

MAINE STATE LEGISLATURE

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THE STATE OF THE JUDICIARY ADDRESS
OF
CHIEF JUSTICE DANIEL E. WATHEN
February 23, 1995

Mr. Speaker, Mr. President:

I appreciate this opportunity to appear before the 117th Maine Legislature. I consider this an historic occasion. Next month, on March 15th, our state celebrates its 175th anniversary. In all those years only 101 people have served on the Supreme Judicial Court. We are a small group, but every person in today's Judicial Branch takes pride in Maine's record of providing that most essential government service -- individual justice. For 175 years, the three branches have worked together to provide the protection and the stability guaranteed by our Constitution. The rule of law hangs by a very slender thread in any society, and an independent and effective judiciary has been a vital part of Maine's government.

I believe that we are at a pivotal time in history. This is evidenced by the fact that Russia, some of the former Soviet Republics, Haiti, and many other nations throughout the world are trying to copy our form of government. The question they ask is -- how do you make the law work? The answer is simple -- we have the rule of law, and an independent judiciary to enforce it.

Why is the rule of law suddenly important? Because you can't do business in a global economy without stability, certainty, and efficiency in legal relationships. Most of these countries have impressive constitutions, but they never had an effective and independent judiciary to enforce them. That is why we have been visited by judges from the Karelian Republic wanting to learn how we conduct jury trials and how we educate our judges. That is why my colleague Justice Roberts lectured on judicial ethics in Estonia this past fall, that is why Kathryn Ainsworth, the former Director of the Commission on the Future of Maine's Courts, now works full time in Latvia.

The world has come to understand the critical function of an independent judiciary in a constitutional government.

It is ironic that at the same time here in Maine, we are experiencing an unprecedented crisis in funding our courts. We have piled on responsibilities without resources. We have cut juror's fees to \$10 a day, and yet we charge civil litigants \$300 for the privilege of having a jury trial that is rarely scheduled. Justice has become a commodity to be paid for. Our court system, which is small and underfunded by any comparative standard, has deteriorated to the point

that our judges and staff are discouraged and frustrated, and sometimes people's needs for protection have to be delayed and possibly never met.

I know I can speak frankly and candidly with you. Many of you have sat behind the bench with judges in your local community, and all of you will be invited to do so. In a word: we are stretched too thin, trying to do too much with too little. In a successful democracy you cannot ration justice. For some years now we have been doing just that.

Therefore, for me, today is more than just a speech -- I hope that it marks the beginning of a dialogue between all three branches of government concerning the delivery of justice in Maine. The future is in our hands. We cannot continue to allow court services to be degraded. The goal for the next century is clear; the people of Maine must have courts that are fair, fast, affordable, and effective.

Many of you have your own thoughts on the future of Maine's courts, but let me share some of my thinking with you. Obviously, we have to begin with funding that is adequate to keep the courthouse doors open. I won't recount the painful history of chronic underfunding in recent times.

At least three authoritative studies have been conducted in the last twenty years, the Brennan Commission on the State Funded Court System in the 1970's, the Commission on Governmental Reorganization in the late 80's, and the Futures Commission in the 90's. They all came to the same conclusion: the law should require the Governor to include the judicial budget in his budget without revision. The purse string belongs to the Legislature, and you should consider the full needs of an independent and co-equal branch of government without first being forced to cut the budget elsewhere.

Unfortunately, that recommendation has never been enacted into law, but something important happened a couple of weeks ago. For the first time in at least the last twenty years, the Governor put most of the ordinary operating costs of the courts in the budget he sent to this Legislature. Being funded at existing levels may not sound like a very historic development, but it really is, and I commend Governor King for his action. He didn't have to do it. He did it because it was the right thing to do. I urge you to support this portion of his budget.

This budget includes nothing extra, nothing new, no "so called" part two. But it does mean that for the first time in years, the Appropriations Committee won't have to search for cuts in other areas in order to keep the courts at our present level and enable us to meet the basic needs of the third branch.

