

MAINE STATE LEGISLATURE

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THE STATE OF THE JUDICIARY ADDRESS
OF
CHIEF JUSTICE DANIEL E. WATHEN
FEBRUARY 11, 1999

Mr. President, Mr. Speaker, Governor King, Members of Maine's 119th Legislature, and fellow Mainers.

Once again, it is my privilege to report on the state of the third branch of Maine's government. The Judiciary, the least powerful of the three branches, is vital nonetheless in terms of upholding the rule of law and protecting our rights as people. As Chief Justice, I have no higher duty than to attempt to voice the unmet need for justice in Maine.

When I first addressed this Legislature six years ago, I was advised to be direct, anecdotal, humorous and brief. Three out of four isn't bad. I am still working on the last one. It is tough for a Chief Justice to be brief. You are all acquainted with lawyers, but perhaps you don't know the difference between a lawyer and a Chief Justice. If you will permit me, there is a little story that illustrates that quite well. There was a guy down around Merrymeeting Bay who made his living renting hunting dogs. Some sportsmen came in from Massachusetts and they asked, how much do you get for this dog? He said, that is \$5 a day. How about this one? That is \$15. How about this one? He said \$125 an hour. He said, why so much? It is my best dog. Old Lawyer, you take him out in one hour he will cover the field and you will have your limit and be back. They took him, he did and they were very happy they had their limit. They came back the next year, of course, anxious, but not willing to go in and surrender to the old yankees so they went through the routine. How much for this dog? That is \$5 and how much for this one? That one is \$15. They got to old lawyer and they said how much for that one? They said, \$5 a day. They said, what happened? That is old lawyer. It is a terrible thing. Some folks came up here and called him Chief Justice and now all he will do is sit on his tail and bark.

Each year, on this occasion, I report on our accomplishments, and I present a modest list of needs -- those that are absolutely crucial, well within the realm of possibilities, and consistent with our incremental approach to modernizing Maine's courts.

If I were forced to be brief today, I would reach a little higher and urge you to provide the legal protection and court services that the folks of Maine deserve. A truly first class court system, providing prompt and affordable justice for all, is well within our means, and yet, we fund court services grudgingly, and unintentionally we ration justice.

Despite your hard work in these halls, too many folks still fail to receive the legal protection they require.

Our budget remains one-third under the national average. If we added the twelve to fifteen million dollars that it would take to bring us even with the average for the rest of the country, expenditures for the third branch would still be less than 2.2% of our total state budget. If you chose to, this year you could fund a court system fully equal to the challenges we face.

Excellence in education, a strong economy, and a healthy environment and lower taxes will elude us unless, at the same time, we protect our citizens and enforce the laws you enact. Prompt and affordable justice for every person in Maine from Kittery to Fort Kent, from Calais to Oquossoc, is not a distant hope, it is a vital daily reality and a necessity.

That is my short speech. But just in case the money cannot be found, I am going to continue on, sacrificing brevity, to highlight our joint accomplishments and advance a more modest list of truly crucial needs for your consideration.

What have we achieved working together in the last seven years?

First, we survived and recovered from being the hardest hit court system in the nation. It is painful to recall that six and seven years ago we relied on judicial vacancies, staff cuts, court closings, and unpaid bills to balance the court's budget.

At the same time, we have reorganized the management system of the courts. You may recall that there had been several studies calling for reorganization. It has taken a lot of work by Ted Glessner and others, but we have succeeded. The role of the state court administrator as chief operating officer of the courts has been elevated, while at the same time the size of the small administrative staff has been further reduced. We have achieved a degree of clarity, openness, responsiveness, teamwork, and a capacity for long range planning and change that was previously lacking.

This year the National Council of State Governments featured the Maine Judicial Branch's Participatory Management Program as one of one hundred and twenty-five innovative programs from around the nation worthy of note in its publication "Managing for success -- a profile of state government

for the 21st century." This recognition illustrates just how far we have advanced in seven years.

I believe that we have also improved the lines of communication and formed a closer working relationship with the public and the rest of state government than we enjoyed in the past. With those changes came a new focus on family law, domestic violence, child abuse and neglect, and that we are now ready to bring a similar focus to juvenile crime and substance abuse. In these difficult areas, we have learned the critical importance of judicial time and attention, and the need for coordinating our efforts with the community, that reservoir of informal social control.

Courts now have computers. We have a sound technology plan, a very modest budget, and we are on schedule in installing an information system that will take us into the next century.

We have dedicated five new modern courthouses and have plans in place for Springvale and Lewiston and Rockland on the drawing board. As a result of a generous private gift, the state now has a judicial center here in Augusta that we use for training and technology. Equally important, that center provides us with a presence in Maine's capital.

