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NEW  
DIMENSIONS  
FOR  
JUSTICE

Report of the Commission to Study the Future of Maine's Courts

All are architects of fate  
Working in these walls of time  
Some with massive deeds and Great  
Some with ornaments of rhyme

Nothing useless is or low  
each thing in its place is best  
And what seems but idle show  
Strengthens and supports the rest

For the structure that we raise  
time is with materials filled  
Our todays and yesterdays  
Are the blocks with which we build. . .

Henry Wadsworth Longfellow "The Builders"



The sculpture shown here can be seen in its entirety at the West Bath District Courthouse, West Bath, Maine.

Created by Jeanne Bruce of Temple, Maine, the piece presents humanity in its many faces, occupations, family structures, hopes, disappointments. Images of the piece appear throughout this report as pictorial representations of this report's theme, *New Dimensions for Justice*. So, too, we present images of the past, many from the Cleaves Law Library archives as we recognize *What's Past is Prologue*.

# NEW DIMENSIONS for JUSTICE

Report of the Commission to Study the Future of Maine's Courts

This project was primarily financed by the State Justice Institute, the Libra Foundation, and the National Institute for Dispute Resolution. Points of view expressed herein are those of the Commission and do not necessarily represent the official position or policies of the funding agencies.



**COMMISSION  
TO STUDY  
THE FUTURE OF  
MAINE'S COURTS**

February 28, 1993

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Administrative Court—822-4291

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The Honorable Gerald P. Conley, Jr., Co-Chair  
Hon. Constance D. Cote, Co-Chair  
Joint Standing Committee on Judiciary  
State House  
Augusta, Maine 04333

Dear Senator Conley and Representative Cote:

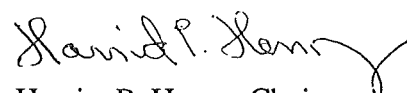
It is with great pleasure that I transmit the final report of the Commission to Study the Future of Maine's Courts. In carrying out our assignment, we have faced the incompatibility and inevitable tension between futurist planning and addressing the short-range issues required by our legislative mandate. This dichotomy of purpose permeated all Commission activity and is reflected in the final report.

This two year study is perhaps the most comprehensive study of the courts since statehood. It has been a very exciting project. In many cases the process has been as important as the product. The Commission has acted as catalyst for projects that are already underway in the Judicial Branch and facilitated dialogue between sectors of state government that heretofore have not communicated. Our recommendations reflect broad input from the legal community and the public.

Although the Commission's future focus has been tempered by our legislative directive, we have continually stressed the magnitude and inevitability of change that society and the courts will face in the next millennium. Our recommendations are designed to provide the flexibility and the resources necessary to plan for and anticipate change, rather than react to new challenges on a crisis basis.

The hard work of the Commission and Task Forces members and the dedication of our very able project director have made this report possible. We are also indebted to many people within Maine and out-of-state but are especially grateful to Chief Justice Vincent L. McKusick for his initial enthusiasm and encouragement and to Chief Justice Daniel E. Wathen for his continuing support of the project. Justice Wathen's first-in-the-nation introduction of participatory decision-making in the management of a Judicial Branch heralds the magnitude of change that will occur in the courts in the 21st Century.

Sincerely,



Harriet P. Henry, Chair

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# OVERVIEW OF REPORT

**New Dimensions for Justice** begins with an overview of the report and a summary of Commission recommendations.

The introductory section lays the groundwork for the report and describes major shifts in our perspective on the delivery of justice. It also summarizes trends in population, social and economic patterns, and technology and science that the recommendations of the report seek to anticipate and accommodate. To focus attention on long-term goals, the section offers a scenario for a bright future dependent on implementation and further development of the recommendations. For contrast, the section concludes with a darker forecast that could come to pass if the recommended changes and shifts do not occur.

The body of the report addresses seven critical areas of the system of justice, setting forth the Commission's vision for each area and spelling out specific recommendations designed to lead Maine to fulfill that vision. The report concludes with recommendations for an implementation process and a detailed action plan which identifies the government agency or other entity responsible for implementing each recommendation, indicates whether appropriations are necessary for implementation, and assigns each recommendation a short-term, medium-term or long-term implementation category.

The appendix includes a description of the Commission's background, operating procedures and methodology, and lists Commission and Task Force members and consultants. Also included in the appendix are: a listing of key reports used by the Commission to develop its recommendations, highlights of its activities, a glossary, the legislation creating the Commission, and acknowledgements.

# SUMMARY OF RECOMENDATION

## I. PUBLIC VOICE AND CONSUMER FOCUS

The justice system of the future must be convenient, understandable, and affordable. Specific recommendations to achieve this goal include

- seeking public opinions about the courts
- encouraging a consumer focus throughout the system
- making information about court actions and procedures widely available
- providing specific information and guidance to all users of the system
- increasing access to court facilities and services in courthouses and at many other locations, physically and electronically
- working with the bar, the schools, and the media to increase public awareness of the role and function of the courts.

## II. ACCESS TO LEGAL SERVICES

Legal services in the future must be coordinated and sufficiently funded so that every citizen who wants and needs a lawyer can have one regardless of ability to pay, and so that legal services will be available to persons facing other barriers, including disabilities, institutionalization, and special cultural or language needs. Specific recommendations to achieve this goal include

- increasing funds for publicly provided legal services for the poor
- coordinating the activities of present public legal service providers and exploring their eventual merger
- increasing capacity for public advocacy and law reform work
- expanding free or low cost clinics and courthouse assistance projects, and exploring in-court use of nonlawyers in critical areas such as family law
- providing language and hearing impaired interpretation in all courts and administrative hearings
- increasing law school clinical training and funds for law students entering legal services jobs

- expanding *pro bono* referral programs to include those ineligible for free legal services
- providing adequate and appropriately administered funding for indigent criminal defense and exploring the right to court-appointed and publicly funded counsel in certain civil matters
- encouraging private lawyers to develop low cost legal service plans, provide a certain number of *pro bono* hours per year to indigent clients, and advise all clients of available dispute resolution options
- increasing the number of poverty law continuing legal education programs
- developing a system of contract legal services in areas not served by existing programs

### III. DISPUTE RESOLUTION ALTERNATIVES

Maine's citizens in the future must have access to a variety of means of resolving their disputes, not only in connection with court proceedings, but through community dispute resolution centers, private dispute resolution services, and a State Center for Dispute Resolution. Specific recommendations to achieve this goal include

- establishing within the Judicial Branch a Planning and Implementation Committee and administrative office to develop and monitor alternative dispute resolution (ADR) programs for the courts
- adopting procedures that will allow trial judges to recommend, require, or employ ADR methods in all civil actions
- developing a new and expanded Court ADR service of neutrals trained to provide all forms of ADR
- developing a program in all courts to screen all civil claims and assist parties to use the most appropriate form of ADR
- developing a screening program to divert certain criminal cases to ADR
- increasing the knowledge of judges, lawyers, and court personnel concerning ADR and assuring that parties are informed of ADR options
- providing adequate funding for court-connected ADR
- developing a statewide network of community dispute resolution centers
- improving means of referral and standards of practice for private dispute resolution practitioners

- increasing the use of ADR by state and local governmental agencies
- establishing a State Center for Dispute Resolution
- increasing formal education in the methods, skills, and use of ADR in elementary and secondary, undergraduate, and professional schools and adult education programs
- encouraging Maine businesses and law firms to develop their own dispute resolution practices

#### IV. TRIAL AND CASE MANAGEMENT

Through procedural change and use of technology, civil cases and the criminal justice process must be managed in the future in an impartial, timely, efficient, and affordable manner that recognizes the interests of parties, other participants, victims of crime, and society in general. Specific recommendations to achieve this goal include

- revising and simplifying court rules and forms to ensure greater efficiency, economy, and understanding without compromising justice
- improving civil case management to attain greater efficiency and reduce costs and delay
- reducing burdens on those selected for jury service
- standardizing forms and administrative procedures among courts and court locations
- mandating statewide pretrial services for criminal defendants
- providing pretrial diversion and sentencing options programs for both adult and juvenile offenders
- establishing closer coordination among the segments of the criminal justice process
- improving coordination and communication between judges and providers of social and mental health services
- improving the juvenile justice system
- taking steps to increase victim involvement in the criminal justice process
- making use of the grand jury discretionary with the prosecution

## V. STRUCTURE AND JURISDICTION OF THE COURT SYSTEM

Court structure in the future must reflect an allocation of jurisdiction, functions, personnel, and facilities that efficiently serves the needs of the public and can be modified flexibly by the Supreme Judicial Court as those needs change in response to social, demographic, and technological change. Specific recommendations to achieve this goal include

- improving flexibility and coordination in the Superior and District Courts by increased use of judicial cross-assignment, abolition of the resident judge system, equalization of judicial salaries and titles, cross-assignment of clerks, and administrative merger and centralization
- developing a nonadversarial administrative forum for family matters
- continuing and expanding the present Family Court Project and structuring it as a separate division of the Superior and District Courts
- abolishing the Administrative Court
- establishing full-time regional Probate Judges as members of the Judicial Branch and eventually bringing the Probate Courts and Registers fully into the Judicial Branch
- establishing an Appellate Division within the Superior Court with final jurisdiction by agreement
- allowing direct appeals from the District Court to the Law Court in family matters, or in other cases on recommendation of the Superior Court and approval by the Law Court
- increasing the Law Court's discretionary jurisdiction
- exploring elimination of overlapping jurisdiction
- establishing administrative forums or other mechanisms for matters that are so routine or ministerial that judicial attention is not required
- raising the jurisdictional ceiling of the Small Claims Court to \$3,000

## VI. ADMINISTRATION OF THE JUDICIAL BRANCH

The Judicial Branch in the future must be governed by strong, clearly defined, and accountable management that will command public and legislative respect through efficient use of public resources in

planning and developing high quality technological and human resources to enhance the effective delivery of court services. Specific recommendations to achieve this goal include

- establishing a management structure under the policy direction and oversight of the Chief Justice, the Supreme Judicial Court, and the trial court chiefs, in which the Chief, with a State Court Administrator as chief administrative officer, oversees the judicial, management, and business functions of the Judicial Branch in a process involving ongoing collaborative discussion among the various functions, as well as participatory decision-making
- establishing a planning capability in the Administrative Office of the Courts, as well as a long-range planning committee for the Judicial Branch
- establishing the capability in the Administrative Office of the Courts to collect relevant statistical information and use it as a basis for planning and policy development
- adopting performance and time standards covering case movement, productivity of personnel, and courtroom demeanor and decorum
- establishing a technology master plan for the Judicial Branch consistent with an overall state technology plan and providing for computer capabilities within and between clerks' offices, as well as for judges and their staffs
- providing for electronic filing of and access to court documents by court personnel, lawyers, and judges under appropriate confidentiality and security safeguards
- developing telecommunications capabilities to reduce the need for live appearances in court proceedings
- computerizing all information in the Registries of Deeds and Probate
- expanding and making accessible law library materials and computerized legal research databases
- providing for orientation and continuing education of judges and other court personnel, including mandatory training in sensitivity to gender, race, and other cultural differences, and in the use of technology
- providing competitive salary levels for judges
- the prompt filling of all judicial vacancies

## VII. SEPARATE BUT CO-EQUAL BRANCH

The independent Judicial Branch of the future must have adequate resources to fulfill its constitutional and statutory duties and the ability to allocate those resources without undue interference from, but in cooperation and communication with, the other two branches. Specific recommendations to achieve this goal include

- providing for direct presentation of the Judicial budget to the Legislature
- providing sufficient legislative appropriations to enable the Judicial Branch to carry out its constitutional and statutory functions
- appropriating Judicial Branch funds in a single appropriation with no requirement of approval of transfers between accounts by any other branch
- establishing capital accounts to permit upgrading of Judicial Branch technology and facilities
- allowing the Judicial Branch to manage its own staff and resource allocations in such areas as personnel, facilities, purchasing and procurement
- improving communication among the three branches by such means as an interbranch forum, an integrated communication system, a statewide technology system, and coordinated long-range planning and capital improvements
- asserting a stronger Judicial Branch presence concerning legislation having a direct impact on the courts
- developing close cooperation and coordination among the three branches concerning public sector dispute resolution

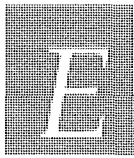
## VIII. IMPLEMENTATION

The Legislature should establish a Court Futures Implementation Commission as an independent body charged with monitoring, adapting as necessary, and overseeing the implementation of the Commission's recommendations.





# INTRODUCTION



Equal justice under the law is an indispensable imperative for a democratic society. By adopting the Maine Constitution in 1820, our citizens made establishing justice their highest priority. Although equal justice is the goal of all branches of state government, the Judicial Branch has a unique responsibility for doing justice because of its primary role in protecting constitutional rights, processing criminal cases, and resolving civil disputes. To meet the challenges of the 21st Century, that responsibility must expand to attain new dimensions for justice.

Courts occupy an important part, but only a part, of a broader justice system. While justice may at times seem elusive, its pursuit must be vigorously sustained. In the furtherance of this pursuit, the 114th Legislature created the Commission to Study the Future of Maine's Courts and charged it with designing a system of justice that will meet the needs of the citizens of Maine in the 21st Century.

Maine has an enviable reputation for an excellent court system which has served its citizens well for most of the 19th and 20th centuries. In recent years, however, Maine has experienced increased use of the courts for civil and criminal matters; increased complexity and variety of technical and public policy issues brought to the courts for adjudication; heavier reliance on courts to solve all manner of social and economic problems; rising costs of litigation to individuals, businesses and government; and decreased accessibility for people of moderate or limited means.

In 1993, Maine's court system suffers from delay, expense, and limited access at a time when diminished public resources are available to deal with these problems.

These trends explain the finding of a 1992 survey conducted for the Commission on the Future of Maine's Courts that the people of Maine were strongly dissatisfied with the cost and pace of litigation and with the inaccessibility of courts. The public wants an understandable system of justice that is fair, fast, and affordable.

**New Dimensions for Justice** contains recommendations and a plan designed both to achieve immediate and needed change in the operations of Maine's courts and to express aspirations for a system of justice that will meet the needs of Maine in the future. This dichotomy between response to the short-term issues embodied in the Commission's legislative mandate and planning for the long term reflects an incompatibility and tension that is inevitable in an enterprise such as this. At the same time, the dichotomy is the strength of the report.

Thus, although the the Commission's futurist flights of fancy are often tempered by its legislative mandate, **New Dimensions for Justice** seeks continually to stress the magnitude and inevitability of change that society and the courts face in the coming decades and the necessity of anticipating new challenges, rather than merely reacting to them on a crisis basis. In many instances, the report reflects the work of problem solvers rather than futurists and dreamers, recommending measured progress instead of quantum leaps. At other times, the approach is much bolder.

**New Dimensions for Justice**, then, seeks to fashion a vision that will give courts and other institutions the structure and flexibility to deliver justice to Maine's people fairly and efficiently not only tomorrow, but the day after that and on into the 21st Century.

# PARADIGM SHIFTS FOR THE JUSTICE SYSTEM

The Commission believes that at least five major shifts in our perspective on the delivery of justice must occur to facilitate the pursuit of justice as Maine approaches the 21st Century. The need for these overarching changes appears and reappears in various sections of this report.

## 1. Consumer Focus

There must be a more intensive consumer focus. The voice of the public must be an integral component in the planning and operation of the judicial system. The courts are fundamentally service institutions and must be consumer oriented. There must be a strong commitment from judicial leadership that every citizen receive dignified treatment and that all personnel are focused on helping citizens use the court system effectively. Convenience to the public is to be emphasized rather than the preferences of judges and the legal community.

The voice of the public must be an integral component in the planning and operation of the judicial system.

## 2. Judicial Leadership

The Judicial Branch must take a more active leadership role in the pursuit of equal justice for all. The Judiciary must create its own vision of a truly just justice system and must articulate the steps needed to attain such a vision. The justice system is too important to leave its future to chance.

Leadership should be viewed in the broadest sense ranging from initiating changes in the administration of the courts to defining and asserting the relationship of the Judicial Branch to the other two branches of government, the public, and the other parts of the justice system. Judges must work to make the system more efficient and affordable. Judges must be concerned with pretrial programs and the placement and treatment of juveniles and criminals after trial. Leadership must also be exerted in dealing with new and challenging subject matter that may come before the court such as right-to-die issues, artificial insemination, genetic engineering, AIDS, computer crimes, and the impact of high technology on all phases of society and the law.

### 3. Judicial Branch as the Dispute Resolution Branch

There must be an expansion of alternatives to the traditional adversary process. The Commission's 1992 survey showed that more than 80% of Mainers support the greater use of processes such as mediation and arbitration as alternatives to the traditional trial process.

Maine's Judicial Branch must play an enlarged role as a provider not only of traditional, and constitutionally mandated, adjudication but also as a provider of, or referrer to, a variety of dispute resolution alternatives. Assistance in identifying and gaining access to the most suitable alternative for a particular situation must become part of the judicial function. This shift will assure that resolutions of disputes in the future will have the credibility and finality given them today by the constitutional stature of the Judicial Branch as a separate and independent branch of government.

