MAINE STATE LEGISLATURE

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June 27, 1963

Charles L. Frost, Director
Welfare Department of Auburn
2 Summer Street
Auburn, Maine

Dear Charley:

I have your letter of June 25th which raises the age-old problem of settlement of children inconveniently born subsequent to a divorce. Both the mother and her former husband claim that the former husband is not the father.

We have always operated on the basis of the court decision in the case of Hubert v. Cloutier, 135 Me. 230. That case held that the mother and her husband could not bastardise the child by their direct testimony. The law required that the fact of non-access to the mother by her husband must be first proven by some outside means such as prison records, Army records or some such type of thing which showed that the husband could not have had access to his wife at the time of conception.

This was a very simple answer because in the absence of such records it was an almost irrebuttable presumption that the husband was the father and therefore the child was legitimate and took his settlement.

On May 28, 1963 our Supreme Judicial Court overruled this holding in the Hubert v. Cloutier case. In the case of Ventresco v. Bushey, our court said: "We now hold that both husband and wife may testify both as to his non-access to her and as to facts which tend to prove that access was impossible."

It now appears that evidence may be given by both the mother and her husband as to his non-access to her. I do not construe this to mean that a simple statement by both the husband and mother that he is not the father is sufficient. I feel that it is necessary for an investigator to question the parties relative to his access to his wife during the normal period of conception.

The court further stated that proof of non-access must be beyond a reasonable doubt. It seems to me this means that there should be some evidence of non-access beyond the bare statements of the mother and her husband. However, this is something that will have to be determined at some future time.

As a result of this last decision, the determination of settlement is somewhat more confusing than it has been previously. I think that this type of case will be much more difficult for an investigator to make a determination than it has in the past.

Under normal circumstances I would not answer you in such a detailed manner, but as you will note, I am sending a copy of this letter to Paul McClay as a guide to him and would suggest that you discuss this matter further with your City Solicitor in order to get the advantage of his thinking.

I hope I have succeeded in thoroughly confusing you. You deserve to be confused for asking me the question.

Sincerely yours,

George C. West
Deputy Attorney General

GCW:H

cc: Paul D. McClay
cc: Barnett Shur, Esq.