This past year, with your support, we implemented a highly successful family division within the district court. It serves all Maine citizens well, but particularly those who cannot afford to be represented. From last July until the end of the year, the division held more than 6,000 hearings and conferences throughout Maine to assist families in protecting children from parental conflict during divorce. Make no mistake about it, we are now preventing, or at least shortening, the downward spiral of rancor and hatred that can rip families apart after they come to court. The family division as one of our most significant accomplishments.

I could go on and talk about training and education programs and the improved compensation plans for both judges and court staff, the civil legal services fund, the implementation of the gender bias study, innovations in alternative dispute resolution, the increasing importance of the violations bureau and many other developments. But suffice it to say, Maine courts have not shied away from change, and together, the three branches of government have been busy.

But our accomplishments dim quickly in light of the challenges and responsibilities we face. About a month ago, I asked folks in the court system to give me their thoughts for this address. This response from a clerk is typical: "I know you have heard this many times, but the greatest thing we need is more help."

The folks who are here with me today bring the same message. They bear witness to the needs of Maine people for prompt and affordable justice. Sharon Burns, Clerk of the Augusta District Court, and Melanie Adams, Clerk of the Skowhegan District Court, represent the folks who work in the clerk's offices in all fifty of our court locations. Judge Courtland Perry, with the recent passing of Justice David Roberts is now Maine's most senior active judge, with more than 22 years experience in the Augusta District Court, is a shining example of the forty-five judges who sit behind the trial bench. Court Perry, beyond that, is truly an example for all who would seek to serve the public. We are indebted.

Our message to Maine is simple -- we need more clerks and more judges in order to give people the time and attention their cases deserve. I hope to have the opportunity to discuss Part II budget requests with your Judiciary and Appropriations Committees in about a week. We have requested thirty additional clerks and four additional judges for the district court. Our need for clerks is so acute that I must emphasize - if we do not get the extra clerks, we can't use the additional judges.

I know some of you are beginning to wonder: If you need that many people, Dan, what is wrong with you? Perhaps you need to do a better job. Why is it that other states do more with less? The answer is, they don't. There was an article in the KJ in November that was old news for us.

Census data confirms that the number of people working in Maine's courts as a percentage of population is significantly below the national average and less than one-half of the New England average. On average, in New England there are ten people working in the court system for every 10,000 of population. Here in Maine, we have only 4.6. We do our best, but when you step up to Melanie's counter, or approach Judge Perry's bench and ask for help, we cannot escape the fact that there are less than half as many of us there to help you as there should be.

This is not a disparity that we share with the rest of Maine government. In fact, in most of our government offices, the average number of state employees equals the average for New England. I invited these clerks here today to emphasize the point that they are doing everything possible to keep up and they are falling behind. Sharon Burns and others like her are working days, nights, and weekends and that is not an exaggeration. We were modifying her computer last Saturday while it was down. When they started at 6:30 in the morning, they discovered somebody had already logged on. It was Sharon Burns, 6:30 Saturday morning. She didn't know that I knew that. Visit her office, its right here on the rotary,

and I am sure you will agree they need and deserve help.

Adding thirty clerks for our fifty court locations would raise our average from 4.6 employees per 10,000 of Population to 5, just barely half the New England average. The total cost, approximately \$700,000, is modest. With respect to the additional judges, the four that we are asking for, there is a reasonable prospect that a significant part of the funds could come from the federal juvenile justice accountability block grant that the Department of Corrections has already received. We realize that money is tight, and we are ready to work with you, but we have to have more help.

Why do we need more help and what will it permit us to do? What difference will it make if you give it to us. As I have told you in the past, the areas of greatest concern in our current operation relate to the protection of children from abuse and neglect and juvenile justice. In other words, we are failing those who are most vulnerable -- our children.

Laws you enacted last session, in combination with Federal law, requires the district court to cut the time that any child will spend in legal limbo and foster care from three or four years to less than eighteen months. Those of you who understand something about early childhood development, know that we are finally doing something right. You know how important those two and a half wasted years are.

Our task is simple and yet daunting, as the number of child protection cases escalates everyday, (13% increase last year, 50% increase in last five years). Just yesterday the supreme court had handled eight appeals and four of them were termination of parental rights cases. We must continue to process the cases fairly and sensitively and do so in half the time. To achieve that result, we are implementing a case management system and will conduct a review of each child's placement at least once every six months.

It is nothing more than increased time and attention, but with 3,000 children in state custody, judicial review of placement alone involves 6,000 new hearings a year for Maine's twenty-nine district court judges -- that is one additional hearing a day, five days a week, for every judge. These are not perfunctory hearings. If the state held your children and your family in its hands, you would expect the full attention of the clerks and the judges. Those we delay, we see again and we will continue to see again as problems in school, problems in court, people at the Youth Center, problems in the community, AMHI and Thomaston. Everyone, including the general fund, particularly the children, will benefit from the improvements you have mandated. We will fail without additional clerks and judges.

We can no longer tolerate chronic delay in dealing with juvenile crime. In many areas of our state, 180 days (one-half year) will pass from the time a juvenile is apprehended by the police until the juvenile's first appearance in court. That initial appearance before a judge represents the first and best chance to determine whether the juvenile is in need of counseling, substance abuse treatment, a curfew or some other intervention. Can they be turned around? The message sent by the failure of the legal process to respond to a juvenile's acts in a time period measured in accordance with children's sense of time is that the system does not care. Regrettably, the same message is received by the victims of juvenile crime.

In a York County District Court pilot project, Judge Jon Levy has demonstrated that given sufficient time and attention from the judge and clerk, the juvenile can be brought to court for an initial appearance in less than fifty days and most cases can be finally resolved in compliance with the national standard of 80 to 90 days. Our response to juvenile crime in particular must be swift -- certainty and consistency are more important than an unfulfilled threat of severity.

Don't misunderstand me and think that with four additional judges and thirty clerks our problems will disappear. These are minimal requests that will permit us to provide prompt justice for our children, but we also have to continue to expand our overall capacity through the use of technology, alternative dispute resolution, volunteers, including that very special group of lay volunteers who represent children in court proceedings through the Casa Program.

In a nutshell, I have just described the package of requests that we will present to your Appropriations Committee next week. There is, however, one additional related item that we can no longer neglect. As the gap in income distribution widens, you know that our overall income is going up, but we are not sharing in it equally. Robert Wright, the former Secretary of Labor, explained it this way, between he and Shaqille O'Neal on average, they are six feet tall, but he is only four foot nine or something like that. That is what is happening to us on income distribution. As more people come to us that cannot afford legal representation, our constitution provides that if they are without funds and threatened with the prospect of losing their children because of allegations of abuse or neglect, or if they are threatened with the loss of their freedom because of their mental health or criminal charges, our constitution wisely requires that the state provide adequate legal representation.

Next to personnel, the largest expense in the courts' budget is legal services for the indigent. We tend to think of this expense as court appointed counsel for criminal defendants. It includes that, but

child protection cases are also included and they account for all of the increased expenditures in recent years. As expenditures for criminal defense trended downward, expenditures in child protection proceedings have increased 283% in the last ten years, 108% in the last five. Legal representation for parents and abused children now account for 57% of the total legal services expenditure in the district court.

Maine lawyers do a commendable job in providing quality representation to the indigent. The hourly rate of compensation, however, has not been examined since 1986 and does not equal the current cost of overhead. Two years ago, the supreme court appointed a committee to review the adequacy of the hourly rate and we have now received a report demonstrating that, at a minimum, the hourly rate needs to be increased by one-third -- from \$40 per hour to \$60 per hour. Let me say that this committee included public members such as Shep Lee, a respected member of Maine's business community.

Let me state my view, unequivocally. This is a big item, but the existing system of appointing private attorneys is the most inexpensive and yet effective method for the state to discharge its constitutional responsibilities.

Our current rates are among the lowest in the nation and even when you fund the requested rate increase, our expenditures on a per capita basis will remain well below, about half, the national average.

Well, that is my long speech. I should talk about improved jury management, challenges in the superior court, court access for people with disabilities, TTY lines, county-owned courthouses, temporary employees, and public trust and confidence. We are also at work on these challenges and many more, but today, Maine courts need more clerks, a few more judges, a little bit of technology and a lot of help from you and the communities we serve.

Two years ago, this very day, I set forth a vision of where the courts of Maine should be in five years, by 2002. At that time, I predicted that "with your help and a modest investment that is well within our means, the five years leading to 2002 are going to represent the most fruitful period of court improvement in the 180 year history of the State of Maine." I looked at that vision again the other day, and I will provide you with a copy of it so you can check up on me, but we are right on target. The five year picture is filling in. Prompt and affordable justice for all is coming to Maine.

As we approach that rising sun of a new millennium described so well by Governor King in his inaugural address, let us remember the words of Dr. Martin Luther King who, quoting the prophet Amos,

said: "Now is the time to let justice roll down like water and righteousness like a mighty stream."

Thank you.