These alternative methods of dispute resolution should be made widely available beyond the court system as well, so that many disputes that now enter the courts or present the prospect of future litigation may be resolved without judicial intervention.

### 4. Technology.

There must be increased use of technology. Because of finances, Maine's courts have been limited in their ability to incorporate technology into the functioning of the judicial process. Technological innovation holds the promise of greater efficiency, improved communication, cost savings, surer and speedier justice, and improved access to the courts for the people of Maine. As the pace of change and the complexity of society continues to increase, the courts will have to rely increasingly on technology to manage the complex organizational and informational systems in which they operate, as well as to provide meaningful service and access to the public. Thoughtful and planned incorporation of technology into the courts will benefit the people of Maine and the cause of justice far more than haphazard and unplanned random acceptance of technology.

It became  
abundantly clear to  
me that unless  
judges themselves  
took an active  
leadership role in  
planning for the long  
term, the future of the  
courts - as an  
institution - was in  
grave peril.

*Chief Justice, Supreme  
Court of California,  
Malcolm M. Lucas*

## **5. Resource Utilization.**

There must be better utilization and allocation of judicial resources. Throughout the Commission's work, through survey results, comments at public hearings and written submissions, the public has consistently stressed that it wants a justice system which is faster, less expensive and complicated, more efficient and effective, and offers alternatives to trials. In order to meet these public demands, the Judicial Branch must maximize the personal and financial resources allocated to it. This maximization of resources is an ongoing responsibility of all branches of government. Given the current state of the state's budget, it is also an absolute necessity.

While the Judicial Branch must do everything possible to fully use its appropriated resources, it must also speak out on the effects of drastic budget cuts on its ability to meet its constitutional and statutory responsibilities. People who turn to, or are required to use, the legal system for resolution of disputes are often in a state of crisis. When the courts are unable to provide timely, equitable and enforceable resolution of their disputes, this failure heightens that crisis and often produces very unfortunate consequences in terms of emotional suffering and economic stability.

The Judicial Branch must advocate for sufficient resources to prevent or alleviate these effects and to meet the clearly articulated public demand for an improved justice system in Maine.

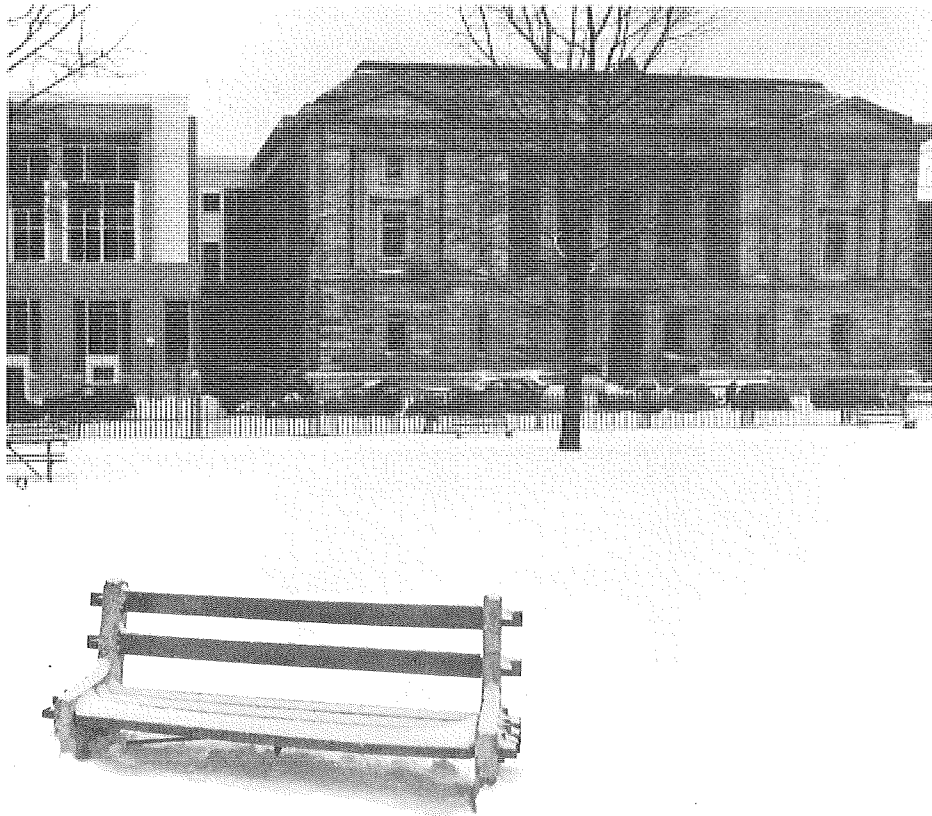
# AS MAINE APPROACHES THE NEXT MILLENNIUM:

## *What's Past is Prologue*

We must consider the Maine of yesterday and today as we plan for Maine's future.

The character of Maine's people and its economy began to change significantly in the 1960's and 1970's in ways that set the stage for today as well as for the 21st Century.

Demographic, cultural, economic, social, and attitudinal trends are helpful in forecasting changes that will affect the future state and expectations of the justice system.



## POPULATION: A CHANGING PROFILE

Slightly over a million and a quarter people live in Maine. During the 1970's, Maine's population grew by 13% which was faster than at any other time in this century. In the 1980's growth slowed to 8.8%. A portion of this increase was the result of natural causes (more births than deaths), but much of the growth was due to in-migration. Earlier in-migrants were primarily people who sought an alternative lifestyle, a return to the land and nature. Later in-migrants were largely "baby boomers," who were young and well educated.

They came to Maine for its clean environment, low taxes, low crime rate, and slower paced life style. They created a substantial consumer market for a growing economy. By the end of the 1980's, however, there was again a net out-migration of Maine's young adults, a pattern that had been constant throughout the century until the late 1960's.

The prolonged recession that began with the new decade in 1990 has brought population growth to a halt. Much slower growth is projected for the end of the century and through 2010. After the turn of the century, slower growth will be endemic, not only in Maine but throughout the United States. By the year 2050, the Census Bureau projects a population decline for the first time in the nation's history. For slow growth states like Maine, declining population could begin a generation earlier than in the nation as a whole. Maine's total population in 2010 is projected to be around 1,350,000.

### Changing Age Composition

Two segments of Maine's population have been growing faster than all others—the "baby boom" generation born after World War II and now turning 40, and the elderly. Between 1980 and 1990, the median age of Maine's population increased from 31.2 to 33.9 years of age. By 2010, half of Maine's population will be 40 or over.

Those between the ages of 35 and 44 increased by over 40,000 in the 1980's, a growth of 62% compared to an overall growth rate of only 8.8%. Today the baby boom generation (age 30-49) accounts for nearly 30% of the state's population; by 1995 more than 350,000 Mainers will be between the ages of 35 and 54. The full weight of the adult baby boom has only begun to be felt in Maine society. Its

Forecasting  
potential social,  
economic,  
political, and  
technological  
developments  
provides insight  
into the societal  
framework within  
which the  
Judiciary will  
function in the  
future.

*Report of the  
Commission on the  
Future of Virginia's  
Judicial System,  
1989*



capacity to influence public policy and its massive demands on the economy and on public services now and into the next decade will be certain and overwhelming. This "middle aging" of baby boomers will continue into the first decade of the 21st Century. Around 2005 the fastest growing population will be the group between 55 and 69 years old, the ages just before and after retirement.

A preview of the costs associated with the aging trend in the years following 2010 will be evidenced in a rise in the population over age 70 who are most genuinely at risk of failing health, reduced independence and eroding wealth. Growth in the over 70 population will accelerate again around the year 2020 when the baby boom begins to reach advanced age. The stresses of that generational event are virtually certain to reverberate through society in unprecedented challenges to long established systems of medicine and health care, social services, government, economics, ethics, and family relationships. The legal system will not escape the effects of these stresses and challenges.

Today the baby boom generation (age 30-49) accounts for nearly 30% of the state's population; by 1995 more than 350,000 Mainers will be between the ages of 35 and 54.

Maine has proportionately more elderly than the national average. As life expectancy continues to increase, the number of "old old"—those 85 and over—continues to rise rapidly, increasing by 30% in the last decade alone. The number of people over the age of 85 will double between 1990 and 2010. The large proportion of Maine's population reaching retirement age all at once, coupled with the growing numbers of very old, will present new challenges to the state's economy and to its institutions which provide for the elderly. An increase in legal issues concerning the elderly will undoubtedly follow.

The increase of the "old old" and the graying of the baby boomers have been accompanied by a significant decrease in the number of children. Almost three-fourths of Maine households will have no children in the home in 2010 as compared with 35% in 1960, 48% in 1980 and 52% in 1990. The continued decline in the birth rate that began in the 1960's is reflected in the 36 infants for every thousand Maine adults in the 1960's as opposed to 16 per thousand in 1990. The lower birth rate over the past couple of decades will result in fewer women of childbearing age into the early years of the 21st Century.

At present, however, the number of children is increasing, though the overall growth rate is small. The gradual increase from 15,046 in

1986 to 17,314 in 1990 is due to a slight increase in births as the baby boom generation, including many of the older baby boomers who delayed childbearing to establish careers, began to establish families.

## **Diversity of Population**

Although minorities are now a small portion of the population in Maine, national trends will likely be reflected here. This may pose challenges seen only to a limited extent in the past. In the 21st Century, population growth in the United States will be sustained by immigrants as the growth of traditional and ethnic minorities will out pace white population growth. The increasing number of Latin Americans and related ethnic groups are replacing Afro-Americans as the largest U.S. minority. Their numbers will show the greatest numerical increase even though Asian-Americans will exhibit the greatest rate of increase. Greater and greater numbers of immigrants will be entering the work force, not as unskilled laborers, but as managers, owners and/or long term, and very rich permanent aliens. Courts will have to be more sensitive to cultural differences; there will be a greater demand for interpreter services.

## **Patterns of Settlement**

Maine is the least densely populated state east of the Mississippi. Its settlement pattern is severely skewed to the southern part of the state and to a transportation corridor extending 15 miles to either side of the interstate highway system. Maine has an overall population density of 38 persons per square mile, but is most densely settled in the southern part of the state where half of the population lives in four counties (York, Cumberland, Sagadahoc, and Androscoggin). The density in this four county area reaches 219 persons per square mile; along the interstate 95 transportation corridor, concentration averages 54 persons per square mile.

The largest share of Maine's population will continue to be concentrated in the southern region. Half the growth will occur in York County, but more than half of this population will live in Cumberland County. The central region, comprising the Kennebec Valley and the Midcoast area, will continue to grow at a modest pace. The Eastern and Western regions will retain their respective shares of the state's population with Hancock County seeing the most growth. Aroostook County, which gained little in the period of in-migration, will decline at an accelerated pace during the 1990's as Loring Air Force Base closes and much of the economy is impacted by loss of consumer spending, over-supply of housing, and other problems

associated with the sudden and severe loss of a major source of income and employment.

### **Continued Growth of Towns of 2,500-10,000 population**

Although most of the state's population is concentrated in only a few counties, the population is not "urban" by standard definition. Only a third of the population lives in places with 10,000 or more people. Most people in Maine live in small to mid-sized towns (2,500 to 10,000 in size). Through the 1980's and 1990's, the trend has been toward small to mid-sized towns located close to large economic and cultural centers. People want small town life styles with easy access to typically "urban" services. While the population has suburbanized, trade and employment are still primarily functions of larger central places. Thus, commuting is a part of the lifestyles of most Mainers – more and more at the rate of two per household, sometimes commuting in different directions – resulting in increasing traffic congestion of roads and pollution. Courts must monitor these changing patterns so that decisions about geographic consolidation, decentralization of court facilities and services, and best uses of resources all reflect these significant changes.

## **CHANGES IN SOCIAL AND ECONOMIC FABRIC**

### **Changing Economy**

In the 1880's, natural resource occupations such as farming, fishing, and logging occupied two thirds of Maine's work force. A half century later, two thirds of the workers were employed in manufacturing, primarily of products from natural resources, but also with significant concentrations in leather and textile products. By the 1980's two thirds of the labor force was employed in the trade and service sectors.

Over the past decade the number of jobs provided by manufacturing has continued to decline while trade and service employment has grown. The fastest growing sectors of the economy have been health services, business and professional services, and retail trade.

Although employment has declined substantially in natural resource industries and in factories, the overall value of goods

produced has steadily increased. Maine's economy today is much more a part of a global economy. Maine is experiencing both opportunities for new markets and job growth for some of Maine's natural resources and manufacturing sectors, and loss of jobs in the shifting of some processing and production to foreign countries. During the next couple of decades, Maine's role in a global economy, now in its relative infancy, will grow substantially. Along with natural resource related products, transportation, telecommunication, trade, and marketing services will be transformed from a small segment of the overall economy to a far more critical role. Although these are positive developments, they are bound to result in more complex litigation for Maine's court system.





## Households and Housing

A sharp decline in household size in the past two decades has been one of the most important demographic trends taking place in Maine and in the nation. The average household has dropped from 3.3 persons in 1960 to 2.5 persons in 1990, with further decline projected to 2.26 persons by 2010. This shift is reflected in the dwelling units needed to house one thousand persons in Maine. In 1960 it required 300 dwelling units; in 1989 it required 380 units; in 1990 there were 445,000 occupied housing units in Maine.

The rapid decline in household size is primarily attributable to three factors: growth in the elderly population, growth in the rate of divorce and family break-up (50% of marriages ended in divorce in 1980 and one family in 50 breaks up every year), and growth in the number of young people living alone. There are changing definitions of what a family is, as the nuclear model is becoming increasingly rare.

## Education

The proportion of the adult population in Maine with at least a high school diploma has increased steadily over the past three decades, from only 43% in 1960 to 79% in 1990. Those with some post high school education or training have increased from 29% in 1980 to 42% in 1990. The number with four years or more of college has increased more slowly, from 14.4% in 1980 to 18.8% in 1990.

In spite of the overall improvement in the educational level of Maine's population, 170,000 people age 25 and over still lack a high school diploma. As Maine's economy changes, the need for specialized training and/or advanced education becomes ever more important. In 1990 nearly one in ten youth between the ages of 16 and 19 had not finished high school and were not in school when the census was taken in April.

## Crime and Societal Behavior

Serious crime is likely to decline through 1995 and then level off after 2000. This forecast reflects the decrease in the population of young males (15-24) who tend to commit most crimes. A low point in the adolescent male population is projected for the period between 1995-2000 which will thereafter begin to rise as the baby boomlet reaches its mid-teens and early twenties. The decrease in the 15-24

year old population would also indicate that the abuse of alcohol and drugs should decline. On the other hand, there are indications that alcohol and prescription drug abuse among the elderly may become more prominent in Maine's aging population.

Crime, however, is also linked to economic factors. Property crimes increased substantially in 1991, especially in rural areas, as the recession deepened. Domestic violence also increased as people vented frustrations on those closest to them. Both of these trends impact our court system.

Despite a predicted decrease in crime, there are a number of nationwide trends which suggest a decline in socially cooperative behavior over the last thirty years. Voter turnout has dropped (1992 Presidential election being an exception), charitable contributions have decreased, church membership is down, response to the census fell, and fewer citizens attempt to remain informed by newspaper readership or viewing television evening news. This behavior demonstrates not only a lack of involvement but also evidence of an erosion in compliance with traditional societal norms. Admitted cheating on exams rose steadily; income tax compliance is down since estimates were first compiled in 1963. A weakening of social controls may lead to an increase in unresolved disputes that reach the court system.

## SCIENTIFIC ADVANCEMENTS AND HI-TECH

The revolution that began in the 20th Century with a profusion of scientific advancements in all fields of endeavor, particularly in communications and medical science, promises to continue at an ever accelerating pace in the 21st Century. For the operation of the courts, technology holds the promise of increased efficiency. Some technology that now seems relatively esoteric and financially out of reach will become standard office equipment. It will also quickly become obsolete, however, with the development of new and improved versions.

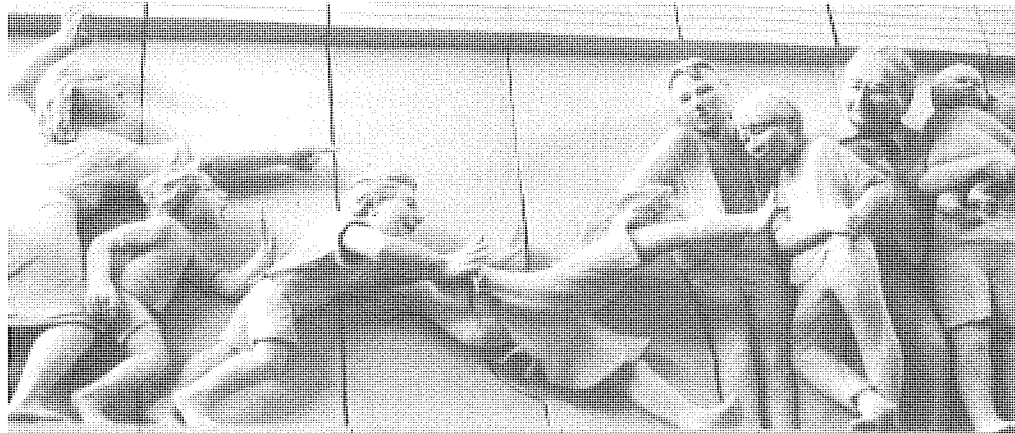
Scientific breakthroughs already have, and will continue to have, equally profound consequences on the jurisdiction of the courts and attempts to adapt traditional rules of law to novel situations and to chart unexplored legal terrain. What is life? What is meaningful life?