At this point you might think that I should sit down. What else does the judiciary want? Don't they understand the budget problem? Yes, we do. But we need to talk with each one of you about the future of the third branch and the people you represent and every program that you support. The judiciary is only one of the three spokes in the governmental wheel, but when it buckles, the wheel stops. Law will hold our society together only so long as it is enforced.

What should we talk about? First and foremost, not all of our Part II requests can be dismissed as a wish list. We have legal and enforceable obligations to people with disabilities under both state and federal law whether they are litigants, jurors, witnesses, employees, or judges. We should talk about that. I am certain we all agree that any organization that handles twenty-three million dollars a year should have a full audit. We should talk about that. Maybe it is wishful thinking in these times to ask for both additional staff and computers, but we have to talk about the impossible situation created by the explosion of increasingly complex paper work in the District Court, most of it mandated by state and federal law, and the sharp rise in the number of people who are forced to go to court without an attorney. If it were not for the folks in the clerks' offices and help provided by Pine Tree Legal Assistance, Legal Services for the Elderly, the Volunteer Lawyers Project, and the Law School Clinic, I don't know what people without funds would do. If courts are to take up the front line in social services, and that is the course established by this Legislature in recent years, we can't uphold the law if we are denied both staff and technology.

Similarly, there are many pressures on the criminal docket. For example, the Federal Crime Bill has already produced 88 new police officers for Maine, and promises 400 more, and nothing for the courts in which they will work. In response to the commendable efforts of Parents Against Tired Truckers, the State Police obtained a \$350,000 grant for overtime and issued 4500 additional trucking violations in the last four months. Those charges are filed in a court system that has no funds for clerical overtime, and is not scheduled to have any for the next two years. We need to talk about that.

Our ability to cover a growing criminal docket by neglecting and delaying civil litigation is beginning to affect our economic well being. No part of our society is more sensitive to delay and uncertainty than

the business community that provides jobs and paychecks, and yet the way we are forced to schedule business litigation and regulatory proceedings in Maine is a crime. We need to talk about how much longer we can meet the needs of one segment of our people by taking from another. These are all subjects of critical importance, and they are all addressed in our Part II requests and in other legislation we will propose for your consideration.

Is there any purpose to be served by our talking? I think so. Let me touch on three subjects. I have spoken a lot about computers in the past year and the unparalleled opportunity they offer to revolutionize the way courts work for people. Some of you who are new may not realize that with the exception of traffic tickets and the criminal docket in the District Court, most clerical functions in the courts are manual. No desk top computers, no electronic data base, only typewriters, paper, and files. Can you imagine what would happen in these legislative halls or within the executive agencies if all recordkeeping was still handled manually?

We know what needs to be done. We have prepared a detailed technology plan. All that is missing is the money. That is a pretty big all. But we can make this plan work this year. There are two federal funding sources that are promising; equipment grants for a criminal record system under the Brady Bill, and equipment grants and reimbursements available under the Child Support Enforcement Act.

Sometimes disadvantages become advantages. We are one of five states with the worst equipped criminal recordkeeping system in the nation. Ordinarily we would not brag about that, but it places us high on the list for money under the Brady Bill. Both of these sources are limited in terms of coverage. But with your cooperation, a little flexibility, and a relatively small appropriation, something less than what we requested, you can leave this session knowing that you have modernized Maine's courts.

I would also like to talk about creating a Court Improvement Fund. Whether it is raised from a surcharge on fines or a set-aside of court revenues is unimportant, but it is critical that we segregate a sum of money annually that we can plan on and use to improve court services. We have to invest systematically in our courts. Possible projects could include delay reduction programs, creation of a true family court, children's centers, improved expense reimbursement for jurors, differentiated case management for complex civil litigation, electronic information kiosks, the list is endless, but it is time we made a start.

