

State of the Judiciary
Chief Justice Daniel E. Wathen, Maine Supreme Court
Message to the Legislature
February 24, 1994

Mr. President, Mr. Speaker, Members of the Legislature, and friends: It is an honor for me to stand here today (I hope that I never get over the excitement that I feel each time that I come here) with colleagues from all three courts and to describe for this legislature the state of the judicial branch of Maine's government.

This is a time of financial difficulty for nearly everyone and that is certainly true for those who deal with the court system. In January, we wrote to all suppliers, landlords, witnesses, jurors, mediators, court officers, attorneys, counties, and municipalities informing them that we are unable to pay our bills and asking them to be patient until a supplemental appropriation is enacted. Fortunately, the full impact of that announcement has not yet been felt because the Bureau of the Budget advanced some funds from the fourth quarter.

But make no mistake about it, we are putting a lot of strain on the system. Let me give you just one example. Just last week, a jury gave up their jobs to sit for a week and a half in a homicide trial. After eighteen hours of deliberation over two days, fatigued and stressed, they returned a verdict. I guarantee you, no citizen is ever asked to do a tougher job. We repay that exemplary display of civic responsibility by asking them to wait to be paid a juror's fee of ten dollars a day, plus mileage. In case you are wondering, we aren't paying judges mileage either. I just want to make that clear.

Our fellow citizens have responded well, however, and some have managed a little humor. A fellow who supplies fuel oil to one of our court buildings wrote and said we didn't need to worry about his patience because we hadn't paid him since last fall and he had stuck with us anyway. He said he appreciated our letter and asked if we would show it to one particular executive agency because he said they didn't even know how to spell the word "patience." (I won't mention the name of the agency, but I think its initials are DEP or something like that).

Our situation reminds me of the story about a farmer up in Aroostook who won the Maine Lottery for two million dollars. When the television crews rushed out to interview him in his fields, they asked what he was going to do with his winnings. He said: "I am going to keep right on farming until I run out of money." Well, we don't like to leave jurors and others unpaid, but we have little choice, we have to keep right on running the courts.

When I spoke on this same occasion last year, I attempted to describe the delay and the expense that confronts too many people when they turn to the Maine courts for protection. I contrasted our current situation with the vision set forth in our Constitution where "right and justice are administered freely and without denial, promptly and without delay."

I explained some of the fundamental causes of delay and suggested to you that by any comparative standard, the Maine court system, although highly efficient and productive, is seriously understaffed at all levels. For example, it has the fewest number of trial judges per

capita in the country. We handle roughly 300,000 cases a year and this small group that came in here today represents nearly one-third of the entire judiciary of the State of Maine.

When compared with either the national average or our New England neighbors, even in the best of times, courts in Maine are underfunded by at least one-third. We get a lot of court services for our money in Maine, and by any standard, the system produces a high level of revenues, \$22.7 million last year. Even in providing counsel to indigent people involved in child protection and criminal cases, we have one of the most cost-effective systems in the country, spending about half of what our neighboring states spend, and yet year after year, we underfund this account. I repeat all of these negatives only to assure you that the fundamental facts I reported to you last year have neither changed nor improved.

We do also have some structural problems, but I am happy to say that L. D. 1354 is working its way through the Judiciary Committee under the watchful eyes of Senator Conley and Representative Cote and it takes care of all the organizational problems that I am aware of and I urge you to support it.

On top of these chronic funding problems, we have the additional underfunding of at least \$5 million in the current year, and at least that much, if not more in the next year. Our judges are among the very few, if not the only state employees, who have been without any wage adjustment since July of 1991. I cannot explain that.

Assuming, however, that the underfunding for the biennium is fully met, and I know that you are working on this and I commend you for your hard work on this issue, but I want you to remember that assuming that we get by this current hurdle, we are only talking about surviving and keeping the courthouse door from slamming shut. We will still be struggling to provide a first-class court system with a third-class budget. Judge Learned Hand, one of the most eminent jurists of this century, warned, "There is only one thing that a democracy cannot do and that is to ration justice." Two years ago, the rioters in Los Angeles echoed the same warning when they chanted, "No justice, no peace."

We know all too well that we are rationing justice today in Maine. A family who loses a loved one to a criminal act should not have to wait eighteen months after trial for a final appeal to be scheduled because we were forced to cut back on court reporters. We must stop budgeting at a level that produces a crisis every six months and undermines any opportunity to better serve our citizens. Justice is crucial to the people of Maine and history and events in the rest of the world remind us that it hangs precariously by a very slender thread.

Despite the difficulties of the last year, we haven't thrown up our hands and accepted a deterioration in service. That isn't the Maine way. We've kept right on working. Among the first things our ancestors did when they settled Maine was to build a courthouse. At a gut level, we share their belief that courts are vital and it is interesting that even today there is a powerful reaction when anyone suggests that a courthouse anywhere should be closed.

We have to remember, however, that the building alone means nothing. It is the access to the services that are housed in that building that must be kept open to your neighbors and mine,

whether they are rich or poor. The rights declared in these legislative halls will be of little value if Maine people are without the means to effectively enforce them.

Today, I have placed on your desks the Annual Report of the Judicial Branch for fiscal 1993. I commend the full report to your attention and I hope that it will really assist you in judging our performance. I would like to give you one example of the time and the study we have devoted in the last year to reforming the court system and responding more effectively to people who need help and protection.

There are no problems in Maine more serious and faster growing than family violence and child abuse. Unfortunately, court procedures failed to keep pace. For example, ten or eleven years ago, with only 1500 petitions filed annually under the newly enacted Protection From Abuse Act, district courts handled those cases during breaks in the regular schedule. This was just a little extra duty. Uniform procedures were never established and each court handled the cases as best they could.

Last year, we had 5,500 petitions for protection from abuse, more than 200 cases per judge, and the numbers continue to rise. Domestic cases of all types, from divorce, to child support, to paternity, to the termination of parental rights (the most serious case), now total 15,000 cases per year -- such cases constitute the fastest growing part of the work of the District Court and generate the greatest amount of paperwork.

Petitions for protection from abuse are particularly time consuming and difficult to handle. They usually involve multiple petitions, multiple hearings, and a ton of essential paperwork for the clerk's office. No filing fee is charged, no revenue is generated. The spouse or child is usually unrepresented, terrified, and sometimes urgently in need of help after being sent from the police, to DHS, to a shelter, and then to the court. Judges and clerks drop their scheduled cases and delay other litigants in order to fill out the paperwork, process the request, and issue an order that hopefully will ensure that person's safety.

This is not an easy job and the absence of the uniform system made the job harder. Last year, Chief Judge Calkins and a team made up of shelter advocates, clerks, security officers, and judges redesigned the procedure and produced a detailed, step-by-step manual for judges and clerks, forms, courtroom protocol, and a plain-English pamphlet that is given to the people who are requesting help.

Everyone knows that a manual alone is not enough, we have to deal with attitudes. Through a series of regional meetings, every person who works in the courts was instructed on the new procedures and acquainted with the dynamics of family violence. Why do people act the way they do? Why is it easy for an outside observer to misunderstand?

Last fall, judges joined with DHS caseworkers and others for a two-day conference on family violence and child abuse that could only be described as unprecedented. The conference included national and local experts and it ended with two young women who described the legal process they had endured in order to be rescued from homes filled with physical and sexual abuse.

No one at that conference will ever question the need for comprehending the full tragedy of family violence and the importance of the work you have entrusted to judges, court staff, and

others. I am bold enough to predict that if you ask any knowledgeable observer, they will tell you that the service the courts provide to battered wives and abused children today has improved, and that reasonable prospects exist for further improvement.

In my own judgment, this is the best piece of work we have ever done in matching court procedure to the needs of the people we serve and it suggests what is possible in other areas. Years ago, a good judge was justifiably disciplined for succumbing to the exasperation and asking a battered wife seeking a protective order, "What do you expect me to do, you married the guy?" Today, I think you would hear a judge ask, "What else is there I can do in this order to make you safer?"

We have come a long way, and we are all indebted to the team that worked on the different aspects of this project. Similar projects are underway throughout the court system; a project to coordinate family court matters in three separate courts in York County, a single judge assignment project in Superior Court in Cumberland and Somerset Counties, a committee to plan and implement the increased use of alternative dispute resolution, a gender bias task force, a committee to explore a nonadversarial forum to more effectively address the needs of children at risk, and a team to assist us in reaching out to fully include people with disabilities as employees, jurors, witnesses, and litigants.

We have conducted focus groups with all segments of the public. We encourage peer visitation between judges. This fall we invited about thirty of the members of this Legislature to spend a day on the bench with a local judge. Many of you were able to accept our invitation. Representative Saxl sat through an entire jury trial with Justice Kravchuk, Senator Harriman attended a sentencing with Justice Saufley, Representative Paradis sat through a morning of petitions for protection from abuse with Judge Studstrup, and some of you visited your former colleague Justice Marsano. (Just in case you are wondering, he is working out fine, ever since he spent that night in the bathroom.)

The media suspected that we were trying to acquaint the legislators with the reality of a modern court and that's absolutely true. But such visits also serve to remind the judges in a very meaningful way that they are accountable to and supported by the people and you who represent them. When your session ends, we will continue that program, and we hope to offer everyone an opportunity to visit at some time in the future.

These are a few of our projects, and I could speak at length on all of them, but I will rely on the report that I have given you. The common element in all that we do is to open the courthouse door a little wider. We particularly appreciate the efforts of the Maine Bar Foundation, the Volunteer Lawyers Project, Pine Tree legal Assistance, legal Services for the Elderly, the Rural Access Project, and Senator Muskie and his Commission for the Study of the legal Needs of Maine's Poor. These folks bring legal services to Maine's poor, but they need help. Here in Maine we are fortunate that we still have the most important ingredient for improving and reforming the court system -- judges and staff who care and who see faces across the bench rather than numbers. But there are two critical areas where we need to invest: technology and training.

Judges and staff have to be freed from the drudgery of multiple entry paperwork and given the time to serve the people who need help and to plan for improvements. Technological competence has escaped us so far, primarily because we have never been given a chance. I made this same plea last year and you responded last July by appropriating a capital budget of \$500,000 as a first step. This important appropriation came on the heels of three very slim years. In reliance on that budget, we realigned our staff without adding any new positions and began a planning process for automating the courts.

Now, eight months later, our allotment is gone and we are confronted with the prospect of using \$360,000 of those funds to make up for the underfunding in indigent legal services. We have to do this, but I think we should recognize that we have done it for the last three years and more of the same is proposed for FY '95.

If we are ever to significantly improve the service we offer the people you represent, we need technology. To obtain it, we need a modest annual capital account to supplement grants and other funds. When we were asked by this legislature last spring to reapportion the House, Senate and congressional districts, and required to complete the job within sixty days, you loaned us a computer. Maybe you wish you hadn't, but you did, and with it we got the job done on time. Without it, we never would have done it. We need that same capacity to better serve the people of Maine in their courts.

As just one glaring example of our technological deficit, we are the only state court system in the U.S. that does not have automated legal research in at least one form. Remember the \$10 juror fee I mentioned at the beginning? With existing technology and a staff, we could design a jury system for our high volume courts that would automatically summon more jurors to "one day or one trial" and actually reduce jury costs while producing happier jurors.

We know how to improve, but the court system is a complex \$30 million business, stretched thin over 50 branch locations scattered throughout Maine and we are expected to run it like a Mom and Pop store. Even though Mom and Pop are still with us, we need to invest in an improved future.

Next, training. The sensitive, considerate and knowledgeable judges and court staff that Maine people deserve and expect are made, they are not born. In a world of instant communication and analysis, courts deal with complex problems and difficult relationships in the full glare of publicity. Authority alone is no longer enough. If we seek acceptance from the litigants and the public, the authority must be seen to be competently and fairly exercised.

Judges require orientation, training, and continuing judicial education. More than one-half of our judges have never attended any training course at the National Judicial College. It is ironic that I serve on the Board of Directors of that institution and yet we have been unable to send a judge there because our budget has made no provisions for education for several years. We must start working on that deficit in the very near future.

I don't want to leave you with the impression that we have ignored judicial education completely, because on the homefront we have made some progress. We have an Education Committee made up of judges who work with our training officer and they have mastered the art

of leveraging grants and scholarships to produce a superb program of in-state instruction. The family violence conference that I mentioned is but one example. Nonetheless, we are 49th among the states in the resources we devote to judicial education and training. We must provide a quality educational opportunity for each person who assumes office as a judge in Maine. Similarly, we must provide the training that our court staff requires and we are actively developing a program in that regard.

Twenty-five years ago, judges assumed office in their late 50's, served twelve to fifteen years and retired at 70. I have now been a judge for nearly sixteen years, I know I don't look it but I am 54 years old. It is conceivable that I could serve 16 more years. (That is not a threat, but just a possibility.) Judges today are appointed at even younger ages and will serve for longer periods of time.

Judges and court staff are like everyone else, they need graining and technological support, and occasionally they need a pat on the back and a little encouragement.

The judiciary is a small but very critical cog in the balancing mechanism within Maine's government. Consider our relations with the criminal justice system alone. It is estimated that Maine spent 210 million dollars on criminal justice in 1990. About 45 percent of that sum was spent on police protection, 5 percent for prosecution expenses, less than 2 percent for indigent legal services, 35 percent for corrections, and less than 8 percent for courts.

I couldn't guess how many millions we impact on the civil side. Just this week, the Superior Court in Augusta is dealing with school funding, AMHI, and fresh start litigation under the workers' compensation system. In the Law Court alone, more than one-half of our civil cases, or one-third of our total filings, involve a public agency such as a municipality, DHS, DEP or PUC. Beyond all of that, we have workers' compensation cases and the responsibility for fairly resolving disputes between plain old people and businesses, some rich and some poor. With chronically reduced resources, it is difficult to meet the needs of all, but we must.

I have focused exclusively on the responsibilities of the courts under the law and the resources that are needed. Rejecting the wisdom of the day, I have not given you a formula for downsizing the court system and there is a good reason. With the exception of the Constitution, we enforce only those rights that this Legislature creates. We take an oath to uphold all of the law, for all of the people, that is our job.

If, for example, as a state we can no longer afford our present method of protecting victims of family violence, then this Legislature is free to downsize by repealing the right and withdrawing the responsibility from the courts. That is your prerogative. But until that happens, we in the judiciary cannot be asked to accomplish the same end indirectly by ignoring our responsibility and degrading court services. As long as the responsibility exists, like the farmer who won the lottery, we must continue discharging our responsibility until we run out of money.

My request is simple, let the resources match the responsibility. Trial judges make difficult decisions involving potentially serious consequences hundreds of times every week. You have selected these women and men to serve as judges, not because they are perfect, but because they are fair, considerate and knowledgeable. They have a difficult job.

Several years ago during a recess in a trial, a Superior Court judge held a routine hearing to consider a requested change in the treatment plan of a person committed to a mental institution. The hospital staff asked that the patient be allowed four hours of unsupervised time while at the hospital and weekend visits at home with his family. Most of the attention at the hearing focused on the weekend visits and the possibility that the patient might not take his medication. After carefully listening to the only medical testimony that was offered, the judge approved the change with certain conditions. Usually things turn out okay, but human behavior remains a mystery, and risk assessment is not an exact science. A year or so later and without warning, the patient killed an innocent and unsuspecting young person, not during an unmedicated weekend visit, but rather during the four hours of unsupervised time. No one has all of the answers, I certainly don't, but I do know that the judge continues to wonder about it and that he feels his responsibility keenly, because I was that judge.

It is my task today to convince you that we owe it to everyone and particularly the innocent who deserve protection to provide the resources that the job fairly requires. I only hope that I have given you something to think about.

Let me close by speaking directly to the Representative from Easton, my hometown, and say, "When you go home today Dick, don't forget to take my mother with you." Thank you very much. Thank you ladies and gentlemen.