

MAINE STATE LEGISLATURE

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THE STATE OF THE JUDICIARY ADDRESS
OF
CHIEF JUSTICE DANIEL E. WATHEN
FEBRUARY 15, 2000

President Lawrence, Speaker Rowe, 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. Last year, I left you with an ancient plea, often repeated by Dr. Martin Luther King, Jr.: He asked us to let justice roll down like water and righteousness like a mighty stream. In the last twelve months, I have presided for at least a day in thirteen different District Courts and one Superior Court. As a trial judge, I have decided divorces in Fort Kent, juvenile cases in Portland, child protection cases in Bangor, and domestic violence petitions in every court. I have thirty-four more courts left to go, but my visits have given me a unique opportunity to see, close up, how the stream of justice flows in Maine.

Let me tell you, the courts in Maine have changed. Here are just a few noteworthy examples:

All families involved in the difficult process of divorce are now helped to manage and solve their problems by our new Family Division. That court works collaboratively with others to connect families with community services. For example, the court and the Department of Human Services jointly administer a grant that promotes local parent education programs to help families that are divorcing or separating. That same court has developed a roster of trained and qualified guardians and supervises their performance. Recently, I received a copy of a letter addressed to a judge. In it the father said, "You have placed my family closer to a path we were unable to find ourselves." This is high praise.

Abused and neglected children involved in protective proceedings are no longer left in legal limbo, they now have first call on improved court procedures and resources, and their cases are completed without unnecessary delay. There is a modest cost for this success, but make no mistake, it is a success.

Juveniles and those victimized by juvenile crime now have the improved services provided by the Juvenile Drug Court that began last month. It screens for substance abuse, and, in partnership with the Maine Office of Substance Abuse, provides a much needed court-supervised intensive treatment program.

The changes in Maine's third branch at the turning of the Millennium are far-reaching and profound, but they can be summarized in one sentence—last year Maine courts moved beyond passive adjudication and

began actively intervening to help solve persistent problems in the lives of real people.

Harkening back to the challenge laid down by Dr. King, we may not yet have a mighty stream of justice, but there is a strong new flow of prompt and affordable justice for all in the courts of Maine.

But this is no time to rest. A wise person said: Justice is an active virtue. One must do something about justice.

I would add that all of us must do something about justice, every day and every year, otherwise injustice sneaks back in.

The delivery of justice is never easy. This is a time of unparalleled economic prosperity and that should help, but our prosperity is not shared by all. Average income is up, but the gap between the rich and the poor is widening. I heard Robert Reich, former Labor Secretary, explain this phenomenon by noting that he and Shaquille O'Neal may average six feet in height, but Reich is still less than five feet tall. Average income is up and many Mainers have seen their income rise, but many have seen it remain stagnant or even disappear. Despite our prosperous economy, homeless shelters have never been so busy with Maine families. Our courts now serve an increasing number of self-represented litigants. Take it from me, justice comes hard if you are poor and have to go it alone in court.

Beyond economic realities, there are many social ills that cut across all lines. Domestic violence, which Governor King has aptly labeled public enemy #1, and which Rep. Povich refers to as Maine's own crime, knows no economic boundaries. Neither do drugs and alcohol. You only have to sit in court for a short time to realize that the plagues of the day, family violence and substance abuse, affect us all.

If we all have to do something about justice, what is it that we need to do? Today, I would like to make a few specific suggestions. You will be relieved to know that my remarks are not aimed exclusively at you, the members of this Legislature. There is definitely a role for government, and I will get to that, but from my perspective there is a job here for each one of us.