I know that dedicated funds are not favored, but because we now collect, in addition to the twenty

million+ for the General Fund, an average of three million dollars a year for nine other agencies of government in separate dedicated funds, the addition of one more fund neither shocks nor offends me. Currently, we collect for the "Keep Maine Scenic Fund," the "Fish and Game Fund," the "Watercraft Fund," "the Victim's Compensation Fund," which incidentally is a small but tremendously important program, "the Transportation Safety Fund," "the Highway Fund," "the Employment Security Fund," "the Government Operations Surcharge Funds," and "the Violations of Local Ordinances Fund." When you throw in a surcharge for drug testing, a surcharge for probation supervision, and a jail reimbursement fee, you can understand why the most complex task that a judge performs is to calculate a fine, explain that calculation to a criminal defendant, and then try to collect it. No one wants another surcharge, but honestly, one way or another, isn't it time that we invested something in the goose that lays the golden eggs.

I also have to talk with you about judicial morale and compensation. Ask any knowledgeable person, and I am sure they will tell you that morale in the trial courts is very low. There are a number of contributing factors. In the District Court you have the stress on judges produced by crowded schedules overburdened with cases involving unrepresented parties in matters of domestic violence, child protection, and petitions for protection from abuse and harassment.

In the Superior Court you have the press of civil and criminal trials, together with increasingly complex cases involving review of state and municipal regulatory action. Just walk into any Superior Court clerk's office and look at the thick files and the boxes of records, and you can see how litigation has changed.

Judging in the trial courts is an isolating and lonely job, and in the last three years a practice has developed with regard to judicial compensation that has seriously eroded morale.

In your own business you would never promise a small group of your employees a cost of living adjustment in lieu of a raise, and then annually break that promise just days before it was to go into effect, particularly if you had given the rest of your employees a raise. That has happened to the judges over the last three years, and the effects have been felt. Judges are the only employees in state government who have been denied any wage adjustment since July of 1991.

It is a complicated tale, but let me sketch it out. The last major change in judicial compensation began in 1982 when the state set out to reach pay parity with the then lowest paid federal judge. The increase was

phased in over five years but by then the lowest paid federal judge had leaped ahead an additional thirty thousand dollars, and they have since gone out of sight. Abandoning parity in 1988, the Legislature enacted an annual cost of living adjustment with a cap of 4%, to begin July 1, 1991. In 1991 the adjustment was made, but for the next three years, in the closing days of each session, this Legislature has deappropriated the funds budgeted for the adjustment. In the meantime, every other state employee, including many professional employees who earn significantly higher wages than judges received raises.

It bears emphasis that we are not the highest paid state employees, only the most visible. Nationally, the compensation for our Supreme Court Justices ranks seventh from the bottom. Last spring I came over for a visit and spoke with the then President of the Senate and the Speaker of the House and asked them in the interest of morale to consider a small token payment in lieu of the two adjustments that had been withdrawn. Unfortunately, when the books were balanced late at night, no money was set aside for retroactive payment and, in fact, to my surprise and dismay the cost of living adjustment was deappropriated for yet another year. I ask you not to let that happen this July. Let the small adjustment that is already included in the budget go into effect for next year. Dedicated and effective employees must be treated fairly and given some recognition and reward.

We have also submitted legislation calling for the appointment of a three member Commission on Judicial Compensation. One of the members would be appointed by the Speaker, one by the President, and one by the Governor. The Commission would be charged with preparing and presenting a biennial report to the Legislature on the subject of judicial compensation. This mechanism works successfully in a number of other states. It guarantees no judicial wage increases, but it addresses the need to insure that basic fairness applies in fixing adequate compensation for an independent judiciary. In exercising our constitutional powers, we are occasionally required to enter the political thicket and rule on matters such as legislative reapportionment and term limits. We frequently decide cases that have profound effects on the budget or public policy. That is the judiciary's role in our system of checks and balances, and never should it appear that the power of the purse is exercised in such a way as to attempt to influence the decisions of the judiciary.

