

State of the Judiciary Address  
Chief Justice Daniel E. Wathen, Maine Supreme Court  
Message to the Maine Legislature  
February 11, 1997, in Augusta, Maine

Mr. President, Madam Speaker, Governor King, members of Maine's 118th Legislature, colleagues and fellow citizens of Maine.

I am particularly honored that Governor King is here today. I think this is a first in Maine history.

Twenty years ago, our then Governor, Jim Longley, and this Legislature launched my career as a judge. Today, his youngest child, Sen. Susan Longley, extends your invitation to address this joint convention. I remember telling him some people may think I am too young. He said, "What an opportunity you have to serve." He was right. The years have been good. The succeeding three Governors have been good to me. Today marks the end of my fifth year as Chief Justice. I appreciate the opportunity to report on the cause of justice.

Let me begin with a story. One of our Maine humorists tells a story about Blinkie Pinkham. He is not related to Reggie or Bill. I guarantee you that. Down on the coast and he is regaling one of the tourists down on the docks with a story about how tough our Maine winters are. Finally, the fellow can't take it any longer and he says, "Look, I am from Arkansas and we have something out there that is far worse than a Maine winter. It is a tornado. We call them twisters." Blinkie said, "We have something worse than that. We call it a Maine divorce." He said, "There is no comparison between a divorce and a twister." He said, "Either way your trailer is gone fast." Like all good Maine humor, it is funny, but there is a hard edge. There is a little truth in that and I would like to come back to that at a later point.

I could speak at length today about the accomplishments of the last five years. I could mention things like the restoration of Maine's meager roster of trial judges; the addition of two new judges to help protect our children; a degree of budget stability; a greatly enhanced program of judicial education and staff training; improved and simplified court procedures; funding to launch automation in Maine's courts; the expansion of alternative dispute resolution; the generous gift of a judicial center in Augusta; much needed courthouse construction; customer oriented management; and a new and improved relationship with the rest of state government and Maine communities.

Leon Gorman, of L.L. Bean, said something that caught my attention. He said, "If you can't measure it, you can't improve it." Maine courts have just entered the age of measurement. We have made real progress, but we can't be complacent. We have a long, long way to go.

I could also speak at length today about the challenges we face. Once again, as I did last year, I could attempt to portray the stark reality of the family violence and child abuse that continues to grow as a part of our courts' daily fare. But people now understand that reality and appropriately the focus is shifting from "what is family violence?" to "what can we do about it?" It happens in everyone's town and it is everyone's problem.

If you doubt the pervasive threat posed by violence and its relevance to legislative issues, you don't need a speech from me. Ask any teacher about the impact of family violence on education.

Ask any police chief about domestic calls. Ask your local hospital administrator about family violence as an avoidable burden on health care. And most sobering to me, ask any high school student about the verbal violence that permeates our public schools. This remains a challenge that will command our best efforts for many years.

Today, I would like to talk about a letter received recently from a woman in Kezar Falls. It was addressed simply to the Justice Department. She was worried about her son's divorce case and she asked this question. "Please, how can a poor person get justice in this state?" You receive similar letters, and you struggle to answer just like I do. It is difficult because her question is profound.

If a poor person is unable to get justice in Maine, what does that say about us? A friend of mine once said that "A state in which justice for the individual takes the back seat is a state in which the front seat is not worth sharing." We have to stop and ask, do all of our neighbors have an equal voice in their own legal affairs? Are we committed to justice for all?

Unfortunately, until today the answer has been unclear. The innocent and most vulnerable continue to be disadvantaged in claiming the full measure of protection afforded by the laws you enact. Laws have meaning only when they are enforced, and when the courthouse door is closed to anyone, we are all diminished. Most of us could agree on the type of court system we want, but we have never talked about it. We know we don't have the money to do everything at once and so we stumble along from year to year. But where are we going? We are not sure, so any road seems like it might get us there.

This morning I want to talk about the future of the courts. Can we agree where we would like our courts to be in the near future, and the right road will become clearer. Let me repeat, the near future. Not a far off utopia. I want to talk about improvements that are realistically achievable by 2002.

Five years from today, someone, maybe me, will be standing in this same spot describing the state of the judiciary at the dawn of a new century and a new millennium. This is what I think Maine folks should expect to hear about the third branch of their government in February of 2002. Remember, I am not describing where we are, but where we should be five years from now.

The resources devoted to the courts of Maine have improved but continue to be modest. Court productivity and workload remain high. Total new case filings this year will exceed 350,000. More than half of those will be automatically processed at the Violations Bureau.

Although the total number of trial judges has not increased significantly, the Family Division is now four years old and consists of eight District Court judges assigned to the Division on a rotating basis, eight Family Case Management Officers, sixteen support staff, and a small professional staff. The Division now handles all domestic matters, including divorce, all juvenile matters, and most child protection proceedings.

Thanks to the jump start given us six years ago, the court system completed the implementation of its five-year technology plan in the year 2,000 and is now equipped with a fully integrated court management system that performs all case processing functions including jury management for a one-day, one-trial system. Court computers are linked to all state and federal databases. Police check stalkers, a criminal record or a protective order as easily as the public

uses a credit card and a PC to pay a traffic fine. Technological innovations added in the last two years include imaging, audio-visual teleconferencing, a real-time transcription. A paperless court system is proposed for 2004.

The trial divisions of the Superior and District Court remain current and practice active case management and have just completed delay reduction programs. All civil cases are now scheduled for trial within six months of the completion of judicially supervised discovery and all criminal cases are scheduled for trial within 90 days of arrest. Sentencing practices include opportunities for restorative justice, and community panels design and supervise sanctions for juvenile offenders.

On the civil side, court connected ADR offers the best private mediators in the state and is now readily available at every court location. Emergency court hearings are available within the Family Division on a 24-hour basis. Excellent judicial appointees continue to be selected from every element of the bar and reflect the diversity of Maine's people. Judicial orientation is rigorous and annual training and education is routine. All judges have had laptop computers since 1996 and they use them routinely.

The Supreme Court remains current in its caseload and under its able Chief Justice and receives all briefs and records in electronic form, and utilizes teleconferencing selectively for oral argument. All court opinions, rules, and forms are now available on the website established in 1996. Courthouse assistance projects exist at each court location, or are accessible by teleconference.

Legal service providers are available to assist those in serious civil proceedings who cannot afford a lawyer. Video-taped instructions, educational programs, a self-service center, and a panel of lawyers offering reduced-fee legal services are available at each of Maine's 50 courts.

How does that sound? Is it a dream? No. It is within our grasp. The foundation has been laid, and I have described little beyond the capacity of equipment that is bought and paid for, or beyond the scope of plans that have already been thought through and widely approved. But there are three missing elements, three crucial steps that we must take during this legislative session.

First in importance is the Family Division I referred to. It does not exist and I urge you to support Governor King's proposal to create that Family Division, this year, within the District Court. Courts must become family friendly. We must preserve family relationships and prevent the harm and expense that currently results from inattention and delay.

No one sets out to be divorced, but it is an unmistakable reality in half of all marriages. Divorce proceedings are emotionally charged, procedurally complex, and you will pay for any mistake for a lifetime. Our court processes 7,000 divorce cases every year, more than three times the number of L.D.'s you will consider in this legislative session, plus thousands of motions for support, visitation, and custody. Two-thirds of these difficult cases involve at least one party who is unrepresented and in 30 or 40 percent of those cases there is no lawyer on either side.

When an ordinary person seeks a divorce today, it is just as though they were told that somewhere inside the darkened courthouse there is a long, narrow, and winding set of stairs. It is up to them to find the stairs and climb them on their own. I don't exaggerate when I say that the Family Division will be like showing that same person to a well-lit escalator. We need to lift families up and help them resolve their differences in a fair and timely manner.

The Family Division will demand parental responsibility, but it will offer education, early and continuous case supervision, less adversarial process, improved court access for everyone, and maximum federal reimbursement for the operating costs. It is workable, affordable, and sensible. It is jointly sponsored by legislative leadership, Governor King, and the Judiciary. It was designed and discussed by family advocacy groups, lawyers, mental health professionals and most importantly just plain folks. Your Speaker tells me that she has discussed it with friends in her living room and when she opened this legislative session, she graciously encouraged its development.

Madam Speaker, I know you are the lead sponsor on this and I know your support is solid, but I live in fear that someone someday will say that you are the mother of the Maine Family Court.

I hope you will agree that this is the next logical and affordable step in developing a much needed Family Court for Maine's families. The Family Division is an idea whose time has come. I also need to talk bluntly about judges pay. The topic may strike you as self-serving, but as Lawton Chiles of Florida says, "It is a sorry frog that won't holler in his own pond." I feel that I should discuss it. Courts are like any business, fair and competitive compensation is essential if we want to attract the best people, motivate them and keep them.

Fortunately, we don't need to guess at what is fair. Last session this Legislature created the Judicial Compensation Commission and the Speaker, President and Governor appointed three business executives who are associated with three of Maine's ten largest employers. John DiMatteo, formerly of Gannet Publishing and the Maine Medical Center, Ival (Bud) Cianchette of Cianbro, and Elaine Rosen of UNUM. If there are three better qualified people in Maine, I don't know who they are. After careful study, and with the able assistance of your staff from the Offices of Policy & Legal Analysis and Fiscal & Program Review, this Commission prepared legislation and a thoroughly professional report. Let me quickly review what they had to say.

First, they acknowledged your statutory charge, to develop recommendations to ensure that "the most highly qualified lawyers in this state, drawn from diverse life and professional experiences, are not deterred from serving or continuing to serve in the state judiciary." Second, the Commission noted that it had clearly in mind that its recommendations be affordable. They found that Maine judges are earning their keep with the smallest number of general jurisdiction judges in the nation. We are fifth from the top in resolving civil cases, twelfth in completing criminal cases. On the other hand, Maine is fifth from the bottom in its total expenditure for the judiciary and legal services. Judicial salaries range from the lowest third for Superior Court judges to the lowest fifth for Supreme Court justices.

Maine's judicial pensions are one-half the level of Vermont, that is pretty low I will tell you and one-third the level of all the other New England states and the pension benefits were slashed in the 1980s in anticipation of salary increases that never materialized.

Finally, within Maine government, judicial salaries are significantly below salaries for professional positions of lesser responsibility. I commend the entire report to you and I urge you to support the legislation submitted by the Commission. Judging is a demanding profession and fair compensation is a vital part of the improved court system we all want.

I know it may be a tough sell for you back home. Personal income in Maine is low, but on a comparative scale judges salaries are lower. I know the value of a dollar. I picked potatoes. I

wasn't very good at it. I worked on farms, and I am proud of the fact that some of my family still work on farms.

What do I say to them or the person on the street in Augusta or Easton if they say judges are paid too much already? Well, first I tell them the Commission has only recommended a salary equal to salaries in states with comparable per capita incomes. And then I say, Maine relies very heavily on the few judges it has, and, in the long run, you are going to get just exactly what you pay for. The venerable Bangor Daily News called the Commission's recommendation "a wise investment." Maine will not achieve justice if we continue to offer third-class salaries to those who are entrusted with the authority to provide it. We demand a judiciary of diversity and excellence, but let me tell you bluntly, the current levels of compensation will exclude many of the best qualified people in this state.

The Commission's bill presents an historic opportunity to build a fairer dynamic and to correct what the Commission called "a breach of faith." I ask you to study their report carefully, and then support it. Maine needs the response recommended by your Commission.

Finally, to complete the picture of the courts in 2002 I need to speak about funding for legal service providers. There are only a few places in Maine that a person with low income can turn to for legal help, Pine Tree Legal Services, the Volunteer Lawyers Project, the Cumberland Legal Aid Clinic, and Legal Services for the Elderly. The woman from Kezar Falls who was worried about her son, I gave her the telephone number of the first two, but if she was truly without funds, I knew that real help was very unlikely.

Funding has always been scarce, but in the last year legal service agencies have been nearly wiped out by budget cuts and restrictions adopted in Washington. For all practical purposes, legal aid is now the responsibility of the states. Pine Tree, for example, has a smaller staff now than it did when it opened its doors in 1967. In those days they had a fellow on staff named Angus King. There are 34,000 low-income people in Maine today for each of Pine Tree's seven lawyers. The Maine Bar and Maine banks have responded to this crisis admirably. Judge Frank Coffin, one of Maine's natural treasures, is leading a grassroots effort to bring intellect, ingenuity, grit, and resolve to bear. Buzz Fitzgerald and the Dirigo Project are weighing in with volunteers, but stable funding is absolutely essential.

Rep. Richard Thompson, the House Chair of your Judiciary Committee, has presented an L.D. today to establish a court user fee to support the Maine Civil Legal Services Fund. That fund was created by this Legislature a few years ago at the request of Sen. Edmund Muskie, but it is an empty bucket, an unfulfilled promise. No money ever found its way into the fund. Lest you think this is a partisan issue, I would add that Sen. Bill Cohen led the fight last year to preserve the federal funding that remains. I would also hazard a guess that Senator Margaret Chase Smith might smile on our efforts in this regard. We need to heed Senator Muskie's call and give a hand to the thousands of low-income people who are left standing alone in the dark at the bottom of the courthouse stairs. They must have a voice. We cannot continue to exclude them.

Recently the court's Gender Bias Commission issued its report. A number of people, Rep. Donnelly and others, encouraged us to look carefully at the court system. We did, and the Commission documented the structural bias that confronts women in seeking a divorce. It's very simple. Women and children are more likely to be without financial resources and to be unrepresented. Therefore, they are disproportionately disadvantaged by court delay and the

adversarial process. This is not intentional bias, no one willed it, but as the Portland Press Herald said in an editorial, the injury and the insult are just the same. Men face their own form of bias, particularly when it comes to custody and visitation.

Time and attention are precious commodities in our struggling court system. If we are to deal with gender bias effectively, in all of its complexity, along with other pressing needs such as victims' rights in criminal cases, the rights of children, and the needs of business for the prompt resolution of regulatory and commercial disputes, then the Family Division, a diverse and top-notch judiciary, and legal services funding are an essential part of any legislative response.

In closing, let me say that I am proud of our accomplishments. I am confident about our future, but most of all I am struck by the historic opportunity we have. Picture where our courts can be, where they should be, in the year 2002. With your help and a modest investment that is well within our limited means, the next five years is going to be the most fruitful period of court improvement in the 180-year history of the State of Maine.

Justice will come when those of us who have never been injured, deprived, or silenced become as committed and concerned as those who have. Let us seize this moment and build for all.

I thank you very much.