

# MAINE STATE LEGISLATURE

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# **STATE OF THE JUDICIARY ADDRESS**

OF

CHIEF JUSTICE VINCENT L. McCUSICK

FEBRUARY 27, 1992

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“THE STATE OF THE JUDICIARY”

A Report to the Joint Convention  
of the 115th Legislature

By Chief Justice Vincent L. McKusick

February 27, 1992

I thank you all for this opportunity to bring you, for the last time, my annual report on the Third Branch of State Government. I first reported from this podium 14 years ago this very morning. From the start, I have emphasized a crucial interdependence of our separate and co-equal branches of government, and have called for the practice between us of the Three C's — communication, cooperation, and comity. For these 14 years, the Legislature has worked with us in the Judicial Branch in that spirit. Whatever differences we have had from time to time on isolated issues, we both have been guided by the same interest in the fair and efficient administration of justice in our great state. I'm grateful for that.

I. Our Current Fiscal Crisis

Our society imposes heavy responsibilities — both constitutional and statutory — on the Third Branch. Created by the Constitution, it performs one of the core functions of government, parallel to and at the same level as the indispensable functions of the Legislature and the Chief Executive. The courts carry the awesome responsibility of adjudicating criminal charges; and on the civil side, the Constitution imposes on the courts the duty of giving “every person, for an injury inflicted on the person or the person's reputation, property or immunities, [a] remedy by due course of law.”

Society also imposes awesome responsibilities upon you of the Legislative Branch — responsibilities made more awesome by these tough times. We do meet today in tough times — far the toughest financially in my time in office. I don't have to remind you that we have been contending with revenue shortfalls and budget cuts since at least December 1989 — for over two years — and we now must find ways of closing a revenue shortfall for a fiscal year ending nearly a year and a half into the future. These are tough times for all of us — in the private sector just as much as the public — and we are all in it together. I today repeat the commitment that the Judicial Department has made throughout this fiscal crisis: we commit ourselves to work hard to do our full part in meeting this continuing crisis — to the full extent we can, and still discharge the heavy responsibilities both the Constitution and the statutes impose on us.

The Third Branch is a very small arm of the State Government — only some 370 men and women, judges and nonjudges, working all over the State, carrying a workload of more than 300,000 filings a year. We have no way of controlling the volume of cases coming in the courthouse door. Our obligation is to accept whatever cases are filed and to proceed to hear and decide those cases in a fair, impartial, and timely fashion. Our gross budget is less than 2% of the State budget. In the last fiscal year, our total expenditures were only about \$31 million, and the courts collected over \$26 million. The courts are a very small net burden on the State's budget.

By objective standards Maine's court system, even before our current cut-backs, ranked among the most cost-efficient in the country. Maine has a remarkably small judiciary, only 50 judges total even with all present vacancies filled. Maine has the lowest number of trial judges per capita of any state. The most recent figures available show that the court system costs less per capita in Maine than in all but 8 states of this country; and less per capita than in any of the other states in the Greater Northeast — that is, in any other state this side of North Carolina and Indiana.

Starting from that history of cost efficiency, my fellow workers in the Judicial Department have responded commendably to meet our State's fiscal crisis — and still carry out the courts' heavy responsibilities. They have done their part on two fronts, both on the expenditure side and on the revenue side.

First, in cutting expenditures. We have, for example, along with other layoffs, now eliminated entirely the use of contract temporary employees, 35 in number, which was the only way over the past several years our clerks' offices have been able to cope with our exploding caseloads, and we have accepted, on an emergency basis, the freezing of several judicial vacancies. By this weekend the Judicial Department will be down six judges from its authorized complement of 50. We are experiencing serious backlogs, particularly in the Superior Court which on Saturday drops to 13 judges from the established 16. That court will be down to the same number of judges it had in 1971 and its workload has doubled in that 20-year period. After tomorrow, the Law Court will be down to five judges, rather than

seven, at a time when it is receiving the heaviest number of appeals in its history. At the end of January the pending caseload of the Law Court was 10 percent higher than it was at the end of January only a year before. We hope a way can be found to fill the judicial vacancies. Among our other cost cuts, we have banned all out-of-state travel at state expense — depriving our judges of essential continuing judicial education at the National Judicial College. These are but some examples of our budget cuts. They're all painful.

On the revenue side, we have also recognized our responsibilities. Under legislative authority the Supreme Judicial Court has adjusted court fees to the extent we believe appropriate, and the Chief Judge of the District Court has updated the schedule of waiver fines on traffic infractions. The courts have redoubled their efforts in fine collection, something that has always been important for the integrity of the judicial process but becomes even more important now in the budget crisis. The courts expect to collect in fiscal '92, \$28.6 million. That is 3 times the court revenues of only 10 years ago. These revenues are not dedicated to the courts, and I by no means suggest they should be. Nor should one look upon the courts merely as revenue producers that should support themselves. Nonetheless, it is a practical fact that the courts are, I repeat, a very small net burden on the state's budget.

To sum up, in these tough times we in the Third Branch are committed to do our full part. But I must report that we are finding it increasingly difficult to carry out our constitutional and statutory responsibilities, in the face of staff reductions, long-continuing judicial vacancies, and restriction of resources in many other areas. More than ever, in these times the great branches must work together to find every way possible to maintain the quality of justice dispensed by our Maine courts.

## II. Review of 1977-1992 in the Courts

Today we meet also at a time of transition for the Maine court system. One Chief Justice leaves, after 14 1/2 years, and a new one will be taking the helm to steer the courts into the next century, indeed the next millennium. It's a proper time for the courts to look both back and ahead.

### A. Joint Accomplishments

Looking to the past, I am struck by what our two branches have accomplished in working together year-in and year-out to improve Maine's courts. Let me "tick off" some of those joint accomplishments.

In 1978, under legislative authority, the Supreme Judicial Court set up the Committee on Judicial Responsibility and Disability, the seven-member group including lay persons that investigates complaints against judges.

In 1980, the Probate Code eliminated trial de novo on appeals from the probate courts to the Superior Court. Probate appeals now go directly to the Law Court.

In 1981, the Legislature, by the single trial law, eliminated trial de novo in the Superior Court on criminal appeals in cases already tried to judgment in the District Court.

In 1982, by creating the Appellate Division within the Workers' Compensation Commission you stemmed the growing avalanche of direct appeals from hearing commissioners to the Law Court.

In 1983, you created the office of Chief Justice of the Superior Court, with functions comparable to those of the Chief Judge of the District Court. By that action and by authorizing me to assign judges to sit in other courts than their own, you have enabled us to move toward a functional and administrative unification of the trial courts.

In 1984, collective bargaining for court employees came through the coordinated action of both the Legislature and the Supreme Judicial Court. In the same year, on the recommendation of the State Compensation Commission, the Legislature put judges on a five-year schedule of salary adjustments and provided them a modern contributory pension plan to replace the previous pay-as-you-go retirement system.

In 1985, you created the Court Facilities Authority, which, through tax-free revenue bonds, helped finance the Cumberland County Courthouse addition opened last June and is now financing the District Court buildings at West Bath and Presque Isle, both nearing completion. I recommend your increasing the bonding capacity of the Authority so that it may address the urgent court facilities needs of both the District and Superior Courts in York County.

Our court mediation program, started by volunteers the same fall I came on the bench, has always had legislative support, and in 1985, the Legislature made mediation mandatory on all issues in divorce cases between couples with minor children. In the same year, the CASA program (court-appointed special advocates) became an established feature of the courts. That program provides volunteer guardians ad litem for children involved in court proceedings,

to take the place of paid court-appointed lawyers. By last count over 1800 children have had the benefit of the CASA program — at 25 District Court locations around the State. Some 450 trained volunteers have given long-term support to those youngsters at risk.

In 1986, the Legislature created the Maine Commission to Commemorate the Bicentennial of the United States Constitution. Culminating with the 200th anniversary of the ratification of the U.S. Bill of Rights last December 15, the Commission has led the people of Maine in a grand celebration of the glories of our constitutional system.

In October 1989, to meet a federal deadline, the Supreme Judicial Court promulgated guidelines for fixing the amount of child support payments, and the Legislature the following April followed suit with statutory guidelines.

This is a proud record, a record compiled over the years only through the practice of the Three C's between our two great Branches.

## **B. Added Responsibilities of the Courts**

To look at the big picture, I note that the annual caseload of the courts in the last 14 1/2 years has gone from about 200,000 per year to well over 300,000. This increase has resulted in part from an accelerated trend in these years for us in Maine to turn time and again to the courts for help in addressing emerging public needs. Some of those public needs that the Legislature has addressed by adding to the responsibilities of the courts are the following: The battle against drunk driving and drugs, consumer protection, protection from discrimination, protection of children and spouses from abuse, permanency planning for children through termination of parental rights, environmental protection and regulation of land use, and protection of our institutionalized citizens. The courts necessarily become involved when the Legislature creates a new criminal offense or a new civil cause of action or a new right to judicial review of administrative action, or some combination of the three. I don't complain about this steady increase in reliance upon the courts to meet public needs; indeed I feel rather proud that the public recognizes the essential role the courts play in our governmental scheme. Nonetheless, adding to the burdens of the courts has obvious implications for the necessary allocation of public resources.

## **C. Review of the Year 1991**

Before I say something about the future of the courts under my successor, let me give you some highlights on court operations in the year just past.

In 1991 the Law Court set new records for both case filings and opinions. New filings numbered 646, almost two and a half times the filings 15 years earlier. In 1991, the Law Court also issued a record total of opinions — 392. Along with my colleagues' heavy decisionmaking responsibilities, the Supreme Judicial Court carries an administrative load by serving, in effect, as the "Board of Directors" of the Judicial Department. The court sets department policy, makes rules of procedure and evidence for all courts, and superintends the legal profession through the Board of Bar Admissions and the Board of Overseers of the Bar.

On September 1, we started a two-year experiment with permitting television in all trial courts in Portland and Bangor. Cameras have of course been permitted in Law Court hearings for 10 years.

I turn now to our trial courts. I am grateful for the strong leadership provided by the Chiefs of our trial courts. They are here with us this morning. They, along with State Court Administrator Dana Baggett, make up my Executive Committee. All of them are carrying a much increased burden of administrative and judicial responsibilities during this time of fiscal crisis, reduced staff, and judicial vacancies.

On September 1, Chief Administrative Court Judge Cleaves, with the help of both District and Superior Court judges, started in Cumberland County the Family Court Pilot Project authorized by the Legislature. This project gathers together from all courts in Cumberland County divorce and protection from abuse cases, post-divorce motions, and child protection proceedings. Those matters are then handled in a coordinated way by a single small group of trial judges.

With legislative support, we have reinstituted an Indigency Screening Program in the District and Superior Courts in four counties, with hope to expand it to other counties. This program checks the financial qualifications of criminal defendants who apply to have counsel appointed for them at state expense.

In 1991, working with the tribal courts of the Penobscot Nation and the Passamaquoddy Tribe, we created the Maine Coordinating Council for State and Tribal Courts, an ongoing body to meet informally from time to time to work out problems of mutual concern between the two court systems. District Court Judge Andrew Mead of Bangor,

who was the Penobscot Tribal Court judge for ten years, took the lead in working with Judge Domareki, the present Penobscot judge, and Judge Romei of the Passamaquoddy Court.

The most dramatic program change in the courts in the last year is our creation, with legislative authorization, of the District Court Violations Bureau. This centralized bureau, which went into operation on the first of January 1992, processes at the Lewiston District Court all traffic infraction cases from the whole State, numbering about 140,000 annually. The bureau collects all traffic infraction fines, including the waiver fines paid by defendants who do not contest the charge; schedules trials for all defendants who do contest the charge; and suspends drivers' licenses on all who fail to answer. The public gets much better service because no longer does a defendant who contests a traffic ticket need to go to court just to obtain a later trial date, and the defendant who elects not to contest will be told by the police officer the amount of the waiver fine and be provided an envelope to mail in the check. Under the leadership of Chief Judge Calkins and her predecessor, Judge Pease, working with a federal grant, the Violations Bureau was set up in record time and at almost no cost to the State. It is too early to know whether it will produce net savings in personnel costs, but we do know it will help control the cost increases that otherwise will certainly come with future growth in volume, and we do know that it is immediately providing much better service to the public.

A year ago I appointed a Volunteer Business Committee, consisting of three highly respected businessmen, to review the courts' administrative and financial operations. That Committee worked very hard and produced its report at the end of March, finding that "administrative activities of the Court System function as well as can be reasonably expected, given the resources available and the growing workloads." They went on to make a number of specific recommendations for improvement of our administrative and financial operations. We have implemented most of those to the extent we are able to do so internally. One of the committee's recommendations was the creation of the central District Court Violations Bureau, already an accomplished fact. Another recommendation, which has been joined in by the Special Commission on Governmental Restructuring, is the elimination of costly bureaucratic duplication between the Judicial Department and the Executive Branch, a proposal now before this Legislature. I strongly urge the adoption of that cost-saving proposal. The Volunteer Business Committee also recommended the designation of a chief operating officer for the judicial system to strengthen and consolidate court management under the direction of the Chief Justice. This strong administrator would act in a capacity similar to that of the chief operating officer of a private corporation, so as to produce better coordination of management and long-range planning in the court system, along with increased accountability. I agree fully with this recommendation, and it is also endorsed by the Governmental Restructuring Commission. I have, however, not acted in this matter, believing that a management reorganization of this magnitude is better left to my successor and his colleagues.

### III. The Future of Maine's Courts

In reporting to you last year I pointed out two challenges that you of the Legislature and we of the courts share in these times of fiscal crisis. Our first joint challenge is to maintain, and if possible improve, the quality of service the courts are providing Maine people. Our initiatives during the past year, such as the new central District Court Violations Bureau, show that we have had some success in meeting that first challenge.

We also share a second challenge. It is all too easy when times are tough for us to become absorbed in the crisis of the moment and to give no thought to the future. We face a host of societal changes as we move rapidly toward the next century. Our second challenge is to lift our eyes from our daily chores, however taxing they are, and to look at the far horizon ahead of us. We are meeting that second challenge through the Commission to Study the Future of Maine's Courts. The Futures Commission, created by the Legislature two years ago and including in its membership five of your fellow legislators, as well as five judges as advisory members, is funded entirely by grants from the federal government and private foundations. The Commission has organized task forces to study access to justice, court productivity, alternative dispute resolution, and court structure, all looking ahead to the demands on the courts well into the 21st century. A heavily attended two-day symposium in January, run by the Commission and the Maine State Bar Association, considered the pros and cons of a single tier trial court and the feasibility of having a family court in Maine. The Commission has much yet to do, but it has already stirred us all as never before to take a close look at Maine's courts and at the future toward which they should be moving. The Commission has set February 1993 as its deadline for submitting its final report to the Legislature and to the Judicial Department.

### IV. Conclusion

In concluding my State of the Judiciary report 14 years ago, I used a quotation from Oliver Wendell Holmes, the poet-physician father of the "Yankee from Olympus." The elder Holmes once said:

[T]he great thing in this world is not so much where we stand, as in what direction we are moving. To reach the port of heaven we must sail sometimes with the wind and sometimes against it — but we must sail and not drift, nor lie at anchor.

For the last 14 years the Maine courts have been steadily under sail, holding to a course to improve the quality of justice rendered Maine citizens. A new helmsman will shortly take the wheel. My deepest wish for him is that you of the other two great branches work with him in the same spirit of communication, cooperation, and comity that you have so generously shown in your dealings with me.

Ladies and gentlemen of the 115th Legislature, here I am at the end of my final report. Perhaps I can do no better than quote the poet Keats, who wrote in his last letter to a friend: "I can scarcely bid you goodbye, even in a letter. I always make an awkward bow. God bless you!"