Finally, I want to say a few words about law and order in our state. Fortunately we do not have the gang activity and the racial strife that we see on television. But there are disturbing trends: increased violence among our youth, serious social effects of drugs, particularly alcohol, domestic violence and sexual assaults hitting new highs, the growing number

of property crimes and other crimes of violence. Crime in Maine is different than what we see elsewhere, but we have serious criminal activity and many of the people who are most vulnerable are insecure in their person and in their homes.

We are witnessing a national debate on the causes of crime and the solutions. Some argue for more prisons, some for boot camps, some for electronic surveillance, and some for improved supervision with education and job training. I am sure that debate will also take place in these halls. I don't have the answers, but I can tell you one thing--no criminal sanction will work until we speed up the trial process, and make the threat of punishment, whatever it is, immediate and real.

Recently, the newspapers reported on a criminal case involving a Maine Guide and a moose hunting violation. The crime occurred in 1991, he came to trial in 1993, and his appeal was finally decided in 1995.

This is not a typical time line, but four years is far too long and far too common. Nothing would please me more as Chief Justice, and nothing would more effectively address crime than to issue an order requiring that all criminal cases be brought to trial within ninety days. I could enter such an order. And that is the national standard. But we couldn't even come close to meeting it.

We must take the delay out of the ordinary administration of criminal justice. Efforts to get tough on crime by threatening a heavy sentence someday in the distant future are not effective. Tougher punishment or different types of punishment will work only if we modernize Maine's courts and impose a speedy trial. This is not a new thought. It has been in our Constitution since 1820. Justice delayed really is justice denied, and in this case, it is the people of Maine who are victimized by an underfunded and understaffed court system.

Today, people seem more concerned with what someone says rather than with what they think. I have attempted to share my thinking with you on some of the issues that are crucial to the judiciary. You may not agree with me. The issues are complex, and I have barely scratched the surface, but I doubt that we disagree about the importance of a vital and independent judiciary to the well being of our tripartite form of government. We in the judiciary understand your budget problems and we can appreciate the cry for less government, but I have talked to a lot of people in the last year and I know you have as well. I am willing to bet that no one said they wanted less justice.

The question I leave with you today is simple and heartfelt -- can we talk about the future of Maine's courts? Do you have time during this session to give

me a call and sit down to talk? I don't care who you are or what committees you serve on. I'm ready to talk. I have posed that same question to Governor King, leaders and members of Maine's business community, and groups as diverse as Parents Against Tired Truckers, the police, family crisis groups, and Editorial Boards. In every case the answer has been yes and the resulting discussions have been positive.

Judges and legislators have to work together because we are partners. When a young mother goes into the busy District Court in Lewiston to get an order that will protect her and her children from an abusive mate, she doesn't distinguish between the law enacted by this Legislature, the judge, and the adequacy of the courts. In her view, it is one system. Either the law works and she is protected, or the law doesn't work, and she and her children remain in danger.

We hear a lot of talk about the fact that government has fallen into disfavor. I don't know whether that is true here in Maine or not, but I offer one very old solution. Alexander Hamilton wrote in the Federalist Papers: "The ordinary administration of criminal and civil justice contributes more than any other circumstance, to impressing on the minds of the people, esteem towards government." Donna Morgan, one of the Parents Against Tired Truckers, said it quite well in the newspaper when she suggested that underfunded courts and lax enforcement should not put people's lives in jeopardy. She said, "If the system in place is not adequate, it should be improved." I agree. You are going to enact hundreds of new laws this session, and yet at the same time laws as basic and simple as those regulating the safe operation of a truck require a special overtime project, and even then effective enforcement is compromised and undermined by a court system bogged down in paperwork. The three branches of government have one job -- to make sure that the law continues to work for Maine people. To do that, we need to talk.

Thank you.