

State of the Judiciary Address
Chief Justice Daniel E. Wathen, Maine Supreme Court
Message to the Maine Legislature
February 13, 1996, in Augusta, Maine

Mr. President, Mr. Speaker, members of the Legislature, and friends:

I am honored to report to this Legislature once again to the 117th Legislature and the people of Maine. This is my fourth State of the Judiciary address and I believe I could sum up the situation of the court in just four words – "still stressed but improving." If I stopped right here, I am sure I would be met with a tremendous round of applause and you would happily go back to your legislative duties. I am sort of reminded of the fellow who was being hung down in Georgia and the sheriff said to him on the gallows, you are entitled to a few final words. He thought about it and he said, "I guess I don't want to say anything." A voice rang out in the crowd and said, "Could I use your time, I am running for Congress." The fellow said, "I guess I don't object as long as you wait until after I am hung before you speak." Well, I don't want anybody using my time today.

I do have a few more thoughts however, and I want you to know that I have been influenced by two questions. A couple of weeks ago I came through the tunnel from the state office building and met a group of legislators. One of them greeted me and said, "When are you coming over to give us the dickens again?" Well, Representative Kneeland and I know that from Easton that being given the dickens is not an easy thing. I was impressed. I can't remember who it was that spoke to me, I know Representative Jackson was there and maybe someday he will tell me who it was, but I assured him that, if invited, I would have something good to say.

The second question was asked a year ago at a press conference right after my last address. One of the reporters said, "You made a big pitch for computers and the need to modernize the courts. You probably are not going to get it, so what are you going to say next year when you are back asking for the same thing?" Well, I have worded all year about that question. So here I am.

Let me begin. Compared to other states, the courts in Maine are still underfunded, but performing at a very high level. I have to thank the women and men who work in the judicial system. They work competently and diligently in the face of increasing demands and decreasing resources. They keep us afloat.

Today I want to report on three major challenges, and tell you about some of our plans for improvement. There are two related social problems straining our limited resources, domestic violence and the abuse and neglect of children. I won't repeat all of the statistics, I know you have read them, but they are really staggering.

National figures reflect over half of all couples experienced at least one violent incident. Although violence is inflicted on both sexes, it falls most heavily on women, and battering is the single major cause of injury to women. One third of all women using hospital emergency rooms are there because of battering.

Well, how are things in Maine? In one word – worse. Nationally 20% of all homicides arise out of domestic situations, here in Maine the average has approached 60% in each of the recent years. Our District Court handles 5500 petitions for protection from abuse a year and the Annual

Report of the courts that we distributed to you last week reflects the fact that domestic cases of all types are the fastest growing part of the civil docket in the District Court.

Let's not use the term domestic violence, it is too polite. We must admit that we are a violent society and that in Maine people beat and kill those they claim to love and they do it at an alarming rate. As a state, we need to address that problem comprehensively.

The news from the courts on child abuse and neglect is equally grim. An official from OHS wrote me recently and asked for more judge time in one of our rural courts. In that particular court 2 1/2 of the 12 available days per month are scheduled exclusively for child protection cases. That sounds like a lot, but they had 12 cases scheduled for the next half day and a new petition could not be scheduled for a minimum of 2 1/2 to 3 months. A final order in a contested matter might take a year. In the meantime, the child remains in foster care and legal limbo. If we double the amount of judge time, we would barely make a dent in the DHS backlog. Since I have written those remarks, I am meeting with DHS this afternoon to see if we can't make a dent in that backlog.

A second cause of strain on the court system is drug and alcohol abuse. A year ago I attended a conference that included teams of students from twenty-five teens from high schools in Maine, some of you folks were there, and the teams reported on the problems that interfered most with their educational environment. Leading every list was drug and alcohol abuse, petty theft, and violence. It sounds like our society.

That situation has serious implications for our criminal justice system. Today's violent juvenile with a substance abuse problem is too often tomorrow's violent felon, sex offender, mental patient, or batterer. Serious criminal cases in the Superior Court increase every year and the trend is bound to continue until we keep children in school and remove drugs and alcohol from school.

With scarce court resources increasingly devoted to the pressing problems of domestic violence, child protection, and crime, there isn't much time left for the 35 to 40 thousand civil disputes filed each year by Maine businesses and injured Maine people. The little time that is left is diminished by the fact that more and more people in Maine are forced to represent themselves in court.

Since the 12th Century in England, our legal system has operated on the premise that most people will be represented by trained lawyers. Human affairs are complicated, court procedures are complex, and although I probably shouldn't say it before this audience, the laws enacted by Congress and the Legislature remain a mystery to many. I know you won't believe this, but some people even claim to have difficulty reading our law court opinions. Fortunately, most of these folks are lawyers. But in any event, the law is a mystery.

Until today if you were poor and needed legal help in Maine, there were four sources of help: the Volunteers Lawyers Project, Cumberland Legal Aid Clinic, Pine Tree Legal Services, and Legal Services for the Elderly. Unfortunately, these programs have been set back in just the last few months, and the very existence of some of them is threatened by changes in the federal budget.

Pine Tree Legal's staff has dropped from 25 lawyers to fewer than 7—a ratio now of one attorney for every 34,000 clients in need. Legal Services for the Elderly has one attorney for every 16,000 clients. These two important agencies deserve your support and need some "safety valve" assistance from you. I use the term "safety valve" because timely legal help for the poor often

avoids a home foreclosure, an unlawful eviction from an apartment or a nursing home, a new welfare case, or the escalation of a domestic case into costly criminal proceedings.

Maine lawyers do more than their fair share, and they have responded to our cry for help in this time of crisis. Some of you received an annual report of the Maine Bar foundation and it says it all. I refer you to that report. But they cannot do it alone.

I raise the plight of those who cannot afford legal representation, first, because the protection of the law is too often an illusion for those who are without counsel. But I also speak out for the courts. When people are without a lawyer they are forced to come to the courthouse and ask for help at the window. For many people this is one of their few contacts with their government and it is not a positive experience. Clerks do the best they can but they have neither the time nor the training to give legal advice. It is usually impossible for the judge to help the unrepresented litigant and at the same time maintain the appearance and the reality of impartiality and fairness. We must find another way to help those without legal representation.

These are just a few of the pressures bearing down on the court system. They could all be remedied by more staff, more judges, and more resources. Let us hope that in the near future this Legislature can consider major improvements in funding Maine's justice system, but in the meantime, how are we going to continue to provide justice today?

Technology is a big part of the answer and you may recall my impassioned plea last year. One minor breakthrough will occur this week when we distribute 11 new laptop computers to trial judges, bringing our total number to 17. These popular little boxes save a lot of paper and do a lot of things. One example, they provide instant electronic access to every law book in the United States, probably five or six times more than is downstairs in the Law Library. Seventeen of our forty-three traveling trial judges will now be able to perform sophisticated legal research anywhere in Maine automatically, instantly, and with less expense.

This is just a hint of the promise that technology offers. But today I can also report progress on the more important task of computerizing all clerical functions and scheduling in Maine's courts. Just two weeks ago, we opened bids on the software package for a modern court management system, and we have much of the money to pay for it in the bank.

Our total technology plan is priced at \$2.1 million. This past summer with the help of Gov. King, law enforcement, the corrections department, DHS, and family violence projects, we obtained federal grants and cleaned out our cupboards - raising a total of \$1.4 million. Just another \$300,000 to \$400,000 will give us a fully functional system and we have a rare opportunity to hit that goal this year by allocating that sum from the technology funds you made available through the Productivity Task Force.

The courthouses are wired, we are connected by a network, and the computer hardware is permanently installed at the Maine Judicial Center here in Augusta. I am pleased to announce that we will have pilot courts on line as early as June, and all courts will be fully automated within 18 months. You will all be pleased to know I will quit talking about it then.

I mentioned the Judicial Center where I am housed along with the court computers at 65 Stone Street. It is a wonderful facility. It was given to the State of Maine by Elsie P. Viles, and last session you helped clear the final hurdle to our moving in. We still have to finish the parking lot and signs. We will have you over in the spring, but the Center has already become the focal point

for court training, conferences, and technology. For the first time in our state's history, the judicial branch of government has a headquarters, and we thank Mrs. Viles for her singular act of generosity and you for your help. She is here today with us.

With your help, the courts of Maine are about to discard the quill pen, unhook the rotary phone, we really do have rotary phones, and plug in the computer. Technology is not a panacea, but when you put it in the hands of our people, everyone in Maine will benefit.

What else can we do to meet expanding caseloads and serve the growing number of people who are forced to represent themselves? If you have ever been involved in litigation, you know everyone needs a friend in court. For years we have benefitted from the services of volunteers and those who work for nominal pay.

Think of the thousands, and I do mean thousands, of jurors, mediators, neutrals, consultants, and lay volunteers who help us out every day. For example, Maine's first lady, Mary Herman, now serves on a committee studying ways to improve the courts' ability to protect children. Volunteer effort has too often gone largely unrecognized, and we have not been very energetic in expanding the opportunities for one neighbor to help another. That is going to change today.

I am pleased to announce what I deem a significant initiative in citizen involvement and courthouse assistance. This initiative bears the name of "The Dirigo Project: Leadership for Justice" and will be guided by a committee of twelve representative civic leaders. As its chair, we have been fortunate in enlisting the services of a man of recognized competence and dedication to Maine, Duane "Buzz" Fitzgerald, President and CEO of Bath Iron Works. He is here somewhere up there as well.

This Committee will review the spectrum of needs of the courts and the needs of citizens for justice to see how each can best serve the other. They will explore new opportunities for citizen involvement in providing court services. This mission is not lightly undertaken. It will involve careful study, thoughtful deliberation, public meetings, the creation of practical programs of training and communication, and it will receive professional staff support.

Let me anticipate your anxiety and assure you that we are not asking for money, this will involve no expense to the state. Because we occupy the unenviable position of being the state judicial system that has been hit the hardest, we received a \$100,000 grant from the Culpeper Foundation through the Governance Institute to see if we could once again demonstrate Yankee ingenuity and do what we do best - lead the nation in tough times. I take no credit for this ambitious project, it is the brainchild of a colleague from the federal bench-our friend, my mentor, and one of Maine's treasures, Senior Circuit Judge Frank M. Coffin. He also is here today.

Judge Coffin, Buzzy Fitzgerald, and I believe, and you know, that courts and justice are just too important to leave to lawyers, litigants and judges. This Committee will open up opportunities for citizen involvement and foster a number of innovative court house assistance projects. What potential does this effort have? Could one volunteer, or a hundred, make a real difference? Let me offer Exhibit A.

Seated in the gallery today is Dana Mayo. He lives down in York County in Lyman and in his spare time he volunteers as a court-appointed special advocate. He currently represents 19 children involved in 17 child protection proceedings. Since 1991, he has handled 31 cases involving 42 children. This is a man who provides justice - one child at a time - and he asks for

nothing in return. Dana, you are a remarkable example of the best that Maine has to offer and I applaud you. Raise your hand, Dana, so we know who you are.

More important for us, Dana is not alone. Since the Court Appointed Special Advocates program began in 1985, there have been 650 volunteers. Currently, 233 active volunteers are helping 903 children involved in 711 child protection cases. On average, a volunteer devotes anywhere from 6 to 20 hours per month on each case. They investigate, they advocate, they monitor, they report, unfortunately they sit in court and wait, and most importantly they protect young children. I don't exaggerate when I say that CASA volunteers save the State of Maine \$800,000 per year in guardian's fees alone. That is just the tip of the iceberg. The real value of their contributions cannot be estimated. We all are indebted to Mary Gay Kennedy and Herb Pierce who staff CASA and to Dana Mayo and countless others like him. May we all have friends like these in court.

I know that you want me to go on at length and talk about the long list of problems that we face, but I'm not going to be accused of giving you the dickens today. Besides, I want to go out and find that reporter and remind her that I didn't ask for the same thing again. We are making progress in Maine. We have a long way to go. But if we can continue to work together and involve Maine's people, we can modernize and streamline Maine's court system so that it protects us all.

Improving court services has never been easy. In part, the need for better courts caused us to separate from Massachusetts in 1820. Court reform is not a 50-yard dash, it is a marathon. But as we face the next century, and the new millennium, it is imperative that we strengthen Maine's courts and renew the promise set forth in the Maine Constitution of prompt and affordable justice for all – whether rich, poor, or in between – justice for all Maine citizens.

Let me close with the words that have rung out for the last 176 years at the end of every court day—GOD SAVE THIS HONORABLE COURT AND GOD SAVE THIS GREAT STATE OF MAINE. Thank you.