

MAINE STATE LEGISLATURE

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THE STATE OF THE JUDICIARY ADDRESS
OF
CHIEF JUSTICE DANIEL E. WATHEN
FEBRUARY 6, 2001

Governor King, President Michaud, Speaker Saxl, President Pro Tem Bennett, members of the 120th Legislature, colleagues, and fellow Mainers:

Each year I report to you on the quality of justice in our State. Always, the question is: Can our system of laws do a better job of protecting each of us? In preparing to answer that question today, I reviewed all eight of the addresses I have delivered since becoming Maine's Chief Justice. My father always said that I talked too much and he was right. But this much I can say -- these annual conversations with you have been productive.

We have truly come a long way since 1992. You have to remember that in the early 90's, financially we were the hardest hit court system in the United States. Some things still haven't changed. Our court system remains undersized and we need more people behind the bench and counter to serve you. We began the 90's with a budget for the Third Branch that represented 1.8 percent of the total state budget. Today, it is just 1.7 percent.

Citizens still experience delay and expense in some important types of litigation, and we need to do more to protect people from crimes of violence, particularly within their own home. But setting that aside for the moment, if you consider where we started, the conclusion is unmistakable -- we have improved the quality of justice for the people of Maine and we have done it with very little. How can we extend and continue this decade of progress?

My father's admonition reminds me of an old story about an Agricultural Extension Agent from the University who went out to speak to a group of farmers. It was a cold, snowy night and when he arrived at the Amity Grange Hall, there was only one old farmer sitting there. After waiting awhile, the agent said: "Well, I am here and my speech is all prepared. Do you want me to go ahead or not?" The farmer said: "When I go out to slop the hogs and only one pig comes to the trough, I still feed him." The agent began his speech and spoke nonstop for two hours. When he finally finished, the farmer sat there sort of wall-eyed and numb. The agent asked: "How did you like my speech?" The farmer said: "Well, it was good, but I forgot to mention when only one pig comes, I don't give him both pails."

Well, there is a good crowd here today, but I am not going to give you both pails. I want to review briefly two of our achievements and focus on what I

think is the key to continued progress. Our government is a system of checks and balances, but sometimes we have focused on the checks and forgotten the balances.

In recent years, however, with only a modest investment, we have made real progress in helping real people. But only because we have worked together. Let me offer a couple of examples.

Just four years ago I stood in this very spot and asked you to support the establishment of Maine's version of a Family Court. This Legislature, Governor King, and the Department of Human Services worked along with us and the very next year I reported that thousands of cases and families were receiving time and attention we had been unable to provide before.

Today, after two and one half years of successful operation, your Judiciary Committee has a report that documents our success in providing prompt attention to the needs of all children -- 15,000 conferences and hearings a year in just those divorces involving minor children. We have also greatly expanded the services made available to troubled families, including a statewide parent education program. These added court services put great strain on our clerks' offices, but they have fought to keep up because they care.

A recent survey of 800 parents and 360 attorneys tells the tale. At the conclusion of their court hearing, parents were asked to rate the Case Management Officers on such things as courtesy, efficiency, patience, and fairness. They were also asked whether they understood what happened in court, whether they had an opportunity to explain things, and whether they felt the process was helpful in resolving children's issues. More than ninety-five percent of the parents rated the work of the Case Management Officers as excellent or good and the bulk of those responses fell in the excellent category. The only less than ringing response related to delay.

Attorneys and child support agents were equally positive in their assessment, ninety-five percent plus high approval. This report confirms that the Family Division is a great success and the best thing we have ever done.

David Kennedy and Joan Kidman are two of our eight hard-working and talented Case Management Officers. Join me in thanking them for a job well done. The entire Family Division represents a One Million Dollar investment in Maine families, but only

one-third of that sum comes from the General Fund. The balance, reimbursed from federal child support enforcement funding, reflects our strong national commitment to effectively enforce parental responsibility in lieu of relying on a system of welfare.

Maine's Family Court is a great example of Yankee ingenuity and frugality, and it has the capacity to grow with us. This year, for example, both parents and statistics tell us that we need one more Case Management Officer in order to keep up. The total cost to the State -- \$27,000. It is your call this year, whether that is a wise investment in helping the families in your community. I hope your answer is yes.

A second example of collaboration between the three branches is the Drug Court program mentioned the other night by Governor King. Just two years ago, I asked the Governor and this Legislature to help establish a Juvenile Drug Court. Today, we have fully operational Juvenile Drug Courts serving seven court locations and will soon start a new one in Lewiston. Six Adult Drug Courts will open on March 5, providing intensive treatment and supervision of offenders from both the Superior and District Courts in six counties.

The juvenile project brought us four new District Court Judges and five Drug Court Administrators. The total annual cost to the State is ten percent, about \$75,000, with the remainder being channeled to us by the Department of Corrections from a federal block grant. This enduring partnership includes the Office of Substance Abuse and all the players in the juvenile justice system.

A recent independent review of our Juvenile Drug Courts noted that although the program targets high risk offenders, many of the participants have improved their homelife, become gainfully employed or returned to school. These early results are impressive. Drug Courts are not only punishing criminal behavior, they are going beyond that to break the cycle of crime by correcting the underlying problem -- substance abuse. The Drug Court method is a more difficult and demanding regimen than prison and in one visit, I witnessed unparalleled honesty, sensitivity, and an ethic of caring combined with strict accountability in the form of curfews, house arrest, drug tests, frequent monitoring and, whenever needed, immediate incarceration.

Drug Courts use the stick, but also the carrot, and I knew something had changed when I heard judges referring to juvenile defendants as "my kids." Listen to the words of one judge: "I never woke up in the night and worried about my work until I started working with this group of young people. They started on drugs and alcohol so young, some using regularly

as early as seven or eight years old. (The average age for first use in some locations is nine.) Smoking dope, swallowing illegal prescription drugs, drinking hard liquor, and smoking cigarettes. They hardly know themselves unless they are under the influence of substances. I have a girl who came into Drug Court using pot and illegal anti-depressants. She was living with an unrelated adult male and had been sexually abused by members of her own family. Today, she is living in her own apartment, going to school full time, getting A's and B's. She is working and has been clean for four months. Being a Drug Court Judge is very personal."

I could tell you about another judge who took her kids on a wilderness challenge course. One juvenile, offered the choice between a detention facility and the event, reluctantly agreed to go. With strong encouragement from another juvenile, she scaled a rope thirty feet in the air and found her self-esteem and that made all the difference. Transformational experiences are not isolated incidents in Drug Court, nor are they confined to the offender. One participant, having vandalized a professional office, was ordered to victim-offender mediation. At the conclusion of the session, the victim offered the juvenile a job.

The weekly court sessions are attended by the parents, the probation officers, substance abuse counsellors, lawyers, and the Drug Court Coordinators. We have built a real community to discipline, strengthen, and help our troubled kids and their parents to help themselves.

Don't be confused by labels. Family Courts and Drug Courts are just two applications of a shift in court operations from passive adjudication to active intervention. A similar shift was previously implemented in child protection cases. You heard the Governor announce increased adoption figures the other night. It is true, cases alleging child abuse and neglect are moving, and we are now challenged to make certain that the delivery of family services keeps up with the accelerated pace of litigation.

These problem-solving courts ain't your father's courts. They are new, different. And destined to be popular. People now call for a "Drug Court approach" to deal with all sorts of social problems. Problem-solving courts have great potential, but they require a dramatic increase in time and attention, and a balanced addition of courthouse staff.

I would like to be able to finish today by saying that we have also turned the corner in stopping the violence that destroys our families, haunts our schools, and threatens our state. But no matter what part of the court docket you look at, domestic violence is there in growing numbers. I have talked about violence in every one of my eight speeches, but more than talk is

needed. There is a lot of momentum, and I hope this is the year we act decisively, but it is a big challenge.

Family violence has a long history and attitudes are deeply ingrained. In early America, it was not an assault for a man to whip his wife provided he used a switch no bigger around than his thumb. Hence, the popular expression "the rule of thumb." By the late 1800's, courts in America explicitly rejected this rule, but they did so in the following words: "Courts have advanced from that barbarism until they have reached the position that the husband has no right to chastise his wife under any circumstances." (So far, so good, but the court continues:) "But from motives of public policy -- in order to preserve the sanctity of the domestic circle, courts will not listen to trivial complaints. If no permanent injury has been inflicted, nor malice, cruelty nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forget and forgive."

Those haunting words, "forget and forgive" were written by a court in another state in 1874, but they shaped the 20th century in Maine and find occasional expression even today. Fortunately, the judicial attitude in Maine has changed. Maine judges get it -- family violence is never trivial. Our watchword for the 21st Century should be: "Whether the victim forgives or not, let us never forget."

Even though Maine judges, prosecutors, police, and advocacy groups "get it," we are all part of a system, and that system hasn't quite "got it" yet. What must we do to make courts effective champions in this struggle for personal safety, simple human dignity, and zero tolerance?

A few quick suggestions: A uniform bail policy and effective training and supervision of bail commissioners. Already underway. Additional intensive judicial and staff training. Scheduled for next September. From this point on, however, we need your help.

First, safe and accessible courthouses for all. I have good news, Governor King has included our plan for improved court security in his biennial budget. Entry screening, to keep weapons out of the courthouse, will no longer be a random event in one county, it will be a routine part of court operations around the entire state and the level of security will essentially be doubled. I ask you to invest in victim safety before a tragedy happens rather than after.

Let us also make a modest investment in assessing courthouse compliance with the Americans with Disabilities Act so that we serve all citizens equally. A friend of mine died this year, some of you knew him. Ron Hanson spent his adult life working to

change the way you and I look at people with disabilities. Ron, Representative Schneider, and many others have convinced me: Every courthouse in Maine must be accessible to all.

Second, increased judicial monitoring and enforcement of bail and release conditions. Batterers intervention programs will work only if the judge remains actively involved. We may be able to do that without additional judges, but we have a critical need for a total of twenty-two additional clerical positions. Active intervention and problem-solving requires staff, and again I ask for your support.

Third, I want to repeat my call to take the bargain out of violence. Our criminal justice system is forced to rely on sentence bargaining in crimes of violence and that sends the wrong message to the offender and often insults the victim. Let me make sure you understand what I am saying. There are no silver bullets. The bargain will be taken out of violence only if you provide the additional prosecutors, special investigators and courthouse staff required for vigorous and full enforcement of the law.

Without those additional people, we are kidding ourselves and endangering the victim. Their struggle for safety will be lost if we continue trying to protect them with one hand tied behind our back. Let the violent offender face the full force of the law, no bargains. To do this, we need a carefully balanced and collaborative effort from all three branches of our government.

I could go on and on and give you the second pail, but I am going to stop. Today, I am not asking you to accept my solutions. To this point we have all struggled to do a better job in dealing with domestic violence, but we have done so separately and independently. Parallel and fragmented efforts at reform are doomed to fail. The three branches of Maine's government must work together. One branch wields the sword, one controls the purse, and the third has neither force nor will but merely judgment. There are times when one branch needs to check or negate the other, but here we need balance. Can we bring our strength, our wealth, and our judgment to bear on Public Enemy #1 -- violence? Yes, if we work together.

There is a fresh willingness within state government today to do just that. I am honored to serve as the Chair of the Children's Council that this Legislature created in its last session. Serving with me are Commissioners Albanese, Concannon, Duby, Kelly, and Magnusson together with seven members of this Legislature: Senate President Michaud, Senator Longley, and Senator Small, Representatives O'Brien, O'Brien, Sherman and Watson. (Sounds like a law firm doesn't it.)

Just two weeks ago at our second meeting, we agreed to lay aside the checks and seek the balances in dealing with two important issues for our state -- substance abuse and the delivery of services to families and children. Contrary to popular belief, it is never easy to drop the role of the critic, roll up your sleeves, and work together. It takes honesty, humility, and perseverance, but mostly mutual respect and patience.

When I spoke at Morse High School recently, my implicit message to those who disrupt schools with bomb scares was this: "You have a personal stake in the success of this school. I don't care if you are at the bottom of your high school class, there is a place for you in life and you will find it, but you are building the foundation for your entire life right here." Today, my message is the same. We all have a personal stake in the quality of justice and the protection the law affords to those most vulnerable and innocent. Daily, we are building the foundation for the future of our own families, our communities, our economy and our State. Let us work together and build for all.