First, I call upon the Bar of Maine, those capable women and men who have the legal training and the knowledge to help people. Our Bar provides thou-

sands of hours of constitutionally required legal services at rates that are significantly below the market, and in addition, leads the nation in supporting free civil legal services for the poor. The Volunteer Lawyers Project, the IOLTA Fund, the Muskie Civil Legal Services Fund, and the Coffin Fellows Program are just a few of the Bar's innovative programs that support and supplement the excellent work of Maine's premier legal service providers: Pine Tree Legal Assistance, Legal Services for the Elderly, the Cumberland Legal Aid Clinic, and the Maine Equal Justice Project. We can be very proud of the contributions of the Maine legal profession, and I know they are redoubling their efforts to provide free legal service—but it is not enough and never can be. Here is the paradox: At a time when we have no shortage of lawyers, the working poor and even those in the middle income bracket are often effectively frozen out of the market for legal services. Why?

Part of the answer lies in the way legal services are marketed. In many court matters, the menu of legal representation is full service and you cannot order a la carte. In the past, we have set legal and ethical standards on the assumption that a lawyer's relationship to a client was one involving single minded deliberation, research and representation over an extended period of time. This being so, questions about liability and ethical quandaries have discouraged private lawyers from offering limited services representation. By this I mean such occasional, time-limited, and specific help as information, simple case evaluation, or planning for court appearances and other procedural advice. For many in Maine, self-representation is an economic necessity, but they should not be cut off from help they need and could pay for. Legal traditions are designed to serve people, not to needlessly disadvantage them.

Today, I call upon the Court's Advisory Committee on Professional Responsibility, the Maine State Bar Association, and other elements of the Bar and legal service community to propose for the Court's consideration, an amendment to the Code of Professional Responsibility that will make it possible for lawyers to offer limited services representation to the people of Maine. I also urge that they consider ways and means by which properly trained and supervised laypersons may offer basic informational assistance to unrepresented litigants at courthouses. Such measures will go a long way in improving court access for those with limited income.

Second, I have a suggestion for members of the public in general. If you reflect on your own life, I expect you will agree that your family, friends and neighbors were a far more positive force in your own personal development than any court. Unfortunately, for many today that is no longer true. Many children who come to court do not have a stable relationship

with a caring adult, and often there are few community services for the court to call upon. Courts provide formal social control, but family and community provide informal social control. It isn't that we in Maine no longer care about our neighbors, we often just don't know. Life today is hurried and hectic and permits a degree of anonymity unknown in the past. We need citizens who are concerned and willing to become involved.

There are many opportunities for public service and none is more important than jury service. Last year eighteen thousand of our neighbors reported for jury duty in the Superior Court and they provided forty-seven thousand, five hundred days of juror service. For ten dollars a day, they entered an unfamiliar and forbidding environment to sit and wait and wait and wait, and finally to sit in judgment on their fellow citizen. This doesn't sound very attractive, but it is vitally important. Everyone loves the idea of jury service, but not this week. Eighty percent of Americans say that juries are the fairest way to determine guilt or innocence, seventy percent say that trial by jury is THE most important part of the criminal justice system. They are right. Under our system of laws, in the final analysis the jury is in charge. The jury is the linchpin of our democracy. We need to improve jury service and I will talk about that, but we need the continued cooperation of people in Maine in discharging their civic duty. Nothing is more important to the continued existence of our country than a strong and vital jury system.

If courts are to actively reach out and serve people, however, we need more than jurors. We need people who are willing to serve as special advocates for children. Each year we use hundreds of Court-Appointed Special Advocates for children in a program called CASA. These trained volunteers represent the interests of children who are the subject of allegations of child abuse and neglect. Often the CASA volunteer is the only lifeline for children experiencing the disintegration of their family. It is a difficult job, but it is immensely rewarding and you can do it. Up in the balcony is Maureen Dillane. The court system honored her this year by naming her Volunteer of the Year. If I list just a few of her accomplishments, you will see why she was selected.

Maureen, a CASA volunteer since the program started in 1985, has served as guardian ad litem for more than 100 children over the past fifteen years. Currently, she serves as guardian for more than thirty children in a number of different courts. She has also actively worked to boost the CASA program itself by recruiting volunteers, participating in CASA training, and serving as a mentor to other volunteers. Her contribution has benefitted not only CASA and the Judicial Branch, but also the many children she has protected through her strong advocacy. On top of all

of that, she is a foster parent, an adoptive mother, and a full-time student and is always ready to pitch in and go to work for a child.