If it works, it's obsolete.

*Daniel Burrus,  
Keynote Speaker, Third  
National Court Technology  
Conference, 1992*

Who decides? These questions have already become subjects of litigation because of the advent of life support systems with the ability to prolong life almost indefinitely. Legal and ethical questions surround the creation of life because of artificially-assisted



insemination and surrogate motherhood. The AIDS epidemic has occasioned many legal conundrums. The existence of the Genome Project, which seeks to map markers on genes that cause disease and birth defects, will continue to raise tremendous ethical questions and greatly impact laws in the areas of health, labor, privacy, property and disability.

## **MOST SIGNIFICANT CHANGES?**

Perhaps the most earth shaking developments in the next thirty years are those that we are presently unable to conceive. We would have reacted with incredulity in 1960 if asked to imagine the great societal changes and upheavals that have occurred in the last 30 years. While Maine can influence its future by analyzing trends to better enable it to address anticipated changes, only institutions with the flexibility to respond to new challenges and a climate receptive to new ideas can help assure a system of justice that will meet the needs of the citizens of Maine in the 21st Century.

*(source: background information provided by the Maine State Planning Office)*

# A CHOICE OF FUTURES

The Commission's recommendations deal with current practices and problems that are the necessary first steps to a justice system that will meet the needs of Maine citizens in the 21st Century. The recommendations also look beyond the present and reflect possibilities that can guide us in the difficult choices that we will encounter in the coming years. Sound choices in the allocation of resources to and within our system of justice can fulfill the promise of the first steps recommended in this report. Unwise choices will only exacerbate the problems that we now confront.

What follows are partial glimpses into two possible futures.





## THE BRIGHT BLUE YONDER 2020

**The year is 2020.** The Chief Justice, the Governor and the Legislative leadership have just participated in the opening ceremony for the first **Conflict Resolution Complex** in Augusta where they paid tribute to the successful cooperation of the three branches of government in helping Maine achieve a system of justice to meet the needs of its citizens in the 21st Century.

The task had been begun in the 1990's by a Commission of citizens, court employees, judges and lawyers. Although in hindsight many of the Commission's ideas seem quaint, much of its vision has become reality. The citizens of Maine are enjoying a faster, more affordable and more comprehensible system of justice.

The Augusta Conflict Resolution Complex is one of five such centers planned for Maine. The anchor tenant is the Judicial Branch. Both at the Complex and at a multitude of **Justice Communication Centers** throughout the State, any person can receive up-to-date information about any aspect of the justice system, whether a specific case or a description of the now simplified practices and procedures at these centers.

In many cases these Justice Communication Centers are located in the same buildings with **Neighborhood Dispute Resolution offices** for the resolution of minor criminal and civil disputes. At the Complex, as at the Communication Centers, fines can be paid electronically, interactive video hearings can be held, and "papers" can be electronically filed. Litigants who do not have lawyers can access computerized support and receive help with all aspects of their cases from preparing and filing electronic documents to getting pointers on presenting their evidence and arguments.

The FAX and the copy machine are relics of the past. Massive courthouses are no longer needed because the volumes of paper they formerly held have been replaced by electronic data storage.

In the lobby of the Conflict Resolution Complex, a member of the public is using the consumer assistance kiosk to pay a traffic fine and to prepare his child support calculation for his marital dissolution case.

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case. The kiosk still allows the use of touch screen input, but relies primarily on voice input.

In recent years voice recognition technology has developed to accept a wide range of Downeast accents. If he has difficulty with the use of the computer to complete his “papers,” the litigant can consult with the consumer assistance clerk who will answer his questions or direct him to an appropriate assistance seminar.

Down the hall in a small, but pleasantly comfortable room set aside for video conferences and hearings, the judge assigned to complex matters is conducting a hearing. An expert witness is testifying from her office in New York, examined by the plaintiff’s lawyer in the Livermore Falls Judicial Communication Center and cross-examined by the Defendant’s lawyer from a Portland law office. The judge views all the proceedings on a multi-screened monitor, interrupts to ask questions, and makes evidentiary rulings using on-line legal research. A digital recording preserves the entire proceeding for any possible appeal.

The criminal docket has been greatly reduced through the use of Neighborhood Dispute Resolution offices, the reduction in recidivism, and the emphasis on crime prevention.

Any person or organization wishing to utilize the services of the Judicial Branch, whether represented by a lawyer or not, is presented with an array of dispute resolution mechanisms that are available. These include mediation, arbitration, early case evaluation, summary jury trials, and references, and traditional trials by judge or jury. Initial access to the intake desk can be made in person, from a home or business computer, or from the public equipment terminals at any of the Justice Communication Centers.

Although constitutional rights to trial are jealously guarded, every effort is made to make the adversary proceeding in a courtroom a remedy of last, rather than first, resort. For example, all but a very few of the domestic relations matters processed by the system will be resolved in a non-adversarial, administrative forum with a variety of support services available for families and individual parties.

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In the same building are a variety of other services, such as parenting classes, support enforcement agency representatives, unemployment offices, job counseling services, and the Attorney General's Consumer Mediation Program to name a few. Particularly unique for court and pre-court proceedings is a child care center for the minor children of the parties. This is run by the Department of Child Care which also runs a facility for visitation by parents with restricted visitation.

All automobile accident, personal injury and medical malpractice cases are diverted to the computer case analysis section where computer simulations help the parties determine liability and extent of the injury. This is followed by mediation and arbitration. A trial is still available, but unless a prevailing party's position is improved from that recommended by the computer analysis system or arbitration, that party must pay all costs.

In the large conference room a group of clerks and judges are attending a seminar on conducting multilingual hearings. They are joined by several of their colleagues from around the state participating from different Justice Communication Centers, and by visiting judges from Kenya, Peru, Denmark and the Republic of Georgia, joining the conference by satellite. Although the Judicial Branch seems much less complex and foreboding to the public than it did thirty years ago, its employees are expected to have a far greater variety of skills and there is extensive ongoing judicial and staff training.

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At the dedication ceremony, the Chief Justice announced that the next Conflict Resolution Complex will open in Presque Isle next March, which will coincide with the completion of the interior access monorail for northern Maine. She also announced the formation of a Futures Commission to make recommendations for a system of justice that Maine should consider for the last half of the 21st Century.

After the ceremony the Chief Justice confided to one of the clerks her concerns for the future, but counseled hope. "There were many times in the past thirty years when I thought we would never make it to this point. The good will, creativity, and valiant efforts of a host of people both inside and outside the court system brought us through many stretches when the future looked bleak indeed."

## A DIFFERENT FUTURE

The preceding vision of the future is consistent with our boast of a society that is committed to the rule of law. We cite our justice system as one of the finest achievements of our civilization—the best alternative to a repressive system where conflicts are resolved in arbitrary or violent ways. Such claims for our state justice system assume that we have a system which, in its day-to-day operation, makes the rule of law a reality for people involved in conflicts. That assumption will be unfounded if we do not recognize some ominous trends in our state justice system that threaten the bright future we have envisioned.

Survey results tell us that there is already widespread dissatisfaction with the pace and cost of civil litigation in the state courts. If that dissatisfaction is not addressed, people involved in disputes will avoid the public justice system, resolve their disputes in socially undesirable ways, or suffer in silence and seek no redress.

There are already increasing numbers of businesses and people who, if they can afford it, avoid the public system of justice in favor of a private system of dispute resolution. If this trend continues, the public justice system will become primarily a criminal justice system, with civil cases only for those members of society who cannot afford the more efficient private system. We reject the notion that privatization of justice is a desirable goal.

Public frustration with the state's justice system will increase if the system's access to technology for receiving, storing, and imparting information remains far inferior to the technology available to many users of the system.

The gradual incorporation of such technology into the day-to-day operations of the system must not be viewed as an option or a luxury. Such incorporation is essential for the preservation of an institution which absorbs, holds, and disseminates information in vast quantities.

We recognize that such technology must be applied by people of intelligence and judgment who share a commitment to the rule of law and the fair treatment of all who use the system. The users of the court system are almost always in crisis. Decisions by clerks, court officers, and judges have a profound effect on these users, both in the

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short term and, in many cases, throughout their lives. These decisions should be made by talented, caring, committed people. Adequate compensation and training are essential to attract and retain the caliber of people we should demand in our state justice system.

The stakes on the criminal side of our justice system are every bit as high. If counseling, educational, and vocational programs continue to disappear from that system, we will have a criminal justice system that only punishes. Although there may be some who applaud that trend, punishment alone is indefensible as social policy because it is so short-sighted. Those who pose the debate as one between leniency and harshness misstate the issue.

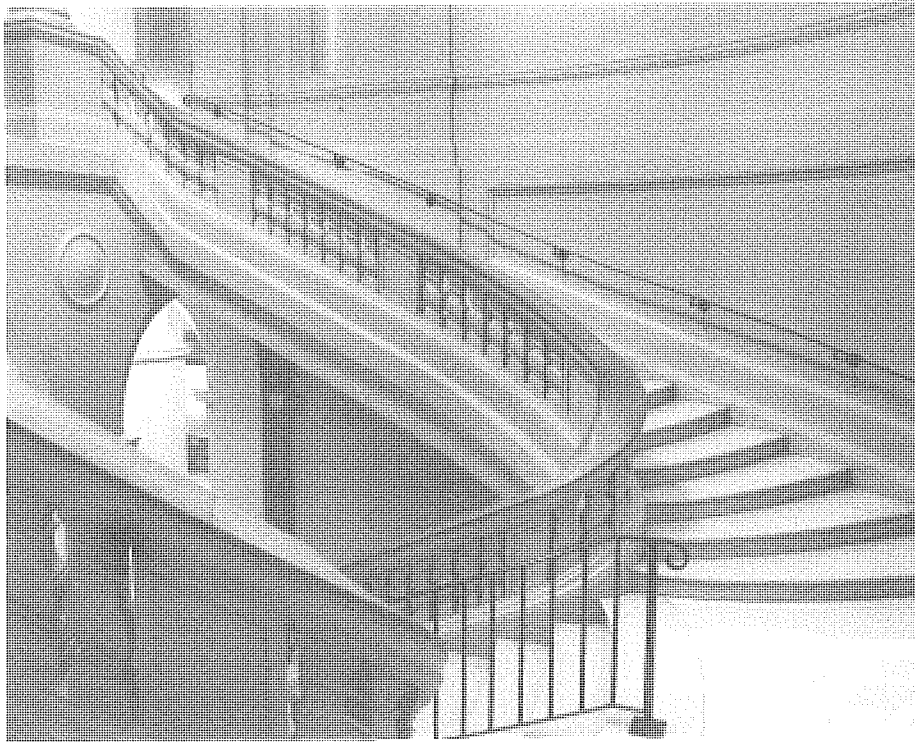
The proper debate is one between the illusion of security provided by dead-time incarceration that is almost always temporary, and the promise of an incarceration or alternative sentence that will change behavior in a way that offers true security for society. There are undeniably some bad people who must be separated from society as long as possible. It is equally undeniable that there are many people whose crimes do not reflect an evil character, and whose promise could be tapped if only there were programs available to do it.

This focus on ominous trends in our justice system should not be dismissed as the usual plea for more money. As a fair reading of this report will reveal, we make many recommendations that would require the Judicial Branch to modify and improve management practices and its way of relating to the public it must serve.

Many of these recommendations can be implemented at little or no cost. Such actions will assist the Judicial Branch in maximizing the financial resources made available to it by the Governor and the Legislature. However, the bright future that we can envision for our system of justice cannot be achieved solely through improved management or greater sensitivity to the feelings and needs of people who use the justice system. Without a much greater commitment of financial resources to the justice system in the years ahead, the system of justice that we envision will never be obtained.

Public institutions, like private institutions, must invest their resources in programs that provide for future return. We see our report as an investment strategy for the future of Maine's justice system. If policy makers ignore this strategy because of the hard decisions it requires, many of them financial, they will impose great costs on future generations burdened with a public justice system that no longer works at all. We owe it to those future generations to choose the brighter future.

The future, by definition, is unknown. To a large extent, however, our vision of the future can provide direction for our present efforts and help us to create one future rather than another.



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*The status quo is no longer a viable alternative.*

*Chief Justice Daniel E. Wathen*



# PUBLIC VOICE AND CUSTOMER FOCUS

*I*

*n the 21st Century, the voice of the public will be vital to the operation of the judicial system and feedback from users and citizens will be sought and welcomed. The mission of the Judiciary will be to maximize convenience, ease of use, understanding, and affordability to the public. A tiered system of services will meet the differing needs of the public and will encompass a variety of dispute resolution and other services. Information and support will make courts hospitable and easy to use by those in need of the services they provide.*

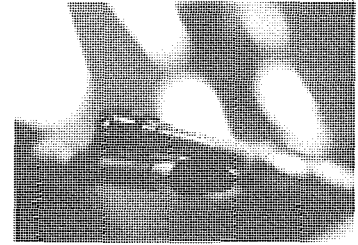
*Courts will be operated to provide service to all citizens regardless of economic status, disabilities, geographic location, and other barriers to access. Court facilities will be fully accessible for all employees. The Judicial Branch will ensure that the justice needs of its citizens are met through the provision of quality services, whether provided from within the Judiciary or indirectly through referrals.*

*Through public education involving our schools and universities, the bar, and the judiciary, our court system and the rule of law will be well understood and respected by the citizens of the State of Maine.*

## A. PUBLIC INPUT

### 1. Public Voice

The courts should institutionalize a voice of the public within the judicial system so that judicial leadership can keep in touch with public perspectives. Routine, periodic surveys, comment cards for users of the courts, and other outreach efforts should be used to test public respect for, and concerns about, the justice system.



### 2. Customer Focus

A customer focus should be established throughout all levels of the Judicial Branch. Formal policies, training, and commitment from leadership are essential to ensure that every citizen receives dignified treatment and that all personnel are actively focused on helping citizens use the court system effectively. The entire system should be reviewed at all levels for roadblocks to effective and satisfying consumer use. The courts should consider the convenience of the public when establishing procedures such as hours of operation of the courts and access after hours through technology.

### 3. Citizen Complaints

The present system for reviewing citizen complaints against judges should be reviewed to ensure timeliness and effectiveness. Information concerning the system must be broadly disseminated to the public.

The voice of the public will be vital to the operation of the judicial system and feedback from users and citizens will be sought and welcomed.

## B. INFORMATION AND SUPPORT WITHIN THE COURT SYSTEM

### 1. Information and Programs

General information should be available at all courthouses and at public libraries to inform the public about the nature of various actions, court procedures, and the system itself. Informational brochures on all aspects of the courts should be prepared and maintained, to be replaced or supplemented by touch kiosks when finances make the technology available. Assistance from literacy volunteers should be used in preparing these materials.

- a. Informational programs or orientation sessions for certain matters (particularly those with significant numbers of *pro ses* such as divorce) should be provided so that parties can learn basic information about how those matters are handled.

- b. Procedures such as those for enforcement of money judgements need to be more fully explained to litigants early in the litigation process so their expectations are more in line with the realities of the process.

## 2. Intake Function

An information and screening program should be established for all courts to give users of the court system basic information about the system, as well as specific information concerning access to counsel, methods of proceeding without legal representation, and available dispute resolution methods and agencies. Computerized kiosks in all courts might be one way of providing this service. Intake personnel should advise and assist parties in selecting the most appropriate method of proceeding and may screen for eligibility and need for legal services. See Recommendations III.A.4,6a.

### *Commentary*

The public's perception and understanding of the judicial system directly affects the ability of the system to function effectively. Confusion about court structure, functions, and procedures, coupled with unrealistic expectations concerning results and perceptions that the system is insensitive, unfair or inefficient, undermine the value of the system as a forum for dispute resolution. While retaining the dignity necessary to public respect, courts must acknowledge and operate on the fact that they exist for the benefit of the citizens of the state who come to them for justice. For example, in order to enforce money judgements, litigants particularly need to know that it is their responsibility to initiate enforcement procedures and that suing someone who has limited assets and income may well be futile.

The judicial system must be more attuned to the demands it places on those who want, or are required, to do business with it. Currently, many of the courts' basic operations reflect an insensitivity to the realities of life outside the courthouse. Court sessions are held and clerk's offices are open only during traditional work hours, essentially making it impossible for citizens to use the judicial system without financial hardship. No thought is given to the child-care logistics entailed in waiting half a day to enter a plea on a minor civil infraction or a trial on a traffic violation. Some of these problems might be addressed through the use of devices such as automatic teller machines (ATMs) for the payment of fines. Although there is an assumption that it is a valuable civic duty for individuals to serve on juries, often there is too little consideration given to the impact such service has on the individual's work and private life.

