higher Education	\$ 715,163	9.0%	\$ 747,735	8.3%	\$ 32,572	5%
K-12 Education	\$ 2,129,772	26.7%	\$ 2,458,076	27.4%	\$328,304	15%
Highways	\$ 798,176	10.0%	\$ 838,320	9.3%	\$ 40,144	5%
Natural Resources, Parks, Community Development, & Housing	\$ 467,207	5.9%	\$ 497,016	5.5%	\$ 29,809	6%
Sewerage & Solid Waste	\$ 254,766	3.2%	\$ 298,364	3.3%	\$ 43,598	17%
Public Welfare	\$ 2,496,584	31.3%	\$ 2,928,496	32.7%	\$431,912	17%
Health	\$ 495,633	6.2%	\$ 505,313	5.6%	\$ 9,680	2%
Total of Included Components	\$ 7,981,344	100%	\$ 8,967,297	100%	\$985,953	12%
Mean	\$ 798,134	10%	\$ 896,730	10%	\$ 98,595	10%
Median	\$ 481,420	6%	\$ 501,165	6%	\$ 34,544	9%

Source: US Census Bureau, State and Local Finances

Table 5.2.B.2: Recent Trends in Maine's Common Function Expenditures, 2006 - 2010 (Real Dollars)

Common Function Component	2006	% of Total	2010	% of Total	Change, 2006 - 2010	
					Amount	Percent
Judicial and Legal	\$ 108,565	1.3%	\$ 106,812	1.2%	\$ (1,753)	-2%
Fire and Police	\$ 368,869	4.3%	\$ 377,548	4.2%	\$ 8,679	2%
Correction	\$ 197,547	2.3%	\$ 209,617	2.3%	\$ 12,070	6%
Higher Education	\$ 773,540	9.0%	\$ 747,735	8.3%	\$ (25,805)	-3%
K-12 Education	\$ 2,303,619	26.7%	\$ 2,458,076	27.4%	\$154,457	7%
Highways	\$ 863,329	10.0%	\$ 838,320	9.3%	\$ (25,009)	-3%
Natural Resources, Parks, Community Development, & Housing	\$ 505,344	5.9%	\$ 497,016	5.5%	\$ (8,328)	-2%
Sewerage & Solid Waste	\$ 275,562	3.2%	\$ 298,364	3.3%	\$ 22,802	8%
Public Welfare	\$ 2,700,373	31.3%	\$ 2,928,496	32.7%	\$228,123	8%
Health	\$ 536,090	6.2%	\$ 505,313	5.6%	\$ (30,777)	-6%
Total of Included Components	\$ 8,632,837	100%	\$ 8,967,297	100%	\$334,460	4%
Mean	\$ 863,284	10%	\$ 896,730	10%	\$ 33,446	2%
Median	\$ 520,717	6%	\$ 501,165	6%	\$ 3,463	0%

Source: US Census Bureau, State and Local Finances

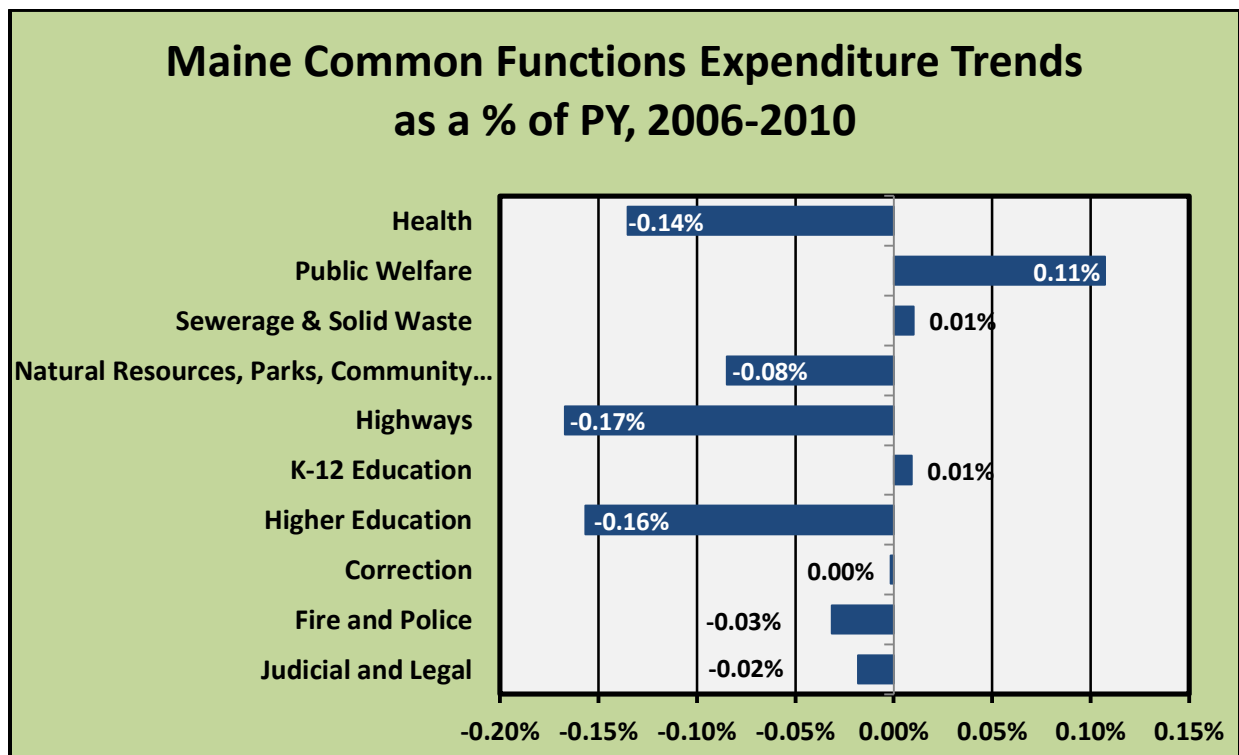
Figure 5.2.B.1:

When the analysis shifts to reviewing expenditures as a percentage of personal income, the judicial and legal services expenditure component still loses ground. Table 5.2.B.3 shows that in 2006, judicial and legal services expenditures in Maine were 0.24% of personal income. In 2010, that spending level dropped to 0.22% of personal income for a percentage change of -0.02%. Other areas of government spending in Maine also declined as a percentage of personal income. Figure 5.2.B.2 indicates that the only areas that actually show spending growth as a percentage of personal income between 2006 and 2010 are expenditures for K-12 education, sewerage and solid waste, and public welfare.

Table 5.2.B.3: Recent Trends in Maine's Common Function Expenditures as a % of Personal Income, 2006 - 2010			
Common Function Component	2006	2010	% Change, 2006 - 2010
Judicial and Legal	0.24%	0.22%	-0.02%
Fire and Police	0.81%	0.78%	-0.03%
Correction	0.43%	0.43%	0.00%
Higher Education	1.69%	1.54%	-0.16%
K-12 Education	5.05%	5.06%	0.01%
Highways	1.89%	1.72%	-0.17%
Natural Resources, Parks, Community Development, & Housing	1.11%	1.02%	-0.08%
Sewerage & Solid Waste	0.60%	0.61%	0.01%
Public Welfare	5.92%	6.02%	0.11%
Health	1.17%	1.04%	-0.14%
Total of Included Components	18.9%	18.4%	-0.47%
Mean	1.9%	1.8%	-0.05%
Median	1.1%	1.0%	-0.02%

Source: US Census Bureau, State and Local Finances

Figure 5.2.B.2:



When Maine's spending for common functions is compared against U.S. averages, judicial and legal services expenditures as a percentage of personal income continues to point towards underfunding. Table 5.2.B.4 shows that common functions expenditures in Maine have fluctuated overtime. In 1996, the sum of common functions expenditures as a percentage of personal income was 18%. In 2010, the sum was 18.8% for an overall increase in common functions spending as a percentage of personal income of 0.8% from 1996 to 2010. Interestingly enough, the sum of common functions expenditures in Maine for 1996, 2006 and 2010 all exceed the U.S. average sum for the same common functions expenditures. In 2006, the sum of common functions expenditures as a percentage of personal income in Maine was 20% above the average; although, that level dropped to 10% above the average in 2010. Despite being above the average in total common functions spending as a percentage of personal income, spending for the judicial and legal services function specifically fell well below the U.S. averages for those same three years. In 1996, Maine spending as a percentage of personal income for judicial and legal services was 34% below average spending. Similarly, spending for other "crime and justice"¹⁸ functions also fell below average spending. In 2010, spending for fire and police as a percentage of personal income was 26% below the average and corrections expenditures were 23% below the average. When calculated together, the "crime and justice" functions make up just 1.4% of total spending as a percentage of personal income in Maine in 2010. This relatively low share of spending on crime and justice components is likely due to a variety of factors, including a low crime rate in Maine, overall underfunding for Maine's judicial system, as well as lower funding for other justice and legal programs.

¹⁸ The expenditure components that were comprised to define "crime and justice" spending consists of spending for judicial and legal services, fire and police, and corrections.

Table 5.2.B.4: Common Functions Spending as a Percentage of Personal Income & Maine as % of US Average, Trends 1996 - 2010									
	Percentage of Personal Income				Percentage of Sum of Common Functions as % of Personal Income			Crime & Justice Total as % PY	Justice & Legal % of Crime & Justice
Trends	Sum of Common Functions	Judicial & Legal Servcies	Fire & Police	Correction	Judicial & Legal Servcies	Fire & Police	Correction		
1996	18.0%	0.18%	0.79%	0.36%	1.01%	4.40%	2.00%	1.3%	13.6%
ME as % US	112%	55%	84%	67%	50%	74%	59%	74%	75%
2006	19.4%	0.24%	0.81%	0.43%	1.23%	4.18%	2.24%	1.5%	16.1%
ME as % US	120%	74%	85%	79%	61%	69%	65%	81%	91%
2010	18.8%	0.22%	0.78%	0.43%	1.17%	4.12%	2.29%	1.4%	15.4%
ME as % US	110%	66%	74%	77%	60%	66%	69%	74%	90%

