

MAINE STATE LEGISLATURE

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**THE STATE OF THE JUDICIARY ADDRESS
OF
CHIEF JUSTICE DANIEL E. WATHEN
FEBRUARY 10, 1998**

Mr. President, Madam Speaker, members of Maine's 118th Legislature and friends.

I am honored to stand at this podium once again and report on the cause of justice in Maine. Last year on this same occasion, I attempted to paint a picture of where our courts could reasonably be by the year 2002 and I asked you for your help. You responded, and we are now at work improving our court system. Today, I would like to report on our progress and the opportunities and challenges in the near future. Court reform is sort of like trying to repair a truck while driving it down the road. If you can't pull over and stop, and we can't, you've got to keep a sharp eye on the road ahead while you work.

When I review our progress, like you I become frustrated. Why not quit talking and build the modern court system we require? Unfortunately, so far we have been forced to work largely within our existing means, and the fundamental facts about our court system have not changed. Maine courts are marked by minimal resources (46th out of the 50 states for total court expenditures), minimal staff, high productivity, but higher workload and unacceptable delay and expense for litigants.

When you consider the resources made available to us, our efforts compare favorably to other states, and, not surprisingly, despite these fiscal constraints, in some respects we lead. -- Dirigo -- it is more than just a motto, our strength lies in the fact that Maine is small enough to manage and we know each other. We work together every day to take advantage of every opportunity for improvement.

Our court automation project is a good example. Even though it has taken us longer than we would like, we have designed and built the first phase of an integrated state-wide court management system for a small fraction of the cost experienced in other states. Many states are outspending us on a ratio of 10 to 1, but the end result is comparable. The system has just been installed in the Superior Court in Franklin and Penobscot Counties. It will soon be coming to a court near you. We have taken advantage of every available opportunity for federal funding and we rely on the hard work of a small but amazingly dedicated technical staff in our office of information and technology. This is how we lead.

Rep. Jabar recently introduced a resolve that asks us to explore the unification of the trial courts. We welcome this as an opportunity to determine whether

we can wring out any additional efficiency by restructuring our small trial bench. We are open to improvement.

Last year, I asked for your help in three critical areas of court operations -- full implementation of the report of the Judicial Compensation Commission, a Civil Legal Services Fund for those who are financially disadvantaged in seeking the protection of the law, and a Family Division in the District Court to better serve Maine's families. You supported all three, but the vital matter of adequate judicial compensation stalled on a crowded appropriations table after being favorably received in both the House and Senate.

Many of you told us last year that the Governor would have to provide funding for the judicial compensation bill in his budget if we were to be successful. The Governor has now done just that, including funds in his supplemental budget to fully implement the recommendations of the Commission. The Governor has explained his position as one of simple fairness and paying an unpaid bill.

The report of the Commission explains the importance of insuring that the most highly qualified people in this state, drawn from diverse backgrounds, are willing to serve, and motivated to excel, in the judicial branch of our government. I ask for your continued support in advancing these important objectives. Maine must maintain a first class judiciary.

The news with respect to the other two building blocks in last year's court improvement effort is very exciting. The Civil Legal Services Fund is up and running. Trustees Lou Vafiades, Mary Schendel, and Robert Marden disbursed the first \$75,000 last month. Folks in need of help are now receiving legal assistance. The battle for equal access for Maine's poor is far from over, but your positive response to severe cuts in federal legal services funding has caught everyone's attention. I have been invited to speak at several national gatherings to describe our efforts and accomplishments. I am very proud to tell your story -- the story about what you folks did for your neighbors. Once again, let me thank you all.

The long-awaited Family Division is also taking shape. Chief Judge Westcott and Deputy Chief Humphrey have produced a comprehensive rule to implement the statute you enacted, divided the state into operating regions, and with local assistance in each region they are now interviewing a pool of

candidates for the important position of Case Management Officer. I am reassured by the quality and competence of the people who seek this opportunity for public service. Judge Westcott will announce his selections soon. Officers and staff will report for training on April 6th, and the doors to the courthouse will open wider to Maine families on Monday, May 4th.