By providing mechanisms for public input into court process and procedures, the Commission seeks to recognize and respond to legitimate complaints concerning the system by those whom it was designed to serve. Rather than simply relying on infrequent consumer challenges to the system, the courts should institutionalize regular means for obtaining public comments, critiques, and recommendations. Court personnel must also be educated to operate in a manner which recognizes that all members of society are entitled to respect and equality in their dealings with the judicial system.

Providing information to the public about court procedures and specific types of litigation helps all litigants to work effectively in the system. Information is especially important in light of the frequency with which parties appear without lawyers. It ensures a greater degree of comfort and efficiency for those individuals. Such information also provides the public with a more realistic portrait of the judicial systems' functions, including its strengths and weaknesses. Both general and specific information could be provided initially by touch kiosks. In the future, kiosks will also be used to assist litigants in filling out simple forms. These educational efforts will also disseminate information about the variety of services which will be available and allow each consumer to make wiser choices in selecting among the various options. The information and screening program to be provided when cases are entered in the court will serve to direct parties to appropriate dispute resolution alternatives as described in Recommendation III.A.4.

## C. FACILITIES AND SERVICES

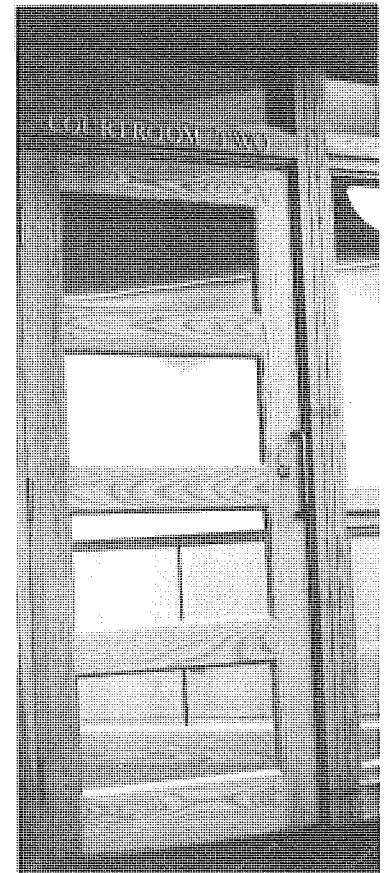
### 1. Access to Court Services

The concept of "access" must be broadened from access to courthouses to access to specific types of court services. Eventually, there should be fewer fully equipped court facilities placed strategically throughout the state but more court services available for less cost and accessible without significant travel.

- a. Some services such as emergency protective orders and payment of fines need to be readily available to every citizen with little travel or inconvenience. However, some travel is reasonable to access the facilities and services required for jury trials.
- b. Access to the court system should be maintained by providing a variety of services including: traditional courthouses, satellite facilities (perhaps storefronts) that handle routine matters such as filings and payments; electronic filing and information retrieval from locations throughout Maine; use of generic public buildings for hearings on routine matters; less reliance on live appearances so that matters could be handled through the use of technology; even "courtmobiles" permitting the clerk's office, or possibly even the judge, to travel to Maine's rural citizens.

### 2. Analysis of Access

A statewide analysis of access for different levels and types of service should be made and used as the basis for future planning for facilities, technology, and other services.



- a. Construction of future court facilities should be tied to the assessment of services needed and full consideration should be given to the use of technology and other resources before a decision to build is made.
- b. Single courtroom courthouses do not make sense from an efficiency standpoint. To maximize efficiency, construction and renovation of court facilities should ensure that there are at least two courtrooms, at least one of which is jury equipped, in each court facility.
- c. The recent trend to develop separate buildings for separate courts must be reversed. Proximity of courts and clerks offices allows greater cross-assignment and increases cooperation and collegiality among personnel. In some areas, the Judicial Branch should consider consolidating the Superior and District Courts in the same buildings, particularly in new facilities.

### 3. Court Locations

- a. Specific facilities should be closed only when access to crucial services can be provided by other methods and where citizens will be reasonably near another court if access is needed. New facilities should be constructed only when access cannot be accommodated by fiscally prudent adaptation of existing structures or greater reliance on technology.
- b. A special court location procedure that incorporates public input and explicitly addresses public access should be established and



should contain objective criteria for evaluating the creation and/or continuing existence of court facilities. Possible criteria include: caseload, travel time, available technology, public concerns, and other means of providing access.

#### **4. Americans with Disabilities Act**

The Judicial Branch should continue and expedite its efforts to comply with all provisions of the Americans with Disabilities Act so that all facilities and services are accessible for users and employees.

##### *Commentary*

On a basic level, access to justice requires that an individual get to a court location and then be accommodated physically within the courthouse. As a result, both the location and condition of court facilities statewide have a profound impact on access. The structure of most courthouses presents significant impediments to people with disabilities. Facilities in all their aspects, from directional signs to entryways to jury boxes, must be evaluated and redesigned to allow access and use by all.

Access must also be viewed in its broader definition of access to services. New technology and a willingness to look beyond traditional concepts of what a courthouse should look like will allow greater numbers of citizens to obtain a full range of services within their own communities.

A statewide analysis, undertaken to determine how citizens gain access to the courts and the ways in which that access can be improved, is necessary for planning for the future. Traditional courthouses should be expanded through technology to allow access by means other than personal presence. The courts must be sensitive to the ways in which language, disabilities, cultural norms, and demands of daily living regulate or inhibit access to the legal system. Above all, the concept of access should be fluid; the courts should regularly assess and respond to changes in consumer demand, demographics, and technology. Such an analysis must acknowledge and take into consideration the inherent tension between the attempt to increase efficiency through centralization and the maximization of access by decentralization.

## **D. EDUCATION ABOUT THE JUSTICE SYSTEM**

### **1. Role of the Courts and Bar**

The Judicial Branch should make the public aware of the role and functions of the courts. This could be achieved by a systematic program of information, publications, and involvement by judges and lawyers in addressing various groups and schools and the general public about these matters.

## **2. Schools**

The Department of Education should encourage school systems to establish an opportunity for all students to study the justice system and other conflict resolution methods sometime between the 6th and 12th grades, and should report to the Legislature by 1994 on a plan to encourage such study.

## **3. Law Schools and the Bar**

The Judicial Branch should support the role of law schools and the bar in training lawyers to recognize, and approach creatively, access and dispute resolution issues arising in the course of their practices.

## **4. Media**

The Judicial Branch should establish a relationship with the media to improve public awareness of the legal system through media efforts.

## **5. Cameras in the Courtroom**

The Supreme Judicial Court should authorize the use of cameras in courtrooms when there are adequate safeguards to protect the integrity of trial processes.

## **6. Attorney-Client Relationship**

Public awareness about rights and responsibilities inherent in the attorney-client relationship should be promoted.

### *Commentary*

The Commission also recommends that the Judicial Branch support efforts to educate the public in regard to the broad theories and practical applications of the law and the legal system. Using existing educational forums and media participation, such as the current experiment with cameras in the courtroom, the courts can encourage basic understanding of and respect for the legal system.

Programs of instruction about law and the legal system, such as those developed by the University of Maine Law School's Law Related Education Program, should be systematically adopted in elementary and secondary schools. The Judicial Branch should support efforts to train lawyers on access and dispute resolution issues. See Recommendations II.A.9., C.5., and III.A.6.c., E. 1 and 3.

*Annual Dinner and Entertainment of the District Bar, consisting of the Superior  
Judicial Court, held at the Montgomery Hotel, South Westfall, Miami, on July 11, 1896.*



*First Row: G. F. Doyles, Arthur L. Hight, A. S. Woodman, J. F. A. Merrill, R. T. Whitehouse,  
W. C. Fox, C. A. Hight, S. C. Perry.  
Second: Judge Webb, Judge Whitehouse, Judge Midwell, Judge Haskell, Judge F. May,  
J. H. Brown, F. M. Higgins, C. H. Bore.  
Standing: H. W. Swazey, Hannibal Hamlin, F. H. Cobb, W. M. Parson, S. L. Kinnaber,  
F. V. Chase, C. L. Hutchinson, John Wells, W. C. Chapman, C. A. Stout, C. A. Thomas.*

*What's Past is Prologue: New Dimensions for Justice*



# ACCESS TO LEGAL SERVICES

**I**

*n the 21st Century, legal services will be better coordinated and sufficiently funded. Every citizen involved with the legal system who wants and needs a lawyer and cannot afford one will have a qualified, motivated advocate.*

*The important role lawyers play in promoting justice will be recognized. Judicial and Bar leadership will continually evaluate the justice system in order to improve access to legal services for all people but especially those facing barriers, including those of limited means, persons with disabilities, the institutionalized, and populations with special cultural or language needs.*



## A. LEGAL SERVICES ✓

### 1. Funding, Coordination of Monies, and Expansion

High priority should be placed on funding for legal services so that the poor have equal access to the court system. In the short term, state and federal monies for support of all public legal services should be coordinated. Over time, the number of lawyers employed or retained by legal service providers in Maine must be increased, and adequate paralegals, support staff, facilities and equipment must be provided to support them. The number of locations where legal services are available to the poor must be increased.

### 2. Coordinate Approaches

The approaches of the various legal services entities, including centralizing intake and referral, should be coordinated to maximize resources and to increase public awareness of all services.

### 3. Possible Merger

The possible merger of legal service providers should be explored. The effectiveness and advantages of the current system involving several legal service providers should be carefully considered and weighed prior to any possible merger of providers. Any eventual merger of providers should be undertaken if and only if the advantages of the current system can be preserved or enhanced thereby.

Anyone who  
values this society,  
values our  
fundamental  
liberties, has a  
stake in making  
sure that justice is  
available to  
everyone.

### 4. Public Advocacy

The ability of current legal service providers to do public advocacy and law reform work should be enhanced, or a public advocacy/reform group should be established to undertake such efforts.

### 5. Family Law Clinics and Courthouse Assistance Projects

The availability of free and/or low cost clinics for family law matters for the poor and near poor should be expanded. The courts should expand the use of courthouse assistance projects to assist unrepresented parties with the completion of forms.

*Howard Dana,  
Director, Legal  
Services Corp.*

## 6. Non-lawyer Assistance

The use of non-lawyers to handle certain matters in court, such as assisting with Protection From Abuse and family law matters, should be explored.

## 7. Interpreters

Qualified interpreters to assist non-English speaking participants and signers or visual presentations to assist the hearing impaired should be provided when needed, without charge, in every court and administrative proceeding where significant rights are involved. Written informational materials in other languages should be available to the extent practicable.

## 8. Loan Forgiveness

A state educational loan program should be established which would enable law school graduates to repay educational loans by undertaking civil legal work for the poor in the public sector in Maine. A similar program should also be encouraged on the federal level.

## 9. Law School

The scope of for-credit clinical programs and the number of students participating in them at the University of Maine Law School should be expanded. Public interest fellowship programs to subsidize law student internships in civil legal services offices should also be expanded.

## 10. Pro Bono Referral Programs

Pro bono referral programs such as the Volunteer Lawyers Project and others should be expanded to include referrals of clients who are financially ineligible for free legal services and unable to pay a private lawyer, but who could pay a private lawyer on a sliding fee schedule or over time.

Adequate funding for the current court-appointment system should be the first and highest priority.

## B. COURT APPOINTMENTS

### 1. Indigent Criminal Defense

The indigent criminal defense system has significant deficiencies which require immediate attention. Adequate funding for the current court-appointment system should be the first and highest priority.

2, ←

Extend

Legal work for poor

Asst. Atty. Gen. & Sec. of State

go into public sector staff

✓

The Judicial and Legislative Branches must join together to establish a planning process designed to remedy those defects. This process should consider local variations in the utilization of public defender, contracted services and the court-appointment system.

Currently funds for constitutionally required court-appointed attorneys are included in the Judicial budget and administered by the Judicial Branch. Although closely interrelated with the judicial function, such a system should be funded and administered independent of the Judicial Branch.

## 2. Indigent Civil Representation

The right to court-appointed and state-financed counsel in certain types of civil cases should be explored. These cases should include those involving fundamental necessities or substantial interests in which the issues cannot be resolved through alternative dispute resolution methods (e.g., the establishment of paternity). Any movement in this area should ensure that current federal and state legal services funding will be supplemented rather than supplanted by court appointments in civil cases and that the current level of *pro bono* representation will also be maintained.

## 3. Indigency Screening

Indigency screening should be an administrative function independent of the Judicial Branch. The system should provide for an aggressive inquiry into the financial status and earning ability of those who claim indigency status. The system should screen for partial as well as full eligibility and conduct interim reviews for continuing eligibility. Current pilot programs for indigency screening should be monitored closely with an eye toward expansion and permanency.

Receipt of certain public benefits (e.g., AFDC and general assistance) should create a presumption of eligibility for court appointments and *in forma pauperis* applications.

Be vigorous  
about  
this

## C. PRIVATE SECTOR

### 1. Lower Cost Legal Services

The provision of low cost legal service by the private bar as a substitute or supplement for free legal service should be encouraged. Low cost service plans could include payments over time and sliding fee scales.

Sliding  
Fee Scale

2. **Pro Bono Referrals**

All lawyers should be strongly encouraged to provide a certain number of hours of *pro bono* representation to indigent clients per year or contribute to a fund supporting legal services for the poor.

3. **Dispute Resolution Options**

Lawyers should be encouraged to advise clients of the nature, risks, and benefits of all available dispute resolution options.

4. **Prepaid Legal Services**

Employers should be encouraged to provide, or as a minimum set up mechanisms for, prepaid legal insurance services for their employees.

5. **Continuing Legal Education on Poverty Issues**

The Maine State Bar Association and the Maine Trial Lawyers Association should increase the number of continuing legal education programs on poverty law issues and related trial skills and offer them at a reduced or no fee for legal services and *pro bono* attorneys.

6. **Contracted Services**

A system under which legal service providers could contract with the private bar to provide free or reduced fee legal services should be developed in those geographic areas not adequately served by legal services offices or voluntary programs.

Public  
Defender  
System

use  
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lawyer's  
in this  
area

**Commentary**

An individual's ability to frame, pursue, or respond to litigation usually depends on his/her ability to obtain legal counsel. Although free legal assistance for some legal problems is available to poor people in Maine, the state's four major legal service providers (Pine Tree Legal Assistance, Legal Services for the Elderly, Volunteer Lawyer's Project, and the Cumberland Legal Aid Clinic) have been unable to fully meet the demand because of their inadequate funding levels. The Maine Commission on Legal Needs concluded in 1990 that more than 77% of the legal needs of Maine's poorest residents were not being met. In addition to those impoverished citizens eligible for but unable to obtain free legal services, there is a growing class of "working poor" who clearly cannot afford legal assistance but who are not financially eligible for free legal assistance. The majority of the recommendations of the 1990 Maine Commission on Legal Needs have been endorsed by this Commission and are incorporated throughout this report. Of those recommendations, the most pressing need continues to be an increase in staffing of the legal service providers.

Explore of court-house  
closing were proposed but  
other

The Commission recommends that funding and activities of legal service providers be coordinated, to the extent possible, to maximize resources. Prior to any full or partial merger of legal service providers, a complete assessment must be undertaken to determine what benefits might be gained thereby. Merger should not be undertaken unless the very real strengths of the current system can be preserved and enhanced. Public advocacy is an important aspect of this legal service work as it may result in programmatic changes more economically than case-by-case litigation. Particularly in the sensitive and fundamental issues of family law, legal clinics and courthouse assistance should be expanded to provide access by the poor to legal redress and protection. IOLTA (Interest on Lawyers' Trust Accounts) has been used successfully as a source of funding for legal services and should continue to be strongly encouraged in Maine.

Because the State itself has a constitutional obligation to provide counsel in certain cases, the Legislature must ensure adequate funding for that obligation independent of other funding for judicial services. Although the Judicial Branch should be sensitive to budgetary considerations, resources for criminal defense costs which are constitutionally-mandated should not be in competition with those for judicial services. Nor should the courts be put in a debtor-creditor position with assigned counsel or hampered in defining the right to counsel by its budgetary impact on the courts.

To augment limited legal services, the feasibility and scope of the right to court-appointed counsel in certain types of civil cases should be explored. To ensure that only those truly entitled to state-financed legal services—however the state may choose to define that group—receive them, the courts should establish and aggressively apply a screening system for all its programs of legal assistance. In civil cases, the indigency screening system should be coordinated with the dispute resolution screening and information program recommended in Recommendation III.A.4. Because of the stringent standards governing receipt of needs-based public assistance benefits, an individual who receives such benefits should be presumed to be entitled to court-appointed and paid assistance.

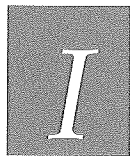
Many members of Maine's private bar already accept fee payments over time and use sliding fee scales in an attempt to increase citizen access to attorney services. However, the private sector has to assume even greater responsibility for access to the system through the provision of free and reduced-cost legal assistance.