Source: US Census Bureau, State and Local Finances

Moreover, when comparing judicial and legal services spending against the other two “crime and justice” functions, judicial and legal services spending as a percentage of personal income consistently came up short. In 2010, judicial and legal services spending as a percentage of personal income made up only 1.17% of the sum of common functions spending compared to a 4.12% share for fire and police spending and a 2.29% share for corrections spending. Of that 1.3% of the sum of common functions that comprises “crime and justice” spending as a percentage of personal income in 1996, spending for judicial and legal services only made up 13.6% of the total. That share of crime and justice spending was 25% below the average the level for judicial and legal services spending in the “crime and justice” functions. Maine did make-up some ground in 2010 when the judicial and legal services share of spending for “crime and justice” functions reached 15.4% of the sum of common functions expenditures. That brought Maine to just 10% below that average share for “crime and justice” spending; still underfunded, but with some improvement.

5.3 Estimating a Benchmark for Judicial and Legal Services Funding in Maine

Thus far, this report’s analysis of judicial and legal services funding in Maine has covered anecdotal evidence and reviewed information regarding underfunding according to those in Maine’s judicial system. We have also analyzed actual funding data from the Maine Judicial Branch budget, as well as expenditures from the U.S. Census Bureau’s State and Local Government Finance data. At this point in the analysis, it is worth discussing how to estimate a benchmark level of spending for judicial and legal services in Maine and why conducting an estimate is important. This section will review the results of a statistical modeling estimate that was developed and discuss the significance of the results.

Estimating a benchmark level of spending is a more accurate means for determining whether or not a particular level of spending is low, high or at the actual needed level of spending. According to LaPlante (2006), there are two practical methods to estimate a benchmark level for spending in public finance (p. 92). The first method is to use a “reference set” analysis. A reference set analysis is conducted by strategically selecting a small group of the variables being analyzed. The data from these variables would be averaged to determine the estimate for comparison. For example, in the case of judicial and legal services spending, the reference set would include states that are similar to Maine in terms of their judicial systems and spending patterns (as well as other factors). The spending levels for judicial and legal services in those states would then be averaged to determine a benchmark level of spending.

A reference set analysis was considered for this report. The set would have included states that have similar population sizes, geographical characteristics and judicial budgeting systems as Maine. The National Center for State Courts has published information to make formulating a judicial budgetary reference set easier. As part of their 2012 Budget Survey, the NCSC develop a “Budget Matrix” that categorized states based on population rank, regional location, and the type of funding the judicial system received (e.g. mostly state funding, or mostly local funding).¹⁹ According to the NCSC Budget Matrix, a reference set comparable to Maine would have included the following states: Delaware, New Hampshire, Rhode Island and Vermont. The downside to comparing Maine’s spending for judicial and legal services in a reference set such as this, is that it is extremely difficult to produce a high quality reference set that accounts for all variables (LaPlante, 2006), as this report pointed out earlier.

The second method used to estimate a benchmark level of spending is a statistical modeling estimate conducted using linear regression analysis. While this method is more

¹⁹ The 2012 NCSC Budget Matrix is attached to this report as Appendix No.1.

complex, it compensates for any lack of quality that a reference set analysis may have. In her report analyzing the Cumberland County Jail system, LaPlante (2006) highlighted the benefits of using regression analysis to estimate a spending level. She explains that by using regression analysis, “jurisdictional differences that complicate selecting a high quality, small reference set are addressed by multiple regression analysis, which involves the use of additional predictor variables to serve as a ‘controls...’ [and], as part of the modeling process, a determination is made about the quality of the estimates, which depends on how well the data explains differences in spending” (p. 92). Therefore, a statistical modeling estimate can prove to be more beneficial than a simple reference set analysis—so long as you have the time, knowledge, and other resources to conduct such a complicated analysis. Because of these benefits, the statistical modeling method was chosen for this study.

The initial step in developing a statistical model to estimate a spending level for judicial and legal services spending in Maine was to determine and assess correlations between the independent and dependent variables. In this case the dependent variable is judicial and legal services spending as a percentage of personal income in 2010 for all states (except Alaska²⁰). The dataset of independent variables consisted of dozens of indicators for all states except Alaska. All of the independent variables were analyzed together to determine how well they correlated with the dependent variable. In regression analysis, correlations are statistically derived using what is referred to as a “correlation coefficient.”²¹ The correlation coefficient of a particular variable indicates whether or not it is statistically significant in the presence of the dependent variable, all others held constant. Additionally, for those variables that appear to be

²⁰ Alaska’s data for judicial and legal services spending is not comparable across states due to Alaska’s unique characteristics when it comes to geographic size, population and income sources.