Maine needs just a few more people like Maureen.

There are a host of human needs within the courts that could be met by volunteers. With support from the LIBRA Foundation, we have established the Maine Volunteers for Justice Project, and we are now ready to provide and support meaningful involvement in the court system by volunteers. We need information aides, clerical assistants, recording assistants, and a host of other people to assist litigants in our fifty court locations. As our brochure says, Opportunity knocks. The Maine justice system needs you. Anyone wishing to become a volunteer for justice, please contact my office and I will send you a brochure.

Third, what is it that those of us in the court system need to do about justice? The list is long, but let me mention a few of the projects we need to work on. Chief Justice Mead and folks in the Superior Court are exploring innovations that will make jury service more hospitable, and more supportive of learning and informed decision-making. A lot can be done in this area and we are about to do it. Written jury instructions, juror note-taking, and juror questions are just a few examples of the possible changes, but first and foremost, we need to eliminate unnecessary waiting.

We in the court system also need to squarely confront the prominent role that substance abuse plays in the conduct that brings many people to court. It is not an exaggeration to say that a high percentage, perhaps as high as 85% of all people involved in crime, family violence and child abuse, have substance abuse problems, primarily with alcohol. Moreover, those reentering society from prison have the same problems that put them there in the first place. Until we deal with substance abuse, courthouses and prisons will remain a revolving door.

With your assistance, Chief Judge Westcott has made a promising start by launching the Juvenile Drug Court Program in the District Court. It is only a start. We have to learn from our experience and expand the availability of drug court services to adult offenders, parents who abuse or neglect their children, and eventually to prisoners reentering society. It is a huge job and a brand new role for courts, but we can do it.

With us today are Justices Cole and Crowley of the Superior Court. I know that they may not look like judges on the cutting edge of innovation, but they have more experience in running drug courts than anyone else in Maine. They are here to tell you that, as suggested by the title of this pamphlet written by addicts in recovery, *Treatment Does Work* and it

works best when judges are willing to give of themselves as these two have done. Criminal behavior can be reduced with close court supervision and a non-adversarial team approach. Drug courts are simply a return to the days when communities were smaller and everyone knew the judge. Successfully implemented on a statewide basis, drug courts will revolutionize Maine's criminal justice system, break the cycle of crime, and protect the public.

Beyond offering new and innovative services, we in the courts must continue to offer traditional services, but with less waiting, less delay, and with a new measure of effectiveness. People want courts to divide their calendar into short segments of time, so that waiting is reduced. Where once we looked to national court performance standards of six months to one year, we must recognize that people now need hearings on contested matters in less than sixty days. It is simple, the public wants a system that is faster and cheaper.

Where once we measured success by the number of protective orders we issued in cases involving domestic violence, the test now is whether the order actually protected someone—did it make them safer—how many draped and empty chairs will be up there in the balcony when the Governor provides his State of the State Address next year. I am anxious to work with the Governor's Task Force on Domestic Violence and that is the standard I will suggest. Let us count the empty chairs each year. It is a tough standard, but courts need to ask the important questions: Do protective orders protect? Do support orders support? That is the new measure of court performance and it should be nothing less.

If courts are to be faster, cheaper, more effective, and still fair, we must join the information revolution. We now have the capacity to electronically collect and organize data concerning court operations.

The next step is to put that information in the hands of the people who need it by posting it on the Web in an interactive format. Only then will we achieve the constitutional promise of prompt and affordable justice.

There are other challenges that the courts face, but it is enough to say today that we in the courts have a big job.

It seems to me that I have left someone out of this discussion. Oh yes, there are some things that you, the members of this Legislature, need to do about justice this year. Let me quickly mention a few.

First, I guarantee you that I don't have an answer for every challenge. Improvements in the provision of court security are needed statewide. Citizens having business in our courthouses must be safe and feel safe

when they are seeking protection and services that only courts can provide. This is especially true for victims of crime and victims of abuse. I have seen the threatening arm of domestic abuse reach into the courtroom and deny justice to those in the witness chair. At our request, the Governor's budget includes modest increases in security which are sorely needed, but these are not a final answer to the issue of public safety. If we were to comply with the demands of some, we would need more than Three Million Dollars extra each year. I have formed an administrative team to carefully review court security, and I have met with the sheriffs and the county commissioners to talk about the role they have traditionally held in providing court security. We will be coming to the Governor and the Legislature in the next session with a reasonable and comprehensive proposal for improvement. We do need your cooperation and assistance, however, to insure safety in all of our courthouses.

Next, many of you have visited a court, but if you have not, I invite you to spend a few hours with us. As the representatives of the people, you need to be personally acquainted with their needs as they appear in court. The Speaker of the House plans to spend part of a day with me when I am working in the District Court and I extend the same invitation to the President of the Senate. I know you are all a little busy in the next few months, but after the session ends, if you will speak to Ed Kelleher, we will be happy to arrange a visit for you. Each court and each community differs, and that is why I am visiting them all, but it is important that you have personal knowledge of the Maine court system as it exists in your district.

Now for jurors. I am really pleased that the Governor has included in his budget funds to reimburse jurors for parking charges whenever that is necessary. It is one thing not to pay jurors a reasonable wage, it is quite another to make them pay for the privilege of serving. On the question of juror compensation, Senator Davis has presented a bill to increase the payment to \$25.00 a day. Both parking and increased compensation deserve your enthusiastic support. When you deduct the jury fee paid by civil litigants, the State of Maine paid only \$2.91 for each of the forty-seven thousand, five hundred days of jury service it required last year. \$2.91 a day. If the jury of our peers is the crown jewel of our democracy, and it is, surely we can do better than that.

The Governor's budget also includes new technology positions for the courts and the funds to connect courts to the State's wide-area network. With your support, we will put the court system on the Web and place the information in the hands of those who need it. Maine will have courts that are faster,

cheaper, and fairer, but only with your help and the advantages offered by technology.

With respect to further streamlining court operations, the Judiciary Committee is currently considering a report from the Court Unification Task Force created by this Legislature at the request of Representative Jabar. That task force, ably chaired by former Chief Justice Vincent L. McKusick and made up of a representative group of outstanding Maine citizens, presented eight recommendations to improve the efficiency and effectiveness of the judicial system for the people of Maine. Time doesn't permit me to review the recommendations, but I endorse them wholeheartedly and thank the members of the Task Force for their valuable work. The prompt adoption of their report will further modernize Maine courts.

Finally, in separate legislation, you will also have an opportunity to make a down payment on the treatment services that will permit us to expand the drug court program to serve others who need it, and an opportunity to fund much needed court building improvements throughout the State.

There is indeed something for the members of this Legislature to do about justice this year.

I will close with this thought. Maine is a small village, we know each other. Working together, our system of justice can lead the nation.

There is a constant need for improvement and each year and each day we must be prepared to do something about justice or we will lose it.

I grew up in Easton and the Prestile Stream runs through it. Starting at the age of five, I fished that stream with my brother and father, Old Joe. When I began, the Prestile was a pristine trout stream of great beauty. When I was twenty, the stream became an open sewer for a much needed local industry. Both my parents and I worked in that industry in order for me to go to college and law school. The trout left and went up the small tributaries. Today, by working together, the folks in Easton have restored justice—they have a vast and modern industry, an improved local economy, a strong community, good schools, and the fish are back. It has taken a lot of work by a lot of people, but my grandchildren, Sam, Emily and Joseph, now fish in what I will always consider to be my stream.

I see a new stream of justice flowing in the courts of Maine today. Some see it, some can't, some see it as only a trickle, but if we all work together and if we each do something about it, our children and all who follow will stand in the middle of a mighty stream.