Maine is the nation's leader in pro bono participation by private lawyers and, therefore, has little to gain from mandatory pro bono. Indeed, coercion of lawyers to contribute and reduced pressures on funding sources could result in diminished support for legal services for the poor, which is an important goal of this report.

Less expensive and more available access to justice may be enhanced by resort to alternative methods of dispute resolution. Thus, lawyers should be attuned to these methods. See Recommendations III.A.6c., E.4.

# DISPUTE RESOLUTION ALTERNATIVES

*Alternative  
Dispute  
Resolution  
Dispute  
Resolution  
alternatives*



*In the 21st Century, Maine's courts will offer citizens access to a variety of means for resolving their disputes, as well as assistance in identifying the dispute resolution methods most appropriate to their cases. Maine will have a comprehensive network of community dispute resolution centers that will recruit and train volunteers to assist people in the resolution of a wide range of conflicts, both at the disputants' initiative and by referral from others, including courts and police.*

*Maine individuals, groups, businesses, and government agencies will make regular use of private dispute resolution services, either before or after bringing legal action. Under the auspices of a State Center for Dispute Resolution, governmental agencies, parties to disputes with agencies, and parties having disputes in the public policy arena will use a full array of dispute resolution methods leading to effective and sensible resolutions that avoid unnecessary expense and delay.*

*The bench, bar, private citizens and businesses, and public agencies will have broad understanding of the value and appropriate use of all dispute resolution methods.*

*Kenneth  
Vand*

## Preface

As a unique and essential safeguard of individual interests in our constitutional democracy, the adversary process characteristic of Maine's courts has served the people of the state well. Where significant public or private interests or matters of principle that cannot be compromised are involved, the state must continue to provide a forum for forceful advocacy that produces a definite and binding judicial decision.

Nevertheless, as the introduction to this report notes, Maine's courts today are burdened by more litigation, more complex issues, an increasing tendency to resolve issues of social policy in litigation, increasing costs, declining access, and diminished public resources. The people of Maine have also expressed general dissatisfaction with the adversary process as the sole means for the resolution of disputes.

At the same time, the number of disputes that do not or cannot reach the courts for formal adjudication is increasing. The recession of the 1990's has put major stress on the state and local political process as Maine seeks to strike a balance among continued economic growth, maintenance of an appropriate standard of living and quality of life for all Mainers, and preservation of an increasingly threatened natural environment. The needs of a more diverse population give rise to new antagonisms and tensions among individuals. The courts do not have the flexibility to deal effectively with the kinds of public and private disputes that these changing conditions produce. The judicial process can only try to pick up the pieces after existing political and social institutions have failed to achieve satisfactory resolutions.

The Commission recommends that the Maine Judicial and Legislative Branches address these problems by developing and implementing a comprehensive system embracing a variety of dispute resolution alternatives. This system will not only provide new flexibility for resolving disputes brought to the courts but will also permit resolution of many disputes before they reach the courts. Maine people are ready for more flexibility in dispute resolution. The Commission's 1992 survey shows that more than 80% of Mainers support the greater use of processes such as mediation and arbitration as alternatives to the traditional trial process.

The comprehensive dispute resolution system recommended by the Commission will provide the high quality of justice that Maine citizens want and deserve, both by increasing access to traditional adjudication and by providing mechanisms that will allow individuals and groups to find their own solutions to problems. By increasing access to dispute resolution, the system will save significant intangible costs arising from unresolved problems among neighbors, families, schools and children,





businesses and public agencies. The system will also save the very tangible costs resulting from unnecessary demands on the courts, lost productivity and the need for social services, and law enforcement. Maine's comprehensive dispute resolution system of the 21st Century will have the trust of Maine's people and will provide for them the flexibility, access and quality of justice required for a new century.

In our present system of government, the Judicial Branch is the branch charged with the resolution of disputes. Its independent stature within the tripartite constitutional plan gives credibility and finality to its determinations. As the scope of dispute resolution activity changes to embrace methods of resolution and types of disputes not now the subject of formal, institutional jurisdiction, perceptions of the role of the Judicial Branch must shift as well. This shift is essential if resolutions of disputes in the future are to have the stature that judicial independence now accords them.

Thus, the Judicial Branch in the 21st Century must be, in effect, the Dispute Resolution Branch, with an enlarged role as a provider not only of traditional, and constitutionally mandated, adjudication, but also of other dispute resolution services. This enlarged role will place the Judicial Branch at the center of a network of services to assist parties in working through problems that might never reach today's courts. The network will also help to resolve disputes that are ripe for litigation, both prior to their formal filing and once they have been filed. By assuming this enlarged role, the Judicial Branch will respond to the demands and problems facing today's courts and will provide a more flexible and responsive method of dealing with the varied and complex conflicts that will confront individuals, advocacy groups, businesses, and government agencies in the next century.

## **A. COURT-CONNECTED DISPUTE RESOLUTION**

### **1. Planning and Oversight**

A planning and oversight function should be established within the Judicial Branch to develop and administer, or monitor, all court-connected alternative dispute resolution (ADR) programs.

- a. In 1993, the Supreme Judicial Court should appoint an ADR Planning and Implementation Committee consisting of practicing lawyers, judges, court administrative personnel, dispute resolution practitioners, and representatives of client groups and other members of the public. The charge of the Committee should be to seek initial funding for implementation planning and projects; to carry out initial planning and implementation activities; and to prepare for the Court detailed plans, projects, and fiscal projections necessary for continuing implementation and evaluation of court-connected dispute resolution.
- b. The ADR Planning and Implementation Committee should design, and the Supreme Judicial Court should establish, as soon as resources permit, an administrative office within the Judicial Branch for administering and monitoring all court-connected ADR programs as they are developed and put in place.

*Justice DeFuria*

*Med. Malp.  
Secretary  
Panel*

## 2. Dispute Resolution Procedures

Procedures should be adopted that will allow trial judges to recommend, require, or employ appropriate ADR methods in all proceedings of a civil nature in all courts.

a. The ADR Planning and Implementation Committee, working with the Advisory Committees on Civil and Probate Rules, appropriate committees of the Maine State Bar Association and Maine Trial Lawyers Association, and the judges and appropriate administrative personnel of all courts should develop, and the Supreme Judicial Court should adopt, a basic dispute resolution procedural plan, with the following specific components and appropriate variations as necessary for particular courts and types of actions:

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- (1) Each party to a civil action or other contested proceeding will receive from the clerk information about ADR options at the time of filing that party's pleading or other paper and will be required to indicate in the pretrial scheduling statement, or an equivalent filing, whether or not ADR is requested.
- (2) If all parties request ADR in the pretrial scheduling statement, or at any subsequent time in the proceedings, the requested form of ADR will occur forthwith, either with a neutral selected and retained by the parties or with one appointed by the court.
- (3) If there is no agreement on ADR in the pretrial scheduling statement, all parties will meet with a judge, other judicial officer, or neutral appointed by the court for a case evaluation conference based on best-case summaries before any further procedural steps are taken. At the conclusion of the conference, the evaluator will issue, or prepare for issuance, the order required by Civil Rule 16, or an equivalent order, placing the action on either the expedited or regular pretrial list and specifying other matters as provided in the rule. If no settlement is reached, the action will go forward under the scheduling order.
- (4) If any party requests ADR at any time at or after the case-evaluation conference, the court may order an appropriate form of ADR to occur at that time or at the completion of discovery. At the completion of discovery, if ADR has not been requested, the court may order the parties to participate in an appropriate form of ADR.
- (5) ADR ordered by the court will be nonbinding, unless otherwise agreed by the parties.

- All ADR procedures will recognize the special needs of low income, elderly, disabled, and unrepresented parties and of parties in situations where there is a potential for violence, abuse, or intimidation.
- (6) ADR methods to be used as appropriate should include mediation, nonbinding and binding arbitration, reference, early neutral evaluation, early judicial involvement, and the summary jury trial, to the extent that the capability exists to make such methods available. Mandatory mediation in family actions will continue to be provided by the Court Mediation Service, and the use of ADR procedures in other types of actions will build on the experience and capacity of the Service.
  - (7) All ADR procedures will recognize the special needs of low income, elderly, disabled, and unrepresented parties and of parties in situations where there is a potential for violence, abuse, or intimidation.
    - b. The Supreme Judicial Court should put the dispute resolution procedural plan into effect in all courts as rapidly as possible in phases to be recommended to the Court by the ADR Planning and Implementation Committee in consultation with appropriate judicial and administrative personnel. The phases should be based on the availability of fiscal and human resources necessary to the adequate operation of the plan.
    - c. The ADR Planning and Implementation Committee should recommend, and the Supreme Judicial Court should adopt, any amendments to the rules of evidence, procedure, and professional responsibility necessary to protect communications and confidences in all ADR processes.
    - d. The ADR Planning and Implementation Committee should monitor the implementation of the dispute resolution procedural plan on a continuing basis and should make recommendations to the Supreme Judicial Court from time to time for any necessary revisions or changes.

### 3. Capacity and Quality

The capacity to provide all types of dispute resolution services for parties to litigation should be developed, including mediation, nonbinding and binding arbitration, reference, and early neutral evaluation, with a high standard of quality based on appropriate training and monitoring.

- a. Before the dispute resolution procedural plan is put into effect in any court, the ADR Planning and Implementation Committee should develop and publish lists of mediators, arbitrators, referees, and neutral evaluators who have either demonstrated experience or undertaken prescribed training and have agreed to accept assignments in accordance with the plan.

b. The ADR Planning and Implementation Committee should develop, and the Supreme Judicial Court should establish, as soon as resources permit, a new and expanded Court ADR Service authorized to employ or contract with dispute resolution practitioners having specialized skills and knowledge appropriate both to different types of litigation and to different methods of dispute resolution. The Service should provide all dispute resolvers used in court-connected ADR except those retained by agreement of the parties.

(1) The ADR Planning and Implementation Committee should develop, and the Supreme Judicial Court should adopt, minimum standards of training, qualification, practice, and ethics for all dispute resolvers employed by or contracting with the Court ADR Service. The standards should be based on experience with ADR in Maine and on national models. The standards should be designed to develop a pool of dispute resolvers having diverse backgrounds and experience and able to provide services of high quality.

(2) The internal ADR administrative office established as provided in Recommendation A. 1b. should develop and administer training programs that will enable dispute resolvers to meet and maintain the standards adopted in accordance with Recommendation A. 3b. (1).

(3) The internal ADR administrative office should monitor all aspects of ADR practice to assure that dispute resolvers employed by or contracting with the Court ADR Service perform at a consistently high level of quality and that their services are provided in an efficient and effective manner.

A statewide plan

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dispute resolution

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#### 4. ADR Screening

A statewide plan for all courts should be developed under which all claims for civil relief will be screened and the parties will be advised and assisted in undertaking appropriate dispute resolution methods, including community or private ADR, court-connected ADR, and adjudication.

a. As soon as resources permit, the ADR Planning and Implementation Committee should develop, and the Supreme Judicial Court should approve, a series of information and screening pilot projects at selected court locations where the dispute resolution procedural plan has been put into effect.

The projects should include the following components:

- (1) Dispute resolution methods available will include community or private ADR services; court-connected ADR methods including mediation, nonbinding and binding arbitration, reference, and early neutral evaluation; and judicial dispute resolution methods, including summary jury trial, informal judicial proceedings, and simplified and full-scale trial proceedings with dispute resolution alternatives available as in the dispute resolution procedural plan established under Recommendation A. 2a.
  - (2) Information and advice will be made available to all potential litigants concerning access to counsel, methods of proceeding without legal representation, and available dispute resolution methods and agencies.
  - (3) Unrepresented parties will be advised as to the availability of counsel and as to which dispute resolution methods can be effectively pursued without counsel.
  - (4) Actions actually entered on the docket will be screened by trained court personnel, who, on the basis of the nature and complexity of the issues, urgency of the matter, and amount in controversy, will recommend an appropriate dispute resolution method or assist the parties in determining the appropriate method. Parties who require counsel for effective pursuit of the most appropriate method and cannot afford it should be provided with publicly funded or *pro bono* counsel free or on a sliding-scale, reduced-fee basis.
  - (5) Nonjudicial ADR methods will not be binding except by agreement of the parties. The right to dispute resolution by judicial methods, including jury trial when appropriate, will be preserved.
- b. As soon as resources permit, the ADR Planning and Implementation Committee should develop, and the Supreme Judicial Court should adopt, a statewide information and screening plan for all courts based on the pilot projects. The plan should take into account the different conditions and case volumes of Maine's urban and rural court locations and should make use of appropriate technologies.

## 5. ADR for Criminal Matters

A program of pretrial screening should be developed to divert certain types of criminal matters to appropriate ADR methods.

- a. The ADR Planning and Implementation Committee should develop, and the Supreme Judicial Court should approve, one or more pilot projects under which prosecutors will have discretion to stay appropriate nonviolent criminal matters (as presently authorized in juvenile proceedings), and refer disputes between victim and offender to mediation, either in a community dispute resolution center established as provided in Recommendation B. 1. or under court direction. If mediation fails, the matter will reenter the criminal justice system at the appropriate point.
- b. The ADR Planning and Implementation Committee will evaluate the pilot project or projects and report to the Supreme Judicial Court its recommendations for the continuation or advancement of the program.

## 6. Knowledge of ADR

The knowledge of judges, other court personnel, lawyers, and parties should be increased about ADR, and guidelines should be established to assure that all parties will be informed of ADR options in the course of professional consultation or during court proceedings.

- a. Before the dispute resolution procedural plan is put into effect in any court, the ADR Planning and Implementation Committee should develop and publish appropriate guidelines to assist judges and court personnel in making sure that parties to litigation are aware of all ADR options at every stage of the proceedings. The Committee should also prepare and make available brief explanatory materials to be provided to all parties upon filing of pleadings or other entry into the civil justice system.
- b. The ADR Planning and Implementation Committee should develop, and the Supreme Judicial Court should adopt, a requirement that the internal ADR administrative office provide familiarization training to ADR concepts, methods, and practices for all judges and other court personnel.
- c. The ADR Planning and Implementation Committee should develop, and the Supreme Judicial Court should adopt, amendments to the Maine Bar Admission Rules and the Maine Bar Rules that would require all lawyers to be familiar with ADR concepts, methods, and practices as a specific requirement of the bar examination (and of mandatory continuing legal education, if adopted). The Committee should also develop and publish guidelines that would enable lawyers to advise clients of appropriate dispute resolution options.

## 7. Funding for ADR

Adequate funding for court-connected ADR should be provided that recognizes the importance of developing and maintaining a wide range of dispute resolution options in order to fulfill the public obligation to provide access to a high quality of justice for all citizens.

Adequate  
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all citizens.

- a. The Judicial Branch should request and the Legislature should provide direct appropriations to fund all court-connected ADR programs without reducing the budget of the Judicial Branch for other necessary operations. The Judicial Branch should earmark ADR as a high priority item within its operating budget.
- b. Court-connected ADR programs may generate revenue by returning a reasonable portion of their costs through user fees set at a level that will not inhibit access in light of the nature of the program and the type of action. *In forma pauperis* procedures should be provided for low income litigants.
- c. The ADR Planning and Implementation Committee should design a continuing study of the financial costs and benefits of court-connected ADR to be carried out by the internal ADR administrative office. The study should assess the costs to the system and litigants as well as (1) potential cost savings within the Judicial Branch from the assignment of functions to nonjudicial personnel and the more efficient use of judge time; (2) potential savings to state government when it is a party to litigation; (3) savings to private parties from speedier settlement of disputes with no, or at least less, involvement of lawyers; and (4) the relation of such cost savings to the other benefits of ADR. The results of this study should be used by the Judicial Branch and the Legislature in developing appropriate levels of appropriations for court-connected ADR and other Judicial Branch operations.

### *Commentary*

The Commission recommends that the Judicial Branch take direct responsibility for a greatly expanded system of court-connected dispute resolution that builds on Maine's pioneering experience with the Court Mediation Service and the Superior Court ADR pilot project conducted in York and Knox Counties. This system will not only provide litigants with a variety of alternatives to full-scale trial within the traditional litigation process, but also will refer potential litigants to more appropriate alternatives before they begin court action.

Within the litigation process today, most cases are settled without a full trial. The timing and content of these settlements, however, are driven by the economic and time pressures that the procedural steps in the process impose on the parties. As a result, pretrial settlement generally involves much expense, uncertainty, emotional turmoil, and inefficiency. Dispute resolution alternatives address the burdens of these pretrial steps as well as those of trial. By promoting settlement early in a conflict, dispute resolution alternatives save money, time, and stress, both for the parties and for the courts. By encouraging low-cost methods that people understand and directly participate in, dispute resolution alternatives provide access for those who would otherwise be shut out of the legal system or dissatisfied by its results. By encouraging flexible processes that take account of complex issues and balance conflicting values and goals, dispute resolution alternatives provide more satisfactory resolutions to a variety of problems that now come to the courts by default. By providing assistance in sharpening issues and shaping the litigation process, dispute resolution alternatives improve the efficiency and quality of that process when trial cannot be avoided.