²¹ In regression analysis, the correlation coefficient is referred to as “Pearson’s R,” which numerically defines the correlation between a dependent variable and an independent variable(s).

statistically significant, scatter plots were used to visually verify correlation between the dependent and independent variable. According to LaPlante (2006), “Viewing a scatter plot requires no statistical knowledge and is a good way to gain a sense of what regression analysis is all about” (p. 93). She explains, “When the values of two variables form a straight line and are tightly clustered, we know that there is a very strong link between the two variables” (p. 94). As a result of these initial pre-modeling assessments, several independent variables proved to have strong correlations with judicial and legal services spending. Five of those variables were chosen to be included in a statistical model that was reliable, valid, and statistically significant.

The five variables that comprised the model used to estimate judicial and legal services spending in Maine in 2010 were:

- Unemployment rate in 1996;
- Population density of urbanized areas in 2010;
- Manufacturing employment as a percentage of non-farm employment in 1996;
- Females as a percentage of the civilian labor force in 1995; and
- State and local expenditures for elementary and secondary education as a percentage of all state and local spending in 1993.

The figures below show the scatter plot results for all five variables.

Figure 5.3.1:

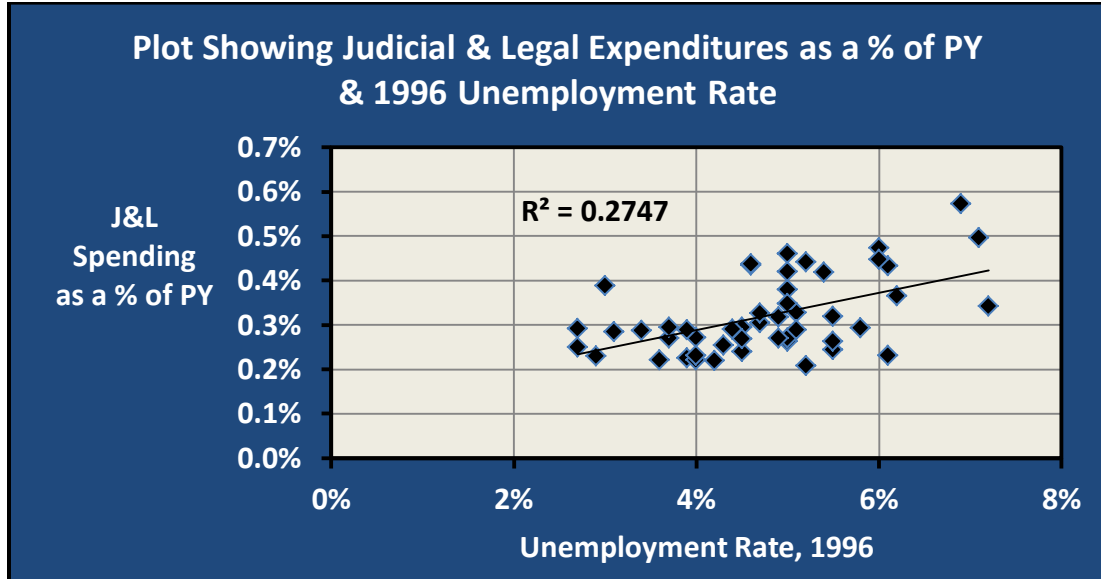


Figure 5.3.2:

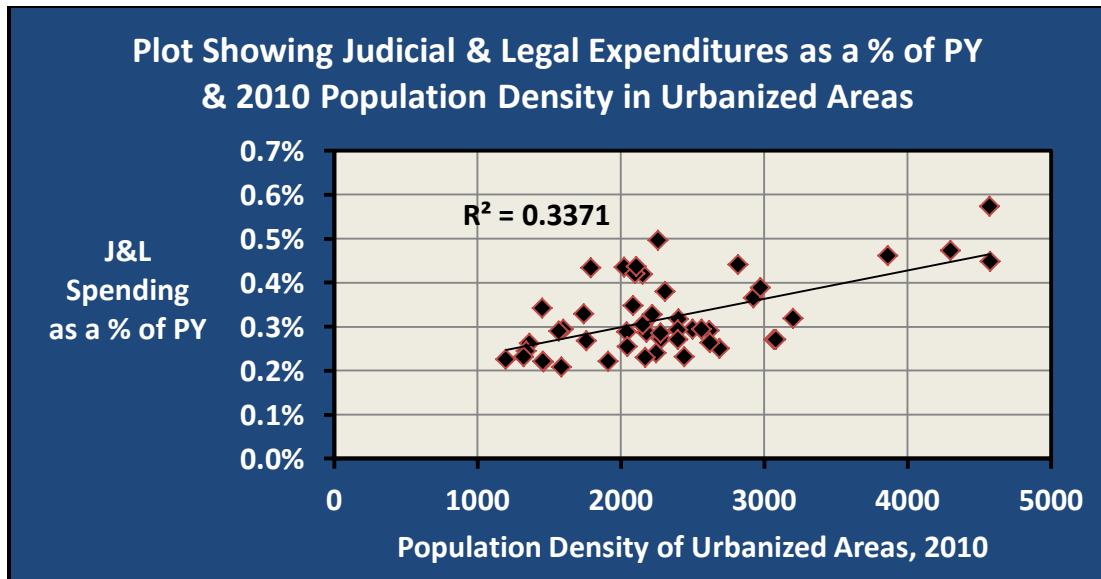


Figure 5.3.3:

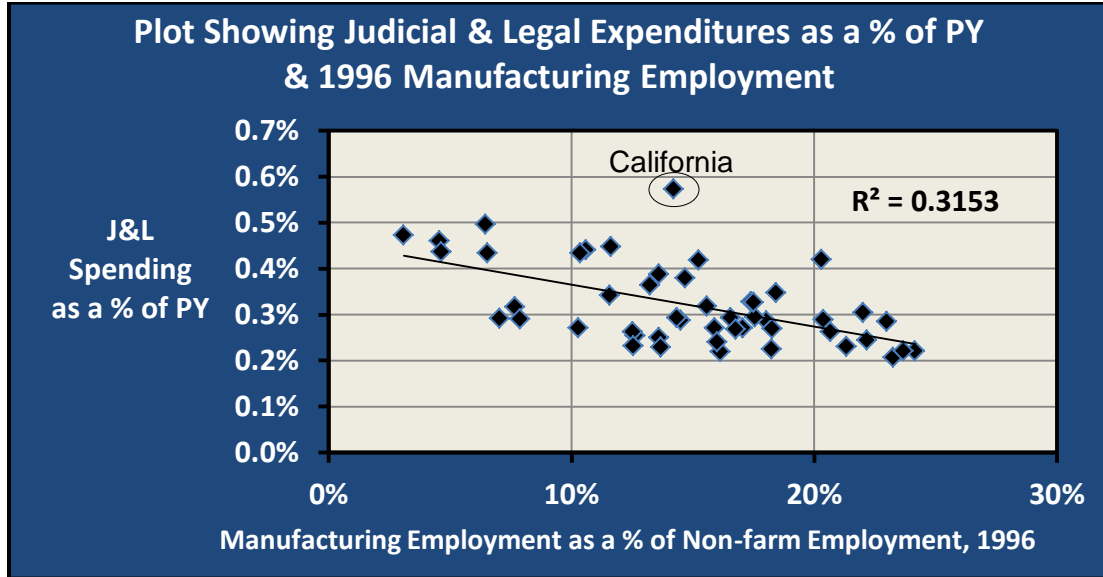


Figure 5.3.4:

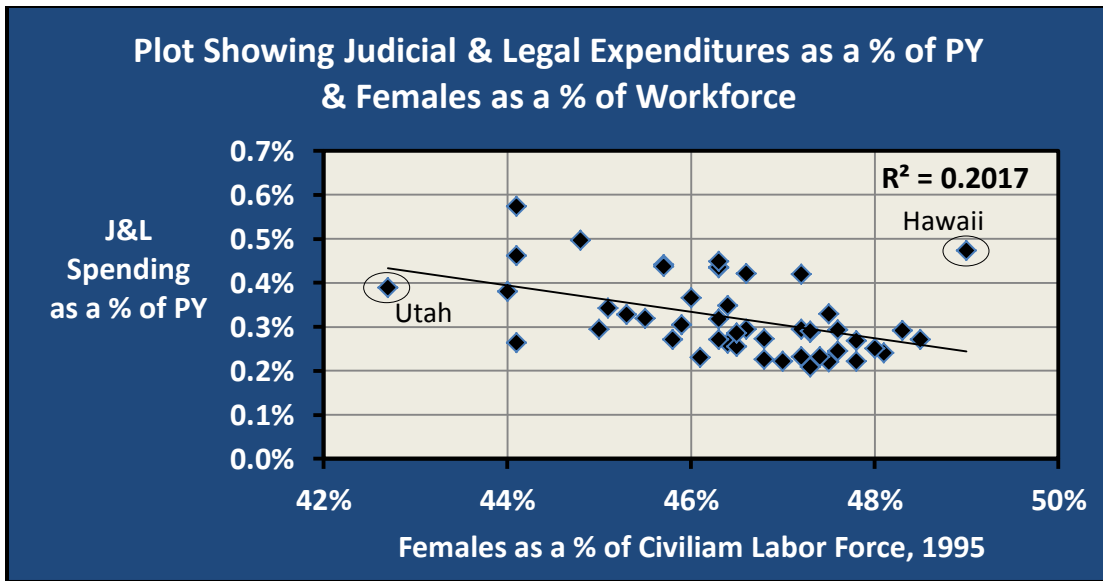
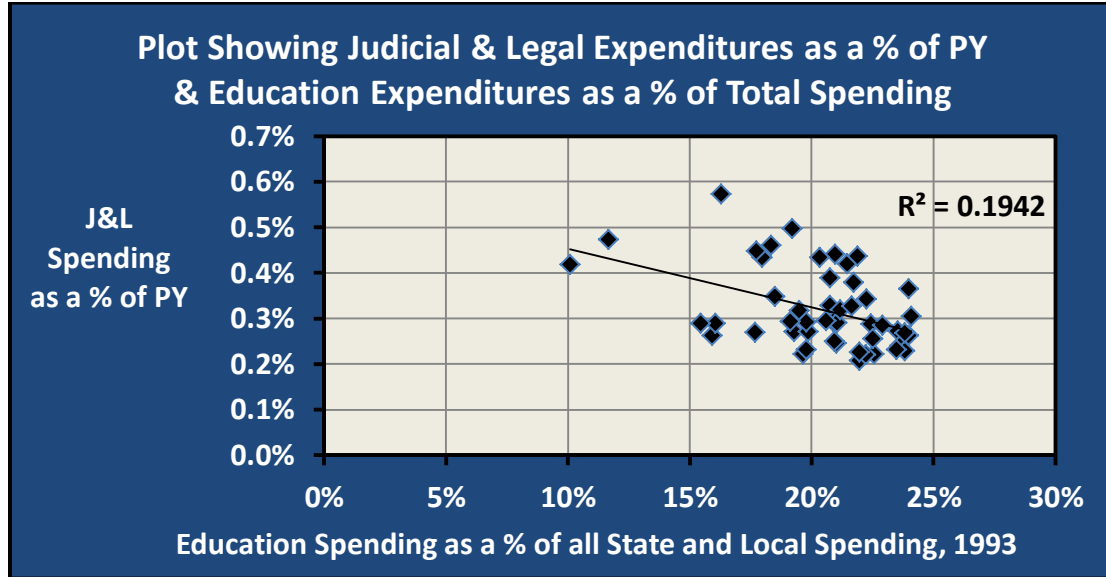


Figure 5.3.5:

A review of the scatter plots indicates that all five of these variables are strongly correlated with judicial and legal services spending as a percentage of personal income. The first two variables, the unemployment rate in 1996 and the population density of urbanized areas in 2010, are both strong indicators of socio-economic conditions in the mid-1990's and late 2000's. The characteristics of these conditions impact activity in the court system, whereby when the unemployment rate and population densities are higher, increased spending on judicial and legal services is needed and warranted. The next two figures, the scatter plots for manufacturing and female workforce data, reveal contrasting correlations as the first two variables; however, for very similar reasons. Manufacturing employment as a percentage of 1996 non-farm employment correlates strongly with judicial and legal services spending, and indicates that as employment in this sector increases, spending in the justice system decreases. Manufacturing employment generally encompasses (at least in Maine) low income jobs that requires minimal levels of education. Therefore, one can infer that as manufacturing employment decreases, civil and criminal activity in the court system increases, requiring more spending for judicial and legal

services. Females as a percentage of the workforce appears to follow a similar pattern. In this particular model it should be noted that Utah and Hawaii are outliers. In the final scatter plot, it can intuitively be derived that as spending in other areas of state and local government, such as education, increases, spending for services such as the judicial system will decrease. The reasons for this correlation are discussed earlier in this report, but can be summarized by explaining that policymakers are responsible for prioritizing a limited amount of public funds. Spending for education, historically, has been a top funding priority for policymakers.

Appendix No.2 shows the results of the multiple regression model estimating judicial and legal services spending in Maine for 2010. The model is comprised of the five independent variables listed above and judicial and legal services spending as a percentage of personal income as the dependent variable. The model produced has strong explanatory power, with an adjusted R^2_a value of 0.65. This means that this particular model explains 65% of the differences in judicial and legal services spending.

Table 5.3.1 displays the results of the model's calculation for estimated spending compared to actual judicial and legal services spending in Maine as a percentage of personal income in 2010. As the table shows, Maine's level of spending for judicial and legal services in 2010 was 0.22% of personal income, or approximately \$106.8 million. The regression model estimates spending should be at a 0.25% of personal income, or approximately \$119.3 million. Therefore, this model suggests that Maine's spending for judicial and legal services fell short by more than \$12 million in 2010.

Table 5.3.1: Comparing Actual Spending with Predicted Spending Levels for Maine Judicial and Legal Services							
Dependent Variable	Independent Variables	Regression Model Statistics				Maine Judicial and Legal Services = Actual and Predicted Spending	
		Regression Constant (ME 2010 %PY)	Regression Estimate (Predicted % PY)	Regression Residual	Model's Predictive Strength (R^2_a)	Predicted Spending in 2010 Dollars	Actual Spending Minus Predicted Spending = Spending Gap in 2010 Dollars
Maine JUD_LEG2010	UNEMPLOYMENT, POPDEN_UA, MANUFACTURIN, FEMALE_WORKS, ELMSECPERC	0.22%	0.25%	0.03%	0.65	\$ 119,281	\$ 106,812 - \$12,469

Notes:

1. Numbers represented in thousands

2. Maine's PY 2010 = \$48,620,161

3. Definition of Variables:

JUD_LEG2010 Judicial & Legal Spending as % Personal Income, 2010UNEMPLOYMENT Unemployment rate, 1996POPDEN_UA Population density of the urbanized areas, 2010MANUFACTURIN Manufacturing employment as a % of non-farm payroll employment, 1996FEMALE_WORKS Females as a % of civilian labor force, 1995ELMSECPERC State and local expenditure for Elementary and Secondary education as a % of all State and Local spending, 1993

If the reference set analysis was used, and our reference set consisted of all state spending for judicial and legal services expenditures as a percentage of personal income in 2010, the average spending level would have been 0.33%. If Maine's estimate for spending were derived using this method, the benchmark for expenditures in 2010 would have been \$161.4 million. This is a much higher estimate than the regression model's estimated spending level and can be explained due to the inherent differences across states mentioned earlier in the section. For that reason, it is easy to understand that the regression model's estimate is far more reliable and of higher quality than using averages to estimate spending.

Chapter 6

Findings and Conclusions

6.1 Summary of Findings

The results of this study are clear – Maine's judicial and legal system is severely underfunded, and has been for a while. Over the last several years, judiciary insiders have continuously pointed-out how underfunded Maine's system is. Maine's Chief Justice Laugh Saufley has explained to lawmakers in nearly every State of the Judiciary speech she has given over the last decade or so that underfunding is having devastating effects on the court system. In her more recent addresses, she has also made clear that recent changes in the complexity of cases, as well as burgeoning caseloads are adding to the growing list of problems. As this report examined, studies from the NCSC and others have also indicated that Maine has been having problems keeping up with the increases in caseloads and complexity; which is creating backlogs in Maine's courts. In 2010, Maine was not able to keep up with incoming cases on both the criminal and civil dockets.

Another study from the NCSC, as well as other speeches from Chief Justice Saufley, explained that the results of reduced funding and services in the justice system are compounding the effect of backlogs in the courts. The NCSC 2012 Budget Survey pointed out that over the past few years, Maine's court system has had to reduce services, maintain staff vacancies and freeze compensation for employees as a result of reduced funding. Similarly, Maine's Judicial Compensation Commission reported in early 2013 that Maine's judges are the lowest paid in the nation. In an NCSC report analyzing 2010 caseloads, the Court Statistics Project reveals that Maine's judges also handle more cases than judges in other states.

The expenditure data collected from the US Census Bureau reveals that, while expenditures for judicial and legal services in Maine has increased over time, spending as a percentage of personal income has consistently fallen below US levels. Between 1996 and 2012, spending on judicial and legal services in Maine as a percentage of personal income was between 41% and 84% below U.S. levels. In addition, Maine's spending for judicial and legal services also fell below other areas of common functions expenditures. Most notably, judicial and legal services spending made up the smallest percentage of "crime and justice" spending in Maine.

Furthermore, this analysis shows that even though actual expenditures for judicial and legal services in Maine has increased between 1996 and 2010, spending has leveled off since 2004 when adjusted for inflation. In fact, since 2008 inflation adjusted expenditures have decreased as a result of the "Great Recession." Similarly, after adjusting for inflation, this study found that the Maine Judicial Branch budget grew by 188.4% less than expected. Moreover, the results of the multiple regression statistical model shows that 2010 judicial and legal services spending in Maine as a percentage of personal income was estimated to be approximately \$12.4 million less than it should have been.

6.2 The Effects of Underfunding

The effects of underfunding are severe. Chief Justice Leigh Saufley, the NCSC and the Conference of State Court Administrators have all stressed the importance of maintaining a level of funding that meets the needs of the public. When those needs are not met, the quality of justice diminishes, which in turn affects the overall function of democracy (Saufley, 2010). When vacancies are left open and court hours are reduced, access to justice suffers. Litigants end up waiting longer for their cases to resolve, staff experience backlogs and important services such interpreters and courtroom recording are not addressed. Furthermore, when the pot of funds for judicial and legal services in Maine is reduced or remains at low levels, funding for new initiatives are pushed aside. For example, Maine's court system has discussed and examined innovations in technology year after year, but a lack of funds results in a prioritized budget that does not include such initiatives. In a 2012 report to the Maine Legislature, the Judicial Branch outlined a plan to implement a new case management system capable of electronic filing. The report cites a critical need to fund this initiative, as Maine is now the only state in the country that does not have some form of e-filing in its court system.

Moreover, underfunding the judicial and legal services system in Maine can bear economic effects. The 2012 study by Pearsall et al points out that funding reductions in state court systems have a ripple effect throughout a state's economy. The study found that as a result of reduced funding, the state's experience lost investment income, decreased revenue from state and local taxes, as well as economic losses in the legal industry (Pearsall et al, 2012, p. 17). Appendix No. 3 shows the economic impact of reduced funding.

6.3 Conclusion

In conclusion, this study accomplished its purpose. The findings answered all of the questions asked, at least to a degree. The analysis of data and materials was able to determine the levels of spending for judicial and legal services in Maine in 2010, and the spending trends over a period of time. The findings were also able to analyze and examine what some of the causes for underfunding stem from; although it can also be concluded that a more thorough analysis of the causes of underfunding could be performed in a future study. The effects of underfunding were discussed and underscored, as was the results of a statistically estimated model for a benchmark level of judicial and legal services funding in Maine. All of these results convey to us that Maine needs more funding for judicial and legal services. If funding does not increase, and the results of underfunding carry on, Maine will likely see the quality of its judicial system, and the public access to that system, diminished even further.

Appendix No. 1:**State Court Budget Matrix****STATE COURT BUDGET MATRIX**

The budget matrix below permits us to compare budget situations in states with common characteristics.

STATES BY POPULATION RANK, REGION, AND LEVEL OF STATE FINANCING

	West/Texas		Midwest/Plains		South		Northeast	
Pop Rank	Mostly State \$	Mostly Local \$	Mostly State \$	Mostly Local \$	Mostly State \$	Mostly Local \$	Mostly State \$	Mostly Local \$
1-8	California	Texas	←	Illinois Ohio Michigan Penn	←	Florida	New York	
9-20		Wash Arizona	Missouri	Indiana Wisc.	N. Car Virginia	Georgia Tenn.	NJ Mass Maryland	
21-29*	Colorado Oregon		Minn. ←		Alabama Kentucky	Louis. S. Car.	Conn.	
30-50	Montana Alaska Utah New Mex. Hawaii Wyoming	Nevada Idaho	S. Dak N Dak Iowa Kansas Nebraska		Arkansas West Va.	Miss.	RI Delaware Vermont Maine N. Hamp.	

* Oklahoma has a uniquely fee-funded system.

← Minnesota is in transition to state financing and has achieved a high level of state funds. Pennsylvania and Florida are in a transition to state financing but are still dependent on counties.

Source: National Center for State Courts, www.ncsc.org

Appendix No. 2:

Multiple Regression Results

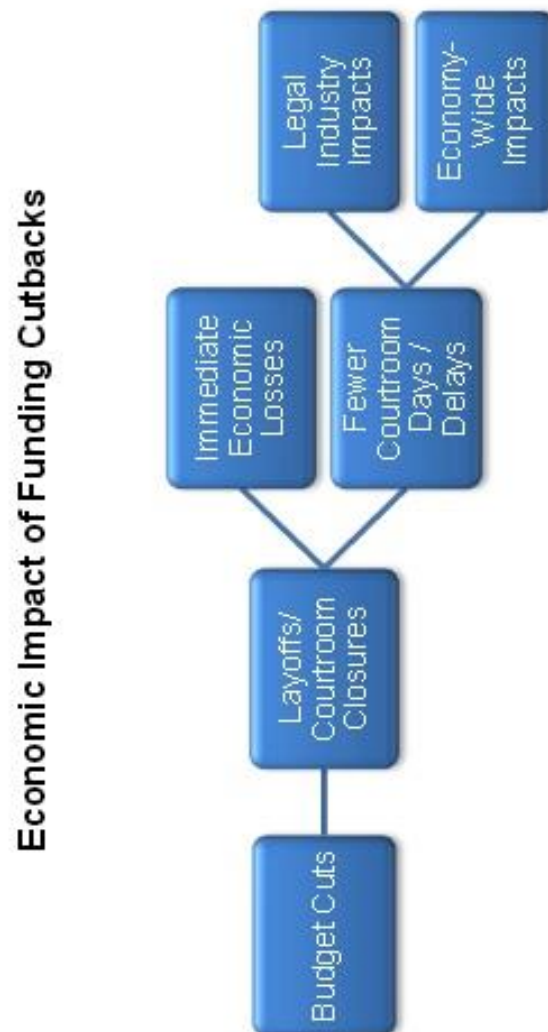
Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
Final	.829	.69	.65	.0005146

Model	Definition of Variables	Unstandardized Coefficients B	Std. Error	Standardized Coefficients Beta	t	Sig.	Collinearity Statistics Tolerance
(Constant)		.013	.0034		3.665	.001	
UNEMPLOYMENT	Unemployment Rate 1996	.000225	.00008	.280	2.959	.005	.813
POPDEN_UA	Population density of the urbanized areas-2010	.00000026	.00000012	.232	2.224	.031	.670
MANUFACTURIN	Manufacturing Employment as % of Non-Farm Employment 1996	-.000046	.000016	-.284	-2.859	.007	.740
FEMALE_WORKS	Females as % of Civilian Labor Force 1995	-.000189	.000064	-.284	-2.939	.005	.781
ELMSECPERC	State and Local Expenditure for Elementary and Secondary Education as % All State and Local Spending, 1993	-.000078	.000028	-.269	-2.766	.009	.763

Correlations				
	JUD_LEG2010	UNEMPLOYMENT	POPDEN_UA	MANUFACTURIN
Pearson Correlation	1.000	.524	-.581	-.561
UNEMPLOYMENT	.524	1.000	.180	-.164
POPDEN_UA	.581	.180	1.000	-.495
MANUFACTURIN	-.561	-.164	-.495	1.000
FEMALE_WORKS	-.449	-.252	-.291	.200
ELMSECPERC	-.441	-.313	.222	.133
Sig. (1-tailed)	.00006	.00001	.00001	.001
UNEMPLOYMENT	.00006	1.000	.130	.014
POPDEN_UA	.00001	.130	1.000	.026
MANUFACTURIN	.001	.014	.026	1.000
FEMALE_WORKS	.001	.001	.001	.001
ELMSECPERC	.001	.001	.001	.001

Appendix No. 3:

Economic Impact of Funding Cutbacks



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