As I have said before, we need more people and the Family Division will be the largest single infusion of court personnel that we have ever experienced -- seventeen new people. The financial burden on the state, however, is modest because we seized an opportunity for federal funding. Similarly, in the important area of child protection cases, we are taking full advantage of the few available federal funds to add to our small court staff to improve the way we protect children. This session you will consider a bill that will challenge us to do our very best in expediting child protection cases. If we are to succeed, we need the help of everyone we can get. We have even gone to the Libra Foundation, and they have provided us with funds for a coordinator to expand the pool of volunteers who serve in Maine's courts.

A report on improvements would not be complete without mentioning the two new courthouses. Five years ago, in the depths of state budget deficits, I asked you to begin the planning process for much needed courthouses in Biddeford and Skowhegan. Both of those courthouses are now open and running. If you haven't seen them, stop and visit. Both courthouses serve Maine people in dignified and secure surroundings. Both are located right where they should be, in the middle of the daily life of the communities they serve.

Even in those financially troubled days of 1993, this Legislature had the courage and the political will to invest in a better future. Today, we all enjoy the fruits of your decision. Last year you approved a project to replace a totally inadequate courthouse in Springvale, and we are hard at work. This year we will ask you to consider the well known needs of Lewiston. There is no need to belabor this point -- Lewiston needs a new District Court.

So much for improvements, now let me turn quickly to the future -- what are our opportunities? What are our challenges? Where can we take a step forward? We have no greater challenge than fairly and effectively dispensing justice to the victims and perpetrators of juvenile crime. There is no one quicker to detect the bluff and weakness in our present system than teenagers. We have a system wracked with delay and stretched beyond capacity. Juveniles will respond to correction only if it is fair, swift, certain and consistent. We must have more sentencing options than a hollow threat and expensive and

inadequate jails. I support the need for the Department of Corrections' Capital Facilities Plan. Juvenile justice represents a great challenge. Juvenile crime is intimately related to divorce, domestic violence, child abuse and neglect. Juvenile cases should be the next addition to our Family Division.

But where will the money come from? In Congress, this year's crime bill appears to be the juvenile accountability block grant. It is a bit too early to put it in the bank, but the Senate version of the bill looks like it will help. It may surprise you to learn that, with few exceptions, federal grant programs rarely find their way down to state courts. In this instance, however, the program could fund additional judges as well as prosecutors and corrections programs. I call upon you to urge our Maine delegation to support S.10, and in any event, I call upon you to invest additional state funds across the board in our juvenile justice system. There is no higher priority. We will either pay now or pay more later.

Looking to the near future, we will continue to be challenged with upward pressure on court funding in general. Juror compensation of \$10 a day is woefully inadequate. I don't know how much longer we will be able to prevail so blatantly on the civic spirit of our friends and neighbors. It is a sad fact that the precious right to trial by jury, first secured by the Magna Carta and envied by the rest of the world, is marked by inadequate compensation, and even that is funded largely by a user fee imposed on civil litigants. Jury reform is an imperative. We must improve.

Chief Justice Kravchuk and the Superior Court bench is engaged in an extensive effort to fine tune the way we manage our precious resource of jurors, but inevitably increased funding will be required. On another front, the rate of compensation for attorneys appointed for indigents in child protection and criminal cases has not been increased in fourteen years. The same is true for those who work in our courts as mediators, no increase in fifteen years. We need these people, they do good work, and they must be adequately compensated.

The biggest deferred expense, however, involves courthouses in county buildings. The history is complicated. Before 1974, the state budget paid only for judges' salaries, all other expenses of the Superior Court were paid by the individual counties. In 1974, Maine took a great step forward and adopted a state-funded court system, with the exception of one minor detail -- it left the counties with complete financial responsibility for maintaining the county courthouses. In hindsight, this was a mistake. Over the years, some county governments have found it difficult to raise taxes to meet the needs of a non-paying tenant. In some instances, the building has literally deteriorated around the courtroom. In Augusta, we have a prime

example. The county courthouse is in dire need of major renovations. Despite the best efforts of the Commissioners, the citizens have rejected a county bond issue, and what was once a beautiful, dignified, historic and functional building is now a decaying eyesore. The next time you go by take a look at the bell tower. It tells the story of neglect and deferred maintenance.

We must support the county courthouses we use. When renovations are required to accommodate the legitimate needs of the public, as in York County, the state must accept its share of the financial burden, either directly or through increased rentals. Even state government doesn't get free rent forever.

To this point in my forecast, I have focused on the reality of justice here in Maine. Budgets, staff, judges, courtrooms, lawyers, jurors, cases, and, most importantly, people with serious problems. We all know, however, that justice must not only be done, it must be seen to be done. The appearance of justice and the public's perception of it are equally as important as the reality. In this area, we have a problem. The public perception of Maine's court system is inevitably shaped and influenced by the media, both local and national. A few celebrated trials in other states have given rise to a new sense of concern about the courts' ability to protect society fairly.

One of our daily newspapers recently observed in an editorial that the jury in the Terry Nichols bombing case seemed to decide the case on "everything but the evidence presented in the courtroom." That conclusion was based upon the remarks of the jury forewoman in a televised interview. People are legitimately concerned that courts and the media are sometimes at odds in their efforts to serve the public. We are wired for 24-hour-a-day drama and entertainment, and we are challenged to deliver justice and protect the public. I am not attacking the press or attempting to diminish its important responsibility under the First Amendment. I am suggesting, however, that we in the courts can no longer ignore the critical role that the media plays in shaping the public's perception of our system of justice.

Recently, I wrote a letter to many of the media outlets in Maine inviting them to explore, with the courts, opportunities for improving our relationship. Efforts could include such things as interdisciplinary conferences, local bench-media committees, joint education sessions, and court visits similar to those that many of you have experienced. Judging by the early response to my letter, there is interest in ensuring that our relationship is marked by mutual understanding, respect, and cooperation.

Maine courts and the Maine media are not rivals for the truth. Today we serve the public and provide information and news without diminishing the protection afforded by the law. In this era, however, our relationship is far too important to be left to chance. We need to work to preserve it and improve it, and we will.

Let me close by emphasizing the critical importance of both the appearance and reality of justice to the State of Maine. James Madison said it well in the Federalist Papers: "Justice is the end of government. It is the end of civil society. It ever has been, and ever will be pursued, until it be obtained, or until liberty be lost in the pursuit." Together, the three branches of state government in Maine attempt to achieve justice for all through the laws you enact. Courts are a safety net for those who have fallen through all other safety nets, courts exist to protect those who are damaged or injured, by rendering justice promptly in individual cases.

The recent accidental death of a nephew and last month's ice storm reminded me forcefully of how lucky I am that my family and friends are willing to drop everything to protect me. A friend of mine flew down from Caribou just to stand with me at the funeral home. Many of you offered words of consolation and Rep. Julie O'Brien's family brought us dinner on three successive nights. I thank you all for your help. In the ice storm, school children in my hometown of Easton took up a collection and sent \$200 to the Red Cross in central Maine. Even strangers responded. Think of the linemen flying up here from other states just so that we wouldn't have to sit in the cold and the dark.

It was a tough time last month and I hate to say this, but someone is hurt worse than we were every day right here in Maine. Too often they have no friends and are abused by their families. No one flies in to rescue them. They have no place else to turn. They look only to the courts for protection, and what do they see? A court without enough people to respond quickly.

Let me tell you about a four year old boy. After being sexually abused by every male member of his family, he had to destroy his mother's security by prosecuting her boyfriend for further acts of sexual abuse. This boy has already spent most of his young life in child protection proceedings and criminal prosecutions.

He asks us today, why are we content to tinker with court improvements while ignoring the obvious fact that Maine courts are stretched too thin? If we love justice, why do we house it in decaying buildings and fund it grudgingly? What should we tell him about the fundamentals of Maine's court system? Are

we really doing the best we can when we spend less than 2% of the total state budget on this important function? He asks why we leave him in a system that is too slow and sometimes unresponsive? Why do we do that, even though later we may have to spend large sums of money to treat him or, even, to jail him?

I can only guess that we do it because most of us, you and I, don't see him. We are compassionate people, but we just don't hear his voice. Believe me, he is out there, along with many sisters and brothers. When you sit in these legislative halls and when we sit in court, let us hear their voices. Then we will respond with the same sense of urgency, importance and priority as though they were our own. They are out there, and once we hear their cry, the question arises: are we prepared to drop everything and help them? Justice demands no less.