Under Recommendation III.A., the courts will be dispute resolution centers that provide potential litigants with a menu of dispute resolution alternatives, as well as assistance in identifying the most suitable alternative for a particular situation. The potential menu of dispute resolution alternatives includes:

- **Early neutral evaluation:** a process in which a neutral with substantial trial experience hears best-case summaries and issues an advisory opinion and then may assist parties in negotiation or structuring the next steps of their case;
- **Mediation:** a process in which a neutral assists parties in conflict to reach a mutually acceptable agreement;
- **Nonbinding arbitration:** a process in which a neutral decision-maker with specialized expertise hears abbreviated proofs and arguments and issues a nonbinding decision;
- **Binding arbitration or reference:** processes in which a neutral decision-maker selected by the parties or the court hears evidence and arguments under informal rules and issues a decision that is binding on the parties, though subject to limited judicial review;
- **Summary jury trial:** a process carried out by a judge in which a special jury hears abbreviated arguments and summarized evidence before deliberating on an advisory verdict that the judge discusses with the parties;
- **Abbreviated civil hearings:** a formal adversarial process conducted under a streamlined procedure to be used in cases where the lengthy discovery and other costly and time-consuming devices of current civil procedures are unnecessary or inappropriate;
- **Full civil proceedings:** the present adversarial process of the full civil trial or hearing, to be used where necessary or appropriate.



The Commission's recommendations call for full public funding of court-connected dispute resolution alternatives, but they also recognize current fiscal realities by providing for a phased-in introduction of the new process. Thus, the volunteer ADR Planning and Implementation Committee to be appointed by the Supreme Judicial Court under Recommendation III.A.1. is charged with developing a cost analysis of the program and seeking funding for the initial stages of the implementation process. The activities of the Committee will carry little or no cost and should result in grant support to start the work of implementation. The dispute resolution procedural plan to be developed under recommendation III.A.2. will also be relatively cost-free, because nonjudicial dispute resolution will be conducted by neutrals employed on a case-by-case basis, rather than by salaried employees of the Judicial Branch. Moreover, the plan is to be phased in as resources become available to meet its costs.

Many of the remaining recommendations, such as those for training and familiarization in Recommendation III.A.6., also do not involve substantial cost. Recommendations that do involve significant cost, such as those for the establishment of a court ADR Service (III.A.3b.) or for development of a statewide ADR information and screening program (III.A.4) or a criminal diversion program (III.A.5) will be implemented only as resources become available in the form of either private sector seed money and support or appropriations. In sum, implementation of the Commission's recommendations for court-connected dispute resolution alternatives can begin immediately. The first steps will not only have significant impact in their own right but also will lay the foundation for realization of the full vision that is embodied in the recommendations.

## **B. COMMUNITY DISPUTE RESOLUTION**

A statewide network of community dispute resolution centers should be developed to accept self-referrals and referrals from public and private agencies including schools. These centers will handle disputes that otherwise might never be litigated, pre-litigation matters, and appropriate civil and criminal matters referred from courts, police, and prosecutors (as provided in Recommendations A.4. and 5. above).

### **1. Planning Group**

By 1994, a statewide planning group should be established and charged with first developing pilot community dispute resolution centers in several geographic areas of Maine and then coordinating statewide development of community dispute resolution programs.

- a.** In 1994, the Supreme Judicial Court should appoint a Community Dispute Resolution Planning Council.
- b.** This Planning Council should consist of representatives of the following groups: community leaders, educators, dispute resolution practitioners, social service providers, local bar

associations and legal services providers, law enforcement personnel, prosecutors, judges and representatives of such groups as the elderly, disabled, and low income which have an interest in community dispute resolution. Members should come from diverse geographic regions of the state and from communities of varying sizes and types.

- c. In its work the Council should make use of local expertise, and call upon providers of mediation services for families and the elderly to assist in planning and implementation of the centers.

## **2. Pilot Projects**

The Community Dispute Resolution Planning Council should establish at least three pilot community dispute resolution centers.

- a. The Council should seek private funds to support its planning efforts and the development of pilot programs.
- b. The Council should seek to establish pilot programs in diverse geographic regions of the state, including both urban areas and smaller communities.
- c. The Council should establish standards and protocols for dispute resolution services, including identification of types of cases that are not appropriate for mediation. This work should be carried out in conjunction with similar work being done by the courts.
- d. The Council should establish training and evaluation standards for the volunteer mediators who should provide services through the centers. These standards should be consistent with those developed by the courts and private dispute resolution organizations.
- e. The Council should monitor the quality of the services provided through the centers on an ongoing basis.

## **3. Report to Legislature**

The Council should report to the Legislature on the experience of the pilot community dispute resolution programs and should make recommendations to the Legislature regarding their extension throughout the state. These recommendations should include proposals for funding.

## C. PRIVATE SECTOR DISPUTE RESOLUTION

### 1. Information and Referral Sources

Private dispute resolution practitioners should promote the use of dispute resolution and increase access to it by continuing to improve sources of information and referral.

### 2. Code of Ethics

Private dispute resolution practitioners in Maine should adopt a code of ethics, such as the Society of Professionals In Dispute Resolution's code of ethics, and continue to develop appropriate standards of practice, registration and performance-based certification.

## D. PUBLIC SECTOR DISPUTE RESOLUTION

### 1. Interim Advisory Committee

An interim advisory committee should be established to provide short-term assistance to state, municipal, and other governmental entities in developing plans and policies for dispute resolution, as described in Recommendations D. 2., 3., and 4.

In 1993, the Governor and Legislature should establish an unpaid advisory committee including representatives of state and local governmental agencies, agency constituencies, and dispute resolution practitioners to:

- a. Provide guidance and expertise to state agencies, municipalities, and other governmental entities in developing dispute resolution policies;
- b. Seek funding to support the committee's work and to provide training to agency personnel;
- c. Review agency dispute resolution policies and recommend to the Legislature statutory or other changes necessary to remove barriers to effective use of dispute resolution by governmental entities;
- d. Design and initiate a continuing study and analysis of the costs and benefits of public sector ADR to both governmental agencies and private groups and individuals;
- e. Develop a proposal for a State Center for Dispute Resolution that will assume the responsibilities and functions of the advisory committee.

## 2. Use by State Agencies

Provision should be made for expanded use of dispute resolution by state agencies.

The Legislature should enact legislation modeled on the federal Administrative Dispute Resolution Act of 1990 and the federal Negotiated Rulemaking Act of 1990.

- a. This legislation should amend the Maine Administrative Procedure Act to clarify agencies' authority to use dispute resolution in resolving disputes and to use negotiated rulemaking when developing draft regulations for submission to public comment under existing provisions of the Act.
- b. This legislation should provide for the creation and implementation of agency dispute resolution policies that encourage greater appropriate use of dispute resolution, as follows:
  - (1) Each state agency should designate a dispute resolution officer to oversee the development and implementation of an agency dispute resolution policy.
  - (2) Each state agency, in consultation with the Attorney General, should adopt a policy addressing dispute resolution with regard to:
    - adjudications
    - license or permit approvals
    - enforcement actions
    - contract administration
    - rulemaking
    - litigationPolicies will be implemented immediately where possible. When developing policies, agencies should identify barriers to effective use of dispute resolution, such as statutory and regulatory barriers and lack of current resources.
  - (3) Each agency should provide training to the dispute resolution officer and other appropriate personnel and the Attorney General should provide dispute resolution training to its staff.
- c. If the development of such policies and procedures imposes costs on any agency, the Legislature should provide direct additional appropriations to fund their development.

### **3. Use by Local Government**

Provision should be made for expanded use of dispute resolution by governmental and quasi-governmental entities at the local level.

- a. Cities and towns, with the guidance of the Maine Municipal Association should review their dispute resolution processes, including processes set out in contracts for services, and expand the use of dispute resolution processes as appropriate.
- b. Regional councils of governments or planning councils, with guidance from the Department of Economic and Community Development, should develop plans to educate municipalities concerning appropriate uses of ADR in resolving disputes that involve the development of comprehensive plans and in coordinating between local governments with regard to planning and development issues.

### **4. State Center for Dispute Resolution**

A State Center for Dispute Resolution should be developed to provide support for agency dispute resolution activities and to assist in the resolution of public sector disputes.

- a. The Legislature should create a State Center for Dispute Resolution that will:
  - (1) Work with state agencies and municipal and other governmental entities to continue developing effective and appropriate dispute resolution policies and procedures.
  - (2) Educate and train agency and governmental personnel, dispute resolvers, and the public in dispute resolution skills.
  - (3) Assume the responsibilities and continue the functions of the interim advisory committee established under Recommendation D.1.
- b. The Center for Dispute Resolution should:
  - (1) Develop and administer procedures for handling and referring policy disputes, including disputes between or within branches of state government and public policy disputes involving other governmental and quasi-governmental entities.
  - (2) Develop forums, panels of dispute resolvers, and referral mechanisms for state, regional and local public policy disputes. Fees for dispute resolution services may be charged by the dispute resolution center or by dispute resolvers selected by the parties.

## **E. EDUCATION ABOUT DISPUTE RESOLUTION**

### **1. Educational Planning Group**

The Department of Education in cooperation with the education and law faculties of the University of Maine System should convene a group of teachers, school administrators, and dispute resolution practitioners to plan and guide efforts to introduce the teaching of dispute resolution principles and skills in the curricula of elementary, middle or junior high and secondary schools. This same group should also help plan and implement the development and use of mechanisms for resolving disputes within school communities.

- a. The Department of Education in conjunction with the Planning Group should seek private funding to support its work and to encourage schools to establish pilot dispute resolution curriculum and dispute resolution programs.
- b. In planning dispute resolution curriculum and dispute resolution programs within schools, the Planning Group should draw on the experiences of Maine schools and faculty who have already implemented such activities as well as the experience and expertise outside Maine.
- c. The Department of Education should report to the Legislature on a plan to encourage and support dispute resolution programs and curricula statewide.

### **2. Undergraduate Institutions**

Undergraduate institutions should teach dispute resolution principles and skills in the curriculum and should provide students and faculty with direct experience of dispute resolution through the development and use of mechanisms for resolving disputes within the college or university community.

### **3. Professional Programs**

Law schools and other graduate-professional programs should offer courses addressing selection and appropriate use of dispute resolution methods and instructing students in dispute resolution skills.

- a. The University of Maine School of Law should incorporate treatment of alternative dispute resolution methods in all required courses where relevant and in appropriate elective courses and should expand the present offerings of specialized courses in alternative dispute resolution.

- b. The University of Maine School of Law should convene a group of faculty from professional schools (including business, public policy, education, nursing, and social work) to coordinate existing dispute resolution programs and the development of new interdisciplinary approaches to teaching dispute resolution theory and skills.

#### **4. Businesses and Law Firms.**

The Alternative Dispute Resolution Committee and the Lawyer Referral and Information Service of the Maine State Bar Association in cooperation with the Attorney General should encourage and assist Maine businesses and law firms to develop their own dispute resolution practices, including use of appropriate dispute resolution clauses in contracts and adoption of the pledge to consider dispute resolution alternatives as proposed by the Center for Public Resources, a national support group for the use of ADR in the private sector.

#### **5. Nonprofit Leadership and Adult Education Programs.**

Private nonprofit community leadership training programs and adult education programs should be encouraged to develop programs to teach dispute resolution skills and to offer courses by various means, including interactive television, that increase public awareness of dispute resolution options.

### *Commentary*

The work of the courts will be complemented by a comprehensive network of community dispute resolution centers, a cadre of private dispute resolution professionals, a new commitment of governmental agencies to settle disputes appropriately, and an education system that teaches dispute resolution skills and increases public and professional awareness of dispute resolution alternatives. Resort to these devices for the resolution of conflict will both relieve the courts of the burden of unnecessary or inappropriate litigation and provide resolution for disputes that the present system does not address.

The community dispute resolution centers proposed in Recommendations III.B will recruit and train volunteers to assist people in the resolution of a wide range of conflicts, including those involving families, school truancy and suspension, neighborhood, consumer, landlord-tenant, and minor criminal or juvenile matters. The Supreme Judicial Court is asked to appoint an initial planning group for the development of community dispute resolution centers, because this activity should be carried out in conjunction with parallel developments in the court system. The Community Dispute Resolution Planning Council, however, will be responsible for obtaining its own funding to carry out the pilot projects contemplated by the recommendations, as well as for making appropriate proposals to the Legislature or private funders to extend and make permanent a community dispute resolution network for the state. Thus, no cost will be imposed on the Judicial Branch for the implementation of this recommendation.

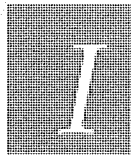
A strong network of private volunteer and professional dispute resolution services is proposed in Recommendation III.C. This network, entirely a matter of private enterprise, will provide access to affordable and appropriate dispute resolution methods for individuals, groups, businesses, and government agencies, either before or after bringing legal action.

Recommendation III.D. dealing with public sector dispute resolution does not call for direct action by the courts. It is included because improved dispute resolution methods in the other branches of government will have a significant impact on the work of the courts and because the methods to be used are parallel to those that will be developed directly in the courts. Following up on the recent successful use of negotiated rulemaking in implementing Maine's transportation policy referendum, federal legislation extending ADR methods to the administrative process should be adopted for state government. The use of mediation under the recent revisions of the Workers' Compensation System should be closely monitored for adaptation in other administrative settings. Municipal and regional governments should be encouraged to use ADR. Under the auspices of a State Center for Dispute Resolution, governmental agencies, parties to disputes with agencies, and parties having disputes in the public policy arena will use a full array of dispute resolution methods leading to effective and sensible resolutions that avoid unnecessary legal expense and delay.

Recommendation III.E. recognizes the importance of education of both the public and the relevant professionals on the methods, skills, and potential of ADR. The bench, bar, private citizens and businesses, and public agencies will have broad understanding of the value and appropriate use of the full range of dispute resolution methods, because schools, universities, and other institutions and organizations will teach, as well as model through their own dispute management procedures, both the uses and the skills of dispute resolution alternatives.



# TRIAL AND CASE MANAGEMENT



*In the 21st Century, the court system will dispense justice in an impartial, timely, efficient, and affordable manner. Cases will be managed in such a way as to minimize costs and delays. Civil rules, procedures, forms and practices within the Maine court system will be simplified and standardized in order to promote the speedy and economical resolution of disputes.*

*Criminal cases will be processed in a timely manner balancing the need for quick resolution to protect societal interests and the need to ensure adequate protection of the constitutional rights of the accused. Maximum consideration will be given to jurors, witnesses, and victims of crime.*

*The criminal justice process will have statewide pretrial services, and alternatives to incarceration will be readily available. Coordination among service providers and other segments of the criminal justice system will be extensive.*

## A. RULES OF PROCEDURE AND EVIDENCE

### 1. Review Rules

The Supreme Judicial Court, in concert with its various advisory committees, should thoroughly review the procedural rules which govern civil and criminal actions as well as the rules of evidence, with an eye toward amending them to ensure greater efficiency without compromising justice. Examples of measures that should be considered in regard to civil litigation include:

- a. Increase use of narrative statements and document summaries to focus the issues under litigation;
- b. Require early stipulation of facts for the same purpose;
- c. Establish timeframes for filings and responses which provide rapid processing and an expectation that those timeframes will be adhered to by counsel;
- d. Establish time limits on direct presentation and cross-examination;
- e. Utilize attorney summaries and expand the use of depositions, particularly those involving testimony of experts, in the presentation of evidence;
- f. Increase use of electronic filing and other technology; and
- g. Permit judges to recommend, require, or employ appropriate Alternative Dispute Resolution methods.

### 2. Simplify Rules

Simplify the rules of procedure and evidence as much as possible so that all users of the court, those represented and those proceeding without representation, have an enhanced ability to understand and to make meaningful use of the justice system and to do so at a more reasonable cost. The Supreme Judicial Court should explore whether the distinctions between the civil rules and the criminal rules could be minimized.

## B. CASE MANAGEMENT PROCEDURES

### 1. Review Procedures

The Judicial Branch should continually seek modifications and innovations in court procedures to achieve greater efficiency while

Now, more than  
ever, there is a  
need to erase once  
and  
for all the common  
picture of an  
American court as  
an institution rooted  
in the past, resistant  
to change, and  
resigned to  
inefficiency.

*Chief Justice C.C.  
Torbert, Jr., Former  
Chief Justice of  
Alabama*

still maintaining its high standards. Examples of possible improvements include:

- a. Assess the benefits of assigning two judges to a single jury trial list;
- b. Expand the use of differentiated case management to assure that cases get the type of judicial attention required;
- c. Expand use of phone conferences, telephone (and eventually interactive video and computer conferencing) motion hearings, and other means of facilitating inexpensive resolution of issues; and
- d. Expand use of alternative dispute resolution methods and dispute resolution information and screening.

## 2. Single-Judge Assignment

To the extent possible with civil cases, and with due regard for the concerns of rural courts, the use of single-judge assignments should be expanded to allow continuity and efficiency of case processing. In cases which extend over a long period of time, the proceedings often are complicated by the fact that several judges may be involved. In many of those cases, it is important that the assignment of judges assure that those cases be scheduled before a single judge. Single-judge assignment pilot projects, such as those to be implemented in 1993 in Cumberland and Somerset Counties, are strongly encouraged.

## 3. Early and Decisive Judicial Intervention

Much of the delay and cost associated with litigation can be attributed to lack of active judicial involvement. The courts should control the flow of cases, from initiation to completion, through adoption and enforcement of reasonable time standards and procedures, and through an active judicial role, including active encouragement of, and involvement in, alternative dispute resolution.

## 4. Discovery Abuses

Misuse and abuse of the discovery process in civil litigation contributes substantially to cost and delay in the process.

- a. The court should reaffirm, through its rules and its actions, that discovery of relevant information in a straightforward, timely manner is the right of every litigant. In all matters there should be an order outlining the timeframe for initiation and completion of discovery to which the parties are expected to adhere.
- b. A mandatory disclosure rule should be considered. Each party, by rule, would be required automatically and routinely to provide the

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other side in a timely fashion with certain basic information. If a need is demonstrated, further information may be obtained through a formal discovery process which should be strictly monitored by the court.

## C. JURY MANAGEMENT

### 1. Reduction of Current Burden on Public

Efforts should be undertaken to reduce the burdens currently placed on those selected to perform jury duties.

- a. When a jury pool is in, multiple juries should be selected;
- b. Jurors should be able to select the portion of the overall jury service which is most convenient for them in those cases in which the court has determined that full jury service would truly be a hardship;
- c. Every effort should be made to hold a trial on the day originally scheduled. If there is uncertainty whether criminal trials will proceed, lawyers should consult with the court early in the morning and jurors should be directed to contact the court later that morning to ascertain if they should report at a designated time;
- d. All motions *in limine* should be deferred until after jury selection to reduce the number of individuals required to wait; and
- e. Jurors should not be required to be present in court if they could be available on short notice.

### 2. Long-Range Efforts for Burden Reduction

When technology and staff resources are sufficient within the court system, shorter terms of jury service, such as a "one week-one trial" approach, should be attempted.

## D. FORMS AND STANDARD PROCEDURES

### 1. Modification and Creation of forms

The courts should establish standardized forms whenever possible to reduce confusion for citizens, clerks, judges, lawyers and others who come in contact with the system and its documents. Standardization will improve the ability of personnel to process paperwork. The standardization process should involve citizens and literacy volunteers and should use nontechnical language whenever possible.

## 2. Standardization of Procedures.

The courts should also establish standard procedures for processing cases from filing through disposition. Although this approach will not be possible for all litigation, many matters can be conducted in such a manner, allowing participants and clerks to better predict the course and timing of litigation. Scheduling and handling of specific types of matters throughout the state, such as Protection From Abuse actions and *in forma pauperis* proceedings, and standardization of routine matters (similar to small claims proceedings) through the use of forms and computers will enhance the ability of citizens to use the court without legal representation if they choose or need to do so. Procedures for adoption and surrender and release of parental rights in Probate Courts are also in need of standardization.

### *Commentary*

Perhaps no other single topic has a greater impact on the actual and perceived productivity of the courts than that of trial and case management. Certainly it appears to have the most frequent and direct impact on the users of the judicial system. Delays in preparing and presenting a case, the costs associated with discovery and trial, the amount of time unnecessarily consumed by actual litigation, and the availability and impact of alternative dispute resolution all



affect the total productivity of the legal system. Delays in resolution of urgent disputes can have a devastating effect on the parties.

The Commission recommends a deliberate, systematic review of the rules and procedures which govern case preparation and presentation as a prelude to modification of the system to reduce delay without affecting the quality of justice. Many of the specific recommendations entail a new approach to case presentation which stresses the need to crystallize and narrow points of fact and law which are critical to the dispute presented and about which the parties disagree. Procedures for increased use of alternative dispute resolution are detailed in Recommendations III.A.2.,4.,5. Attitudinal and procedural changes are to be accompanied by an increased utilization of technological advances for matters ranging from routine filings to the use of videotaped expert testimony.

There are barriers to use of the judicial system that, although more subtle than those of money and time, are equally effective in limiting access to the courts. The most widespread of these is the complexity of the legal system; it intimidates potential users and artificially curtails the actions of those who are already involved in litigation. Even lawyers may be unable to explain procedures and requirements which seem to exist because they have always been so, often without a still valid purpose. In too many instances, there are wide disparities in forms and procedures not only among the Superior, District, and Probate Courts, but among the different locations of each court.

The recommendations reaffirm the need for courts to reassert control over the timing and character of litigation through more active participation and intervention. Such a role not only reduces delay but can lessen the impact of financial disparities between the parties. Courts should also attempt to standardize forms and procedures to increase the predictability for users and reduce confusion and attendant delay and costs. As an example, in family law matters, creating standardized forms for motions to enforce judgement and motions for contempt which would be available at all clerks' offices would significantly assist unrepresented parties as well as others.

Efforts should also be made to reduce the often substantial burdens placed upon those called as jurors. The current system of jury selection and utilization requires potential jurors to set aside substantial amounts of time on the possibility their services will be required. Continuances are especially burdensome if a juror lives considerable distance from the court. The courts should assess the method of jury selection to decrease the time and uncertainty for those citizens asked to discharge this vital obligation.

## **E. CRIMINAL JUSTICE ISSUES**

### **1. Pretrial Services**

Pretrial services, such as evaluations, counseling, and treatment, including services for juveniles, should be mandated statewide with monitoring and funding to be overseen by Maine's courts. Screening for bail consideration should be provided prior to a defendant's first appearance before the court in order to establish eligibility for court-appointed counsel and release assistance and the least restrictive conditions of release necessary to preserve the integrity of the judicial system. Neutrality of pretrial services must be guaranteed.

## **2. Alternatives to Sentencing and Incarceration**

Programs offering diversion prior to trial and sentencing options should be supported and expanded statewide. These programs should encompass juveniles as well as adult offenders.

Implementation of a first offender diversion program and continuation of electronic monitoring and intensive probation are all supported by the Commission. Judges should be aware of, and use, the most appropriate sentencing and placement options.

## **3. Criminal Justice Process Coordination**

There should be closer coordination among the various segments of the criminal justice process. Monitoring the interrelationships among the criminal code, the criminal docket, the availability of judicial and prosecutorial resources, the sentencing guidelines, the adequacy of prisons and jails, the availability of pretrial screening and diversion to alternative dispute resolution, the availability of dispositional alternatives and the capacity of the Probation Department should be an ongoing responsibility of some group such as the newly formed Maine Criminal Justice Commission.

## **4. Coordination with Providers of Social and Mental Health Services**

- a. There should be closer coordination among the judges, the District Attorneys, the Department of Corrections, the Department of Human Services, the Department of Education, and the Department of Mental Health in providing social service, evaluations, counseling, training, and residential and/or institutional placements.
- b. Judges should be briefed on, and periodically visit, institutions to which they sentence criminals or juveniles or commit persons who are mentally retarded or suffering from mental disease as well as the community-based services in which persons whom they place on probation are required to participate.
- c. More testing and treatment resources, especially for substance and sexual abuse, are needed in prisons, jails and juvenile facilities as well as in community settings for persons on probation. Literacy training and vocational education opportunities are also needed in all facilities. Failure to provide these services is extremely short-sighted and will multiply the costs to society in the long run.

### *Commentary*

The ability of the criminal justice system to fulfill its adjudicatory, protective and rehabilitative functions has been severely curtailed by a lack of resources and coordination. Too few pretrial services are available such as evaluations, counseling, treatment, determination of appropriate bail release conditions and pre-appearance screening of eligibility for appointment of counsel. There are insufficient alternatives to incarceration at present. The lack of coordination among the participants of the system, from prosecutors to social service providers, often results in dispositions which reflect the absence of alternatives rather than the unique circumstances of each case.

As the breadth of programs expand and their viability is ensured through adequate funding, the courts must make efforts to familiarize themselves with the resources available. Judges should understand the scope and purpose of the institutions and services available at all stages of the criminal process and should be attuned to discrepancies between the design and actual operation of those programs. Coordination of participants will reduce duplication, stretch limited resources and promote dialogue among entities which have, in the past, seen themselves as competitors for funding rather than as colleagues in the justice system.

It is the prerogative of the Executive Branch, subject to constitutional and statutory limitations, to decide which cases should be brought to court, which cases should be diverted or informally adjusted, and whether there should be pre-indictment probation or pretrial counseling and treatment. Information about types of resources such as counseling, treatment, the availability of foster homes or group homes, must be available to judges in pre-adjudication bail proceedings and in making post adjudication decisions on sentencing options/alternatives for adults and juveniles and for deciding about placements or commitments in civil proceedings. Resources are too scarce to be squandered or not used to the best advantage. The proper disposition in sentencing, especially of juveniles, should not depend on which Department has funding for services or a vacant bed in facilities under its jurisdiction. Diversion of certain criminal matters to alternative dispute resolution is covered in Recommendation III.A.5.

Lack of close coordination between criminal prosecutors and case workers from the Department of Human Services impacts the work of the courts because abuse cases are often delayed until decisions about criminal prosecutions are made and charges are processed. This in turn delays permanency planning for children and treatment for abusers.

## **5. Juvenile Matters**

Improvements are needed in the juvenile justice system.

- a. Closer coordination between the juvenile docket and the family docket should be established.
- b. All judges handling juvenile matters need to receive increased training about juvenile justice programs and services. Judges who preside in Juvenile Court should be rotated periodically to avoid burnout.



- c. Written policies must be developed for all courts regarding the court-appointment process. Appointment procedures for juvenile matters vary widely from court to court.
- d. Additional time limits need to be imposed in juvenile matters in such areas as time to dispositional hearing and time for juvenile evaluations.
- e. Meaningful probation is a needed service for juveniles.

#### *Commentary*

Many of the same factors which support special consideration of family matters are also germane to juvenile matters. The Commission's recommendations are designed to reflect these time, sensitivity and disposition factors as well as to reflect the Juvenile Code's emphasis on treatment and rehabilitation. Due to the press of workload in District Court and delays in District Attorneys offices, some juvenile matters do not receive sufficient time and attention and are not heard on a timely basis given a juvenile's sense of time. An increase in judicial effectiveness with juveniles will pay larger dividends than many other improvements in the system in terms of social, human, and economic impact. Judges need to take a particularly active role in juvenile matters for just that reason.

Closer coordination between the juvenile docket and the family docket is currently being accomplished to some extent because District Court judges, who handle the bulk of family matters, also sit as the Juvenile Court. Judges who specialize in family matters have easily transferable skills in handling the juvenile docket. Many of the recommendations previously outlined in the discussion of the alternate dispute resolution programs in criminal proceedings are particularly appropriate in juvenile proceedings.

## **6. Victim Involvement**

The following steps should be undertaken to increase victim participation in the criminal justice process:

- a. Services for victims, including victim advocates within the District Attorneys' offices, should be expanded in order to adequately fulfill their mission.
- b. Prosecutors should give victims of crime notice of all significant stages of the proceedings and keep victims informed of the progress of their cases; prosecutors, judges and court personnel should accord due respect to the victim's role in criminal proceedings and to the victim's position regarding disposition and outcome of the case.
- c. Especially in domestic violence and sexual abuse cases and in any criminal cases involving serious physical or emotional trauma or serious financial loss to a victim, the victim and/or victim's family should be involved and should be heard concerning the disposition

of the case, whether by plea bargain or by conviction after trial or open plea. If for some reason the victim and/or victim's family has not been notified or is not available or interested in the outcome, the court shall be made aware of these facts and should continue the matter to allow for victim input whenever feasible and appropriate.

- d. The Department of Attorney General, which is responsible for implementation of the Victim Compensation Program, should make available to all District Attorneys and to all law enforcement agencies a fact sheet for victims containing information about the victim advocate and victim compensation programs.

*Commentary*

Although Maine law currently gives victims of crime a role in the sentencing process, the criminal justice system does not do enough to accomplish the actual participation of victims in sentencing proceedings. The Commission's recommendations are intended to assure that prosecutors and judges do everything possible to ensure the actual participation of victims in the process.

## **7. Discretionary Use of the Grand Jury**

The time and expense associated with the Grand Jury process in its present form is of questionable benefit. The use of a grand jury should be left to the discretion of the District Attorney or Attorney General so that it is available in very sensitive or highly politicized cases but not constitutionally required in others. Such a change needs to be monitored to assess whether there is an increase in the demand for judicial resources because of a significant increase in contested probable cause hearings.

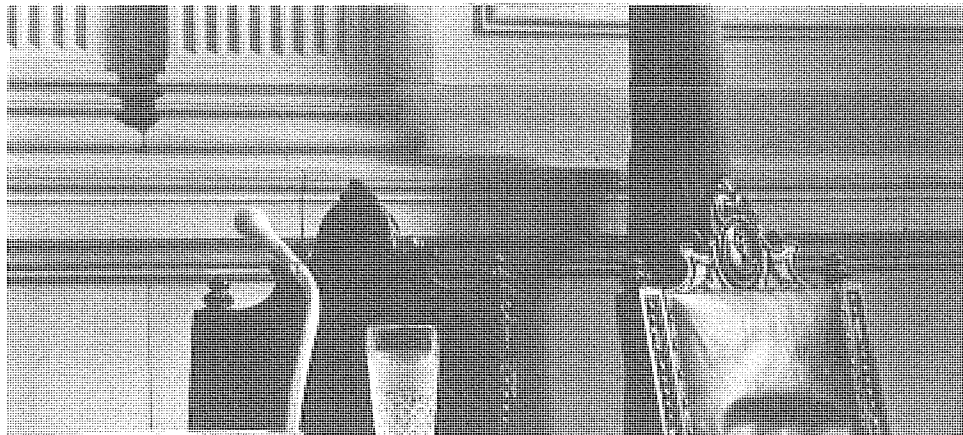
*Commentary*

The Grand Jury is deeply rooted in American jurisprudence and historically has been very important as courts and society evolved. Now it is rare that a Grand Jury fails to indict someone if the District Attorney wishes to obtain an indictment. Today in Maine, as in other states, its use is only significant in a limited number of high profile cases, and cases involving political overtones or public sensitivities. In those cases, under the Commission's Recommendation, the District Attorney would still have the option, but not be constitutionally required, to use the Grand Jury. By eliminating mandatory grand juries, much duplication of effort in the processing of the same cases in District and Superior Courts can be avoided and delay can be reduced.

# STRUCTURE AND JURISDICTION OF THE COURT SYSTEM

**I**n the 21st Century, court structure will be designed to serve the interests of the public and not any particular group of judges or lawyers and will be as simple as possible. The type of courts, the horizontal and vertical integration of courts and court functions, and the optimum geographical consolidation or decentralization of physical facilities will vary from time to time as the result of societal changes, demographic trends, advances in and availability of technology, and changing public expectations about the role of courts.

*The Supreme Judicial Court will have considerable flexibility in its authority to modify court organization and operations and to allocate resources to accomplish these goals.*



## A. STRUCTURE OF SYSTEM

### 1. Superior and District Courts

The following operational changes are recommended to improve coordination between the Superior and District Courts and the flexibility with which they deliver services without altering the present structure:

- a. **Judicial Cross-Assignment.** Cross-assignment of judges in all trial courts by the Chief Justice should be routinely used to maximize personnel and facilities, accommodate the special demands which rural areas place on the available judges, and expand the variety of matters to which judges are exposed. To maximize judicial availability, every judge appointed to a trial court should understand that s/he may be cross-assigned.
- b. **Resident Judge System.** The current resident judge system should be abolished. In high volume areas (determined by the Chief Justice of the Supreme Judicial Court) where judges often serve in administrative capacities and as informational resources for clerks, one supervisory judge per area could be designated. In those areas where it is deemed appropriate to have supervisory judges, the Chief Judge of the District Court and the Chief Judge of the Superior Court should have the authority to designate such judges for their own courts.
- c. **Same Title.** All trial judges should have the same title to reaffirm the parity of judges irrespective of the courts to which they are appointed or assigned. The members of the Supreme Judicial Court should continue to be referred to as “justices;” all others should be designated as “judges.”
- d. **Equal Pay.** Current Superior and District Court judicial salaries should be equalized to reinforce the position that there is no difference in the quality and the importance of the work of all Maine trial judges. Parity should be achieved by increasing District Court levels to those of the Superior Court, as soon as possible, but at least within the next five years. Pay equalization must not compromise funding for future increases in the salaries of current Superior Court judges.
- e. **Merged Personnel and Records.** Support personnel and records should be merged administratively in court locations where current Superior and District Courts are housed together or in close proximity. The resident judge system needs to be abolished prior to this administrative merger.

- f. **Clerk Cross-Assignment.** The cross assignment of clerks between the present Superior and District Courts should be used to accommodate shifts in workloads and maximize limited personnel.
- g. **Docket Numbering System.** The court should develop a uniform docket numbering system for all courts and regions to enhance access as well as the ability to use cross-assigned clerks for docketing duties.
- h. **Central Filing.** The use of central filing for all courts from all locations should be established to minimize public confusion, ensure uniform docketing and procedure, and maximize limited personnel and resources. This can only be accomplished when electronic data transmission and imaging technology are available to support this effort. Litigants should be able to file in any location of the trial court, relying upon court personnel to ensure transmittal of the paperwork to the appropriate division and location as an administrative matter.

#### *Commentary*

The Commission recommends no change in the basic structure of the Superior and District Courts. Section V.A. contains a number of functional recommendations designed to improve coordination between those courts and to increase the flexibility and efficiency with which all of Maine's courts deliver their services.

The Legislature instructed the Commission to study the "[i]ntegration of the jurisdictions of the various court systems, including the feasibility, cost and method of creating a unified trial court system" for Maine [P.L. 1989, ch. 891, § B-5(1)]. The Commission gave extensive consideration to this issue, beginning with a symposium on court structure held on January 16 and 17, 1992, at which representatives from a number of states with "unified" systems discussed their experiences with Maine judges, lawyers, and others.<sup>1</sup> In addition, the Commission contracted with the National Center for State Courts to examine the current status of court organization in Maine and survey prevailing attitudes about further consolidation of Maine Courts. Then, in response to alternatives submitted to the National Center by the Structure Task Force, the National Center suggested the implications and factors to be considered in deciding among the various options. No empirical data on the impact of court unification on the effectiveness of court performance could be obtained.<sup>2</sup>

From these preliminary efforts, it became clear that there was no single view of what the concept of a "unified trial court" meant. In the course of the Commission's deliberations, three basic models were considered:

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<sup>1</sup> See Commission to Study the Future of Maine's Courts and Maine State Bar Association, *Exploring Maine's Future: Symposium on Court Structure* (1992).

<sup>2</sup> See Commission to Study the Future of Maine's Courts, *Phase I Report: A Working Document*, 55-115 (1992).

- (1) Complete merger of the present Superior, District, Administrative, and Probate courts in a single statewide trial court of general jurisdiction with appropriate divisions for specialized matters such as family law and appeals.
- (2) Creation of a single statewide "Superior Court" in which the present Superior and District Courts would be reconstituted as the "Circuit" and "District" divisions, retaining their present jurisdiction and personnel. Separate "Family" and "Appellate" divisions would be established within this single court. The Administrative Court would be abolished and its jurisdiction incorporated in the single court. The Probate Courts would retain their present functions but Probate Judges would become part of the Judicial Branch.
- (3) Retention of the present system of separate courts, coupled with a variety of operational and internal structure changes to increase coordination, efficiency, and flexibility.

After extensive consideration, models (2) and (3) were presented to the public in the September 1992 *Preliminary Recommendations of the Commission* as Alternates A and B. Eight Commissioners had favored Alternate A, six had favored Alternate B, and one had abstained. During the public hearing, there was almost no public comment on the unification question.

At the meeting of the Commission following the public hearings, ten of the 16 Commissioners present favored Alternate A, but the proposal did not receive the two-thirds vote necessary under the Commission's bylaws for adoption as a final recommendation. A number of specific recommendations for functional change were approved, however, including equalization of the salaries and status of judges, abolition of the District Court resident judge system, and cross-assignment of all judges and other personnel of all trial courts to maximize the use of personnel. The Commission also approved recommendations to develop family and appellate divisions within the trial courts, improve the handling of juvenile matters, abolish the Administrative Court and incorporate Probate Judges into the Judicial Branch. See Recommendations IV.E.5., V.A.2. to 5. These changes will provide many of the benefits that formal structural unification has been designed to achieve in other jurisdictions.

The history of Maine's court system shows that no particular court structure can remain frozen in time. Creation of the statewide Superior Court in 1930 and the District Court in 1962 were major initiatives to adapt the courts to changing needs of the public. The Commission has fulfilled its mandate from the Legislature with its exhaustive consideration of trial court unification in Maine's present circumstances. This study does not presume to be the final word on the subject, however. Court structure must be subject to continuing review and reevaluation in light of changes in social and economic conditions, technology, and the needs and expectations of Maine's people.

Using the planning mechanisms described in Recommendation VI.B., the Judicial Branch can conduct this review through a continuous court-structure monitoring process. This process would be based on a determination of public needs in light of data and projections in the areas of access, trial and other dispute resolution functions, demographic and geographic trends, administrative and technological developments, the need for flexibility in the utilization of personnel and fiscal resources, and a continuing cost-benefit analysis.

Throughout this report, the Commission has emphasized public satisfaction, access, and operation and fiscal effectiveness as goals for the courts on a par with, or necessary to, the overriding purpose of the fair and due administration of justice. The Judicial Branch should take responsibility for the continuing evaluation of the structure of Maine's courts to assure that these goals are met despite inevitable social, economic, and technological change.

## 2. Family Matters

- As rapidly as possible, the Judicial Branch should work in concert with the Legislature to design . . . a non-adversarial administrative forum to handle domestic disputes . . .
- a. Non-adversarial Administrative Forum.** As rapidly as possible, the Judicial Branch should work in concert with the Legislature to design . . . a non-adversarial administrative forum to handle domestic disputes . . .
- With a system patterned on the administrative hearing model, litigants would be assisted in presenting facts critical to a fair resolution of their disputes. This forum should use social, financial and other dispute resolution services. Judicial resolution of serious factual or legal issues should be preserved and available by reference from the administrative forum and by judicial review of administrative decisions.
- (1) Even with a non-adversarial administrative forum to handle domestic disputes, there should be judicial oversight/ratification of even uncontested matters, especially if they involve children.
  - (2) Access to the non-adversarial forum should be through the information and screening program recommended in Recommendation III.A.4.
- b. Continuation of the Family Court Project.** The Family Court Project should continue and expand into other high volume geographic areas as well as in other areas where it is determined to be appropriate. The nature of the project would remain unchanged, including the continuation of concurrent jurisdiction between the present Superior and District Courts to ensure access. In the near term, expansion would not require new staff or judicial resources, but would draw on the experience of the Portland project in:
- Coordinating the processing of present Superior and District Court family law matters;
  - Using innovative scheduling procedures to achieve earlier access to the courts;
  - Offering pretrial and case management services through the dispute resolution information and screening program recommended in ADR Recommendation III.A.4., when in place, to increase non-adversarial dispositions and tighten the management of trial lists;
  - Using judges who have a special interest in family law matters and offering them educational and other support;
  - Connecting with community resources such as guardians *ad litem*, mental health services, supervised visitation centers, parental education programs, etc.

Until economic circumstances change, the Family Court Project can only serve as a focus for the accomplishment of the above objectives using current resources.

To accomplish a thorough assessment of the Family Court Project in its present or expanded form, the sunset provision of its enacting legislation should be extended five years from the effective date of the extension.

- c. **Family Court as a Division of the District and Superior Courts.** In those areas in which the Family Court Project exists, or into which it is expanded pursuant to V.A.2.b., it shall be structured as the Family Court Division of the District and Superior Courts. When the Administrative Court is dissolved, the Chief Justice should designate a primary judge from each trial court to provide the approximate level of judicial resources currently being devoted to the project by the Administrative Court. One of these judges, provided with appropriate staff assistance, should be charged with directing the project.

#### *Commentary*

The Family Court Project was undertaken in 1990 on the premise that family matters are unique and should be accorded special focus and consideration. The issues raised in such proceedings are emotionally charged and often concern the well-being of children in our society. Delay and insensitivity in these cases can further heighten the anxiety and damage occasioned by such family controversies. The Family Court Project encompasses not only special procedures and scheduling, but sensitivity to family issues on the part of clerks and judges with a special interest and expertise in family matters. See also Recommendation IV.E.5. concerning closer coordination between the juvenile docket and the family docket.

### **3. Abolition of the Administrative Court**

The Administrative Court as a discrete entity should be abolished and its trial functions transferred to the District Court. However, the filing and docketing of these administrative matters should continue to be centralized in order to be handled most efficiently and to avoid having to train all clerks to handle this small, but distinct, caseload. An Administrative docket in the District Court would provide such centralization. Although docketed centrally, cases formerly heard by the Administrative Court could be heard statewide. The appellate function of the Administrative Court should go to the new Appellate Division. The two judgeships from the Administrative Court must be retained and transferred to the District and Superior Courts, where the two Administrative Court Judges have been providing badly needed support.



#### 4. Probate Court

- a. **Full-time Probate Judges.** The structure and function of the Probate Court should remain essentially unchanged at the present time. However, as the current part-time probate judges finish their terms, the positions should be filled through appointment of 4 full-time probate judges. Although their work would largely be within the Probate Court, these judges should be part of the Judicial Branch, receive the same pay as other trial judges, and be available for cross-assignment in the District and Superior Courts. Administratively, the Judicial Branch should establish regions to be served by the various Probate Court Judges which reflect groupings of counties that are geographically contiguous.
- b. **Registries and the Courts.** The Probate Courts and Registries should become part of the Judicial Branch when other changes in the court system have increased the accessibility, affordability, and efficiency of the system to the level of the present Probate Courts. Paralleling the clerks of courts, the registers should be appointed. The transition from county to state courts should be done with the cooperation of county government.

#### *Commentary*

In the past, there have been discussions concerning the value and structure of both the Administrative and Probate Courts. In regard to the former, the Commission's recommendation reflects the consensus that the current workload of the Administrative Court does not justify its continued existence as a separate entity. At the present time, Administrative Court judges spend the majority of their time hearing Superior and District Court matters, especially family law disputes. Their work has been indispensable in those courts. Those judges have provided substantial staffing for the Family Law Project. The small number of true administrative law cases could easily be subsumed into the caseloads of other courts.

The Probate Court system in Maine has been challenged for the appearance of impropriety conveyed by the presence of part-time judges who are not restricted from practicing law in the communities in which they serve. Strong public and legislative support for the present structure of the Probate Courts and Registries of Probate exists because the present Probate Courts work well in that they are user friendly, the unrepresented litigant is able to conduct business with relative ease, the courts are affordable to use, and there is a minimum of delay. Fiscal realities also would make assumption of the probate function by the state impossible at this time. The Commission's recommendations, therefore, are designed to address in the short term the perception of impropriety, but leave to long-range planning the transition of the Probate system from a county-based and directed structure to part of the state system. Although our recommendation calls for the cross-assignment of Probate Judges to hear other matters, the Commission did not envision that non-Probate judges would be assigned to the Probate Court in the near future.

## 5. Appellate Courts

a. **Creation of an Appellate Division.** An Appellate Division should be established in the Superior Court to hear appeals. Present appellate jurisdiction would remain unchanged, with three exceptions, so that appeals from the Probate Court and Superior Court would continue to go to the Supreme Judicial Court and those from the District Court and state and local administrative agencies would go to the Appellate Division.

The three exceptions are:

- (1) Appeals from all types of family matters should go directly to the Law Court regardless of which court they originate in, unless all parties agree to a final appeal to the Appellate Division with no further appeal to the Law Court;
- (2) Parties who wish to appeal from civil, non-family matters originating in the District Court could, if all parties agree, opt for a final appeal to the Appellate Division with no further appeal to the Law Court; and
- (3) The appellate functions of the present Administrative Court would go to the new Appellate Division.

Appeals would be heard by an individual judge. Over time, as caseload requires and as the discretionary jurisdiction of the Supreme Judicial Court is increased, three-judge panels within the Appellate Division for review of some types of matters, would be appropriate.

b. **Increased Discretionary Jurisdiction in the Supreme Judicial Court.** The Supreme Judicial Court should be provided with a mechanism which will allow it to handle the increasing number of appeals already docketed and the further increases projected for the future. An expansion of the discretionary appellate jurisdiction of that court will allow it to operate essentially as a "certiorari" court, able to decline to hear repetitive matters which have no law-shaping value.

c. **Bypass Procedure.** Rule 72 of the Maine Rules of Civil Procedure should be expanded to allow a Superior Court Judge to recommend to the Law Court that the Superior Court be bypassed for appeal purposes, even when both parties do not agree, if there is a question of law of sufficient importance or doubt, or if it is very clear that a case will proceed on to the Law Court regardless of Superior Court action. The Law Court should be able to decline to accept the Superior Court recommendation.



*Commentary*

The multi-tier appeal process currently in place hampers swift resolution and finality of decisions, particularly in family matters which originate in District Court. With few exceptions, the Superior Court has no mechanism for prioritizing cases to allow "fast tracking" in matters where delay is especially detrimental. Multiple levels of review in some matters can be highly repetitive with no systemic benefit. Staff shortages and anticipated significant increases in the number of appeals in the future will exacerbate these problems. The Commission's recommendations will allow more prompt attention to appeals which will no longer have to compete with trial work for judicial attention. Family matters would no longer be subject to two levels of appeal.

## **B. JURISDICTION**

### **1. Overlapping jurisdiction**

A study should be undertaken on whether to change the jurisdiction of the Superior, District, and Probate Courts to minimize those areas of concurrent jurisdiction for which there are no compelling reasons. Caution needs to be exercised in this area so that access is assured in rural areas.

### **2. Administrative Forums**

Administrative forums similar to the traffic violations bureau should be developed for the processing of routine cases which do not require judicial attention. These areas might include: commitment reviews of Pineland and Augusta Mental Health Institute cases, enforcement of money judgements, violations of fish and game laws, truck weight requirements, and motor vehicle sticker violations. Judicial review of these administrative processes should be maintained.

### **3. Ministerial Functions**

The Judicial Branch should review all judicial functions to determine which functions are purely ministerial in nature, and therefore, do not require judicial attention, and recommend to the Legislature other mechanisms for that work.

### **4. Small Claims**

The financial limitation should be raised for small claims to at least \$3,000.00. Provision should be made for a periodic review of that monetary limit and consideration given to tying it to an economic index such as those commonly used in lease agreements.

## Commentary

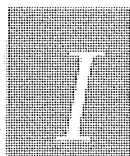
Given finite financial resources, the use of judicial resources should be reserved for cases where judicial involvement is necessary. Courts should be called upon to resolve matters only when an effective court remedy is possible. Futile court orders only serve to lessen respect for the justice system and waste valuable court resources (e.g., Protection from Harassment actions involving children on school buses calling each other names).

Much of the increased pressure placed on the judicial system is attributable to a tendency on the part of the Legislature to insist that the courts resolve society's problems. Thus, the Legislature often criminalizes behavior that it finds distasteful or unacceptable, presuming that the judicial imposition of prescribed sanctions will curb those activities. Forcing the courts to deal with these matters slows the system substantially and diverts time and resources from truly critical legal issues. Any increase in delay, with its concomitant increase in cost, magnifies the barrier to access by the common citizen. Obviously, the use of the judicial system in this manner carries a real cost to society as a whole. There must be a reassessment of what issues and disputes can and should be resolved in the judicial system and which are more appropriately handled in other forums. Such other forums should include expanded use of administrative hearings and procedures for matters which do not require judicial intervention. Such hearings are designed to ensure a full and impartial statement of the pertinent facts and appropriate resolution safeguarded through the continued availability of judicial review.

Some functions now performed by judges are purely ministerial and should not require judicial attention. For example, there are many hearings in District Court in which a large number of defendants fail to appear. Presently a judge must sign every one of these complaints or pleadings when a clerk could readily exercise that function. Many matters in Probate Court are purely ministerial as well and might be more appropriately handled by Registers.

Although the small claims approach has been successful in allowing unrepresented litigants to resolve disputes without the financial burden of retaining counsel, the jurisdictional limit of the small claims court has not kept pace with dramatic changes in the nation's economy. The jurisdictional limit was \$35.00 in 1945 and has only been raised to \$1,400.00. Today many citizens with mid-size disputes are cut off from the judicial system because their claims are above the jurisdictional limit but not significant enough in terms of dollars to engage attorneys. A system for periodic review would ensure that the limitations reflect economic realities.

# ADMINISTRATION OF THE JUDICIAL BRANCH



*In the 21st Century, the Judicial Branch will be governed by strong management with clear and distinct lines of authority and accountability and will foster the efficient use of public resources to enhance the effective delivery of court services. Its performance will command the respect and trust of the public and their representatives in the Legislature. The Judicial system in Maine will be committed and have the ability to do long-range planning and priority setting, and will have state-of-the-art technology and systems to collect and analyze relevant data about the courts and users of the courts.*

*Methods to evaluate the performance of the court will be in place for all court employees and the system as a whole.*

*The courts will use and plan for advances in technology to increase access, convenience and ease of use of the courts for all citizens. The selection, training, and compensation of judges and staff will ensure that the judicial system is staffed by personnel of the highest possible professional qualifications and these personnel will reflect the diversity of Maine's population.*

## A. LINES OF AUTHORITY

### 1. Chief Executive Officer

The Chief Justice of the Supreme Judicial Court, