

# MAINE STATE LEGISLATURE

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# **STATE OF THE JUDICIARY ADDRESS**

February 7, 1989

by

CHIEF JUSTICE VINCENT L. McCUSICK

A Report to the Joint Convention

of the

One Hundred and Fourteenth Legislature

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I last stood at this podium at this same hour exactly 52 weeks ago. As the head of the Judicial Department, I always welcome your annual invitation to report on the state of the Third Branch. I propose this morning to provide you with a Review of the Year in the courts since my last report. Then I'll comment on where we are and where we should be going.

The past year has in general been a good one in the courts -- thanks in no small part to the working together of the three great branches of State Government in the spirit of the Three C's -- comity, communication and cooperation. That is not to say that the courts do not have serious problems or that the courts do not have substantial needs, but the good news is that we are identifying and addressing those problems and needs. I will have more to say about that side of things later.

In the last year, the Supreme Judicial Court in its appellate work has kept on top of its heavy case load. Last year the Law Court set a record in the average number of opinions issued by each justice -- nearly 50, for a total of 348 opinions. The Law Court also had to review some 70 petitions for discretionary review in workers' compensation and post-conviction cases. During 1988, the Law Court continued its "road show" by sitting in Knox, Androscoggin, and Sagadahoc Counties for the first time ever and in Franklin County for the first time since 1851. We look forward to sitting in Ellsworth in May to help celebrate the 200th anniversary of the incorporation of Hancock County.

In the last year, the trial courts -- particularly the District Court -- have again experienced an extraordinary increase in their already heavy caseloads. I am proud the judges and clerks and other personnel of our trial courts have met that demanding challenge as well as they have, but we must get help for them. I will have more to say about their need in a moment.

In the last year, with legislative support, the trial courts have broadened and strengthened existing innovative programs for improving their service to society.

1. Only three months before his death in October, Lincoln Clark, Director of the Court Mediation Service, issued an impressive 10-year report. That program started in 1977 with a small group of volunteers mediating 61 small claims cases in Portland. By 1988 a statewide network of paid mediators were handling mandatory mediation of contested divorces involving minor children and providing voluntary mediation of small claims and other civil cases -- in all, well over 4,000 cases a year. The Court Mediation Service stands as a distinguished memorial to Lincoln Clark, the Father of Maine Mediation.

2. 1988 was a year of commendable growth in the CASA program -- the Court Appointed Special Advocates program. In this one year CASA volunteers have been appointed guardians ad litem for children at risk in 263 new child protection cases in 16 District Courts all across the State. One hundred sixty-two dedicated and specially trained volunteers from the local communities continue to perform this immensely valuable, long-term service to our children.

3. The Medical Malpractice Screening Panels, created by statute and placed under the administrative direction of Chief Justice Brody of the Superior Court, has completed a second year of operation. Those panels have proved themselves a success. They have disposed finally of nearly half of the 200-plus malpractice cases filed in 1987 and 1988.

The last year has also seen other innovative programs newly instituted in the trial courts:

1. The indigency screening program with legislative funding became operative in Portland in January 1988 and in seven other locations in July. Both the Maine and the U.S. Constitutions require the state to pay for counsel for indigent criminal defendants. For the protection of the public treasury, however, we must assure that only a criminal defendant in financial need gets a free attorney. Figures already show that the indigency screening program is working, as it should, to identify unqualified applicants and to deter others from even applying. You will have before you a proposal to extend that worthwhile program statewide.

2. With legislative funding, the Superior Court on September 1st, started a pilot Alternative Dispute Resolution Program in York and Knox Counties. By this program, specially selected and trained attorney mediators, working under the supervision and control of the court, will seek to resolve substantial civil cases in order to avoid the delays and costs of full pretrial and trial proceedings. This program results from a study sponsored by the Maine State Bar Association, which was headed last year by your colleague, Representative Francis Marsano.

3. A grant from the Maine Bar Foundation has provided the Superior Court with a juror orientation video. This video, running about 13 minutes, is being shown to jurors to supplement the preliminary instructions given by the presiding justice. It saves time for the justice and it assures uniformity in the basic instructions. The video program gives a good view of how a case proceeds in court. We have copies available to lend to civic organizations and schools. We are studying the possible use of similar videos for instructions for the grand jury and for basic information on arraignments in the District Court.

As of last July 1, the Legislature increased the funds for paying court-appointed counsel for indigent criminal defendants, thus alleviating a serious problem, particularly in rural counties. As I earlier noted, we have a constitutional obligation to provide defense counsel to indigent defendants on their request. The Supreme Judicial Court is issuing fee schedules reflecting the increased funding. I point out that the fees still fall short of the full "market value" of the services rendered. The lawyers of Maine have always done a fine job of discharging their professional responsibility to help the courts in providing representation to the indigent. They cannot, however, be expected to carry the full financial load. I congratulate the Legislature for recognizing and addressing the past problem of underfunding of indigent criminal defense.

In the last year with your help we continued to upgrade or replace overcrowded and inefficient court facilities. The District Courts in Bridgton and Calais are moving into new quarters, and the grossly inadequate Kittery District Court facility has been replaced by a new court building adjacent to Turnpike Exit 1 in York. With the opening of the new Bridgton District Court by mid-March, all 49 trial court locations, with the sole exception of Presque Isle, are fully accessible to handicapped persons -- and a new Presque Isle District Court is right now in the planning stage. Thus, with your support we have nearly finished the handicapped-access program started in 1985. We also have made good progress in planning a new District Court building to serve the fast-growing Bath-Brunswick area. Chief Judge Devine and I have given top priority to that facility, which we expect will be located at the West Bath Exit from U.S. Route 1.

One event in 1988 was of particular long-term significance for housing the courts of this State. Last summer the legislatively created Maine Court Facilities Authority became operational under the chairmanship of Colin Hampton, former President of UNUM Corporation. One big advantage of using the Authority for financing court buildings by revenue bonds is that the State will own the facilities after 20 years rather than paying rent forever. The Authority has already raised the moneys for a portion of the addition to the Cumberland County Courthouse. Groundbreaking on that project has been delayed by the fact the bids came in substantially above the architects' estimates, but I am confident that redesign and rebidding will permit us to break ground this year on that urgently needed facility.

In further regard to court facilities, you last year created and funded the Supreme Judicial Court Plan and Design Commission. That Commission under the chairmanship of your colleague Representative Ruth Foster is now engaged in the second phase of the planning necessary to bring the Supreme Judicial Court to Augusta, to join the other two branches of State Government. I again remind you that Article IX, Section 16 of the Maine Constitution reads: "Augusta is hereby declared to be the seat of government of this State."

In the last year, we have made steady progress on the very large and the very difficult job of computerizing the trial courts. All 32 District Court locations now have their criminal cases and traffic infractions on computer, and work is under way to program and install computers to handle the criminal cases at the 17 Superior Court locations across the State. All of us, including our highly competent computer officer, Ben Crites, wish that computerization could be completed faster. It's a very big job. It is made so by the location of our 49 trial courts all across the State and by the complexity of court operations. But, I can say with confidence that our computer system is of high quality. We are getting the most for our dollar. We are also fully supporting the work of the commission to computerize criminal history records that is chaired by Senator Joseph Brannigan. The proposed computer system will interconnect the courts with the State Bureau of Identification, the Motor Vehicle Division, and law enforcement agencies at all levels. The Senator for some reason calls it the "McJustice Program."

In concluding this "Review of the Year," I proudly report that the joint Annual Meeting of the National Conferences of Chief Justices and of State Court Administrators, held at the Samoset at Rockport the first week of August, was a huge success. The midsummer beauty of the Maine coast drew the largest gathering of top state court officials ever to be assembled anywhere. The Maine State Bar Association sponsored an opening reception for our guests. No public appropriation was required to bring these major national conferences to Maine. The same is true of the American Bar Association Appellate Judges Seminar that drew many judges from all over the country to Portland in late September.

I now want to discuss with you where the courts of Maine find themselves today and where they should be going -- I want to discuss some of the problems and needs of the Maine courts.

The number one need of the Maine courts right now is for additional personnel in the clerks' offices of our 49 different trial court locations. I hope you will give favorable consideration to our request to add 50 new people in our clerks' offices in three steps over the next year and a half. We have kept our request to a bare minimum. The total number 50 may seem large at first blush; but, remember, these new people will be assigned according to need across the State at 49 different locations.

This urgent need for help in our clerks' offices is driven by the dramatic increase in trial court caseloads. Each year now, starting with 1985, I have reported from this podium that a record number of cases has been filed in the courts of Maine. 1988 was no different, with more than 340,000 cases filed statewide.

Let me put that 340,000 figure in perspective. It took our courts from statehood in 1820 to 1977 -- over one hundred and fifty years -- to reach 200,000 cases annually. Then, up to 1984, our trial courts had reached less than 240,000 cases, an average yearly increase of about 5,000 cases per year. In adding more than 100,000 cases in the last four years, we have witnessed a five-fold jump in the annual growth rate of our caseload.

There are many reasons for this explosion in the use of the courts of Maine. The reasons include, I believe, accelerated economic activity; increased criminal law enforcement; heightened concern for children and others needing protection against neglect or sexual or other abuse; increased land use regulation in the face of an expanded rate of real estate development; and growing highway traffic.

The increase of 100,000 cases in only four years can be put in perspective in another way. In terms of work load, it is as if we added in these last four years four new courts of equal size to the four District Courts now operating in Biddeford, Lewiston, Augusta, and Bangor -- while maintaining business as usual in those communities and elsewhere across the State! If we had duplicated those four courts, we would have needed 8 new courtrooms, about 8 additional judges, and 50 additional clerks, not to mention mediation rooms, waiting areas, and so on. In fact, in the last four years we have added only two new District Court judges and virtually no additional clerks.

The tremendous work load thrown upon the people in our clerks' offices is quantified dramatically in another way. This fiscal year, our clerks will collect in cash and checks over \$21 million at 49 different court locations. Those collections are almost double the \$11.2 million collected only four years ago. As an aside, I would note that the \$21 million collected in fines and fees and turned over to the State Treasury, will this year as usual cover about 75 percent of all the state costs of running the courts.

I must point out that it is not only increased numbers of cases and increased dollars to be collected that multiplies work for our clerks. Increased work load also comes along with every one of the valuable innovative programs we have instituted for improving the courts' service to the public. Mandatory mediation for divorce, the CASA program, the medical malpractice screening panels, the Superior Court's expedited caseload system, and so on -- every one of these commendable programs places additional administrative and scheduling burdens on our clerks. Better service to the public comes only at the price of more work for the clerks' offices.

We are most fortunate to have highly dedicated and competent court clerks -- and I mean all those who work in the offices of the clerks of court. They are the front-line soldiers of the Judicial Department, and they are "good soldiers." Every day they undertake a variety of roles and responsibilities in operating the courts and in dealing with the public that rivals Superman and Superwoman. I am proud of the way they have responded to the deluge of new cases in the past four years, but we cannot expect them to continue to carry their steadily increasing load without help. Getting for our hard-pressed court clerks the additional help they urgently need I consider simply a matter of common fairness to them.

For all these reasons I urgently request 50 additional clerical personnel over the next year and a half. I repeat, our request is the minimum to meet our needs. It is modest in light of our exploding caseloads and considering the size of our statewide operations at 49 different trial court locations.

We are also asking for two additional judges for the District Court and two for the Superior Court. The increased number of cases in our trial courts is not the only reason for needing more judges. Cases are becoming more complex and are taking longer to try. For example, trials of several hours and even days have become commonplace in the District Court -- for example, in divorce and parental rights termination cases. Maine has only 49 active judges, putting it at the bottom of the scale in number of judges per 100,000 population when compared with either the other New England states or with other rural states across the country.

In this coming year we will continue to work on our needs for more adequate court facilities at several locations around the State. We hope very much to see groundbreaking this year for the new District Court facilities I have already mentioned at Bath-Brunswick and at Presque Isle. We also are studying facilities problems in the District Courts in Dover-Foxcroft and Machias. Capital funds to meet those needs we propose to raise through the Maine Court Facilities Authority.

We are also giving special study to the facilities needs of both the District Court and the Superior Court in York County. All the courts there have experienced a particularly dramatic increase in caseload. The Biddeford District Court is simply running out of room to perform its basic functions. The Superior Court in Alfred has only one adequate jury courtroom and could use at least two more. I hope my report next year will be able to suggest a solution to the York County facilities problem. The Superior Court also has serious space problems in Androscoggin and Kennebec, as well as most other counties. We will be addressing these needs on a priority basis.

You have before you the final report of the Joint Select Committee on Corrections now chaired by your colleagues, Senator Beverly Bustin and Representative Rita Melendy. L.D. 44, proposed by the Committee, would create a system for enhanced review of criminal sentences by the Law Court. My colleague, Justice Wathen, after studying the long-time

experience in Great Britain with sentence appeals, has suggested in a recent Maine Law Review article that a thorough review of sentences by the Law Court with written opinions could develop sentencing standards -- or guidelines, if you like -- through a case-by-case evolutionary process. These standards would of course be controlled by the maximums or any minimums set by the statutes for particular crimes. The guidelines thus developed by case law could prove a helpful tool for trial judges in discharging their difficult sentencing responsibility. They also could assist in reducing sentencing disparity and in realizing greater fairness in the system. The enhanced sentence review would place an additional burden on the Law Court, but that burden is one my colleagues and I are prepared to assume and that on balance we believe is worthwhile to make a place for.

Three years ago, the Legislature created the Maine Commission to Commemorate the Bicentennial of the U.S. Constitution. That Commission, under the leadership originally of former University of Maine President Arthur M. Johnson and now of attorney Hugh Calkins of Dover-Foxcroft, has done, and continues to do, a splendid job of reminding us of our constitutional heritage. The Commission is distributing to each of you today a copy of the volume entitled "A Rising Sun," collecting speeches made under its auspices. I am pleased to recognize its editor, Professor Neal W. Allen, in the gallery.

Continuing in this bicentennial year 1989, our Nation commemorates the convening of the First Congress and the inauguration of the first President of the United States. In September we should take special note of two events 200 years ago that carry great significance for all state courts, including the Maine courts. On September 24, 1789, Congress enacted the Judiciary Act of 1789 setting up the federal court system. The very next day, Congress voted to submit the Bill of Rights to the States for ratification. Every working day the courts of Maine are called upon to apply and enforce the guarantees of individual rights contained in the Federal Bill of Rights -- freedom of speech and religion, and protection against unreasonable searches and seizures, for example. Without courts to enforce the guarantees of the Bill of Rights -- and the similar provisions of our Maine Constitution -- those noble declarations would remain only aspirational and hortatory.

The significance for state courts of the Judiciary Act of 1789 and its progeny lies in what those federal statutes do not authorize the federal courts to do. The big reservoir of judicial power -- as well as responsibility -- remains with the States and the state courts. Over 95% of all litigation takes place in the state courts. Under Article III of the U. S. Constitution and the Judiciary Act of 1789 and its progeny, federal courts are specialized courts of limited jurisdiction. In general, they can hear only civil cases involving questions of federal law or citizens of different states and criminal prosecutions for specific federal crimes. The bicentennial of the federal court system teaches us anew one clear lesson: However much federal law intrudes more and more into American life, the state courts still carry most of the burden for resolving disputes between citizens and between citizens and their governments, even to the extent of applying and enforcing much of the federal civil law. State courts have as their standard fodder civil cases running the whole gamut from contract and tort disputes, workers' compensation appeals, land use and other economic regulation, divorce and other family and inheritance matters, and so on; and criminal prosecutions ranging from murder to burglary to consumer fraud.

The quality of justice in this country depends overwhelmingly on the quality of our state courts. You in the Maine Legislature and we who work in the Maine courts are constantly faced with the joint challenge of maintaining and enhancing the quality of our courts. We have together accomplished much in recent years in steadily improving the administration of justice in our State. On behalf of all of us in the Third Branch, I renew our pledge to continue to work closely with you in discharging our joint responsibilities for the courts of Maine.

Thank you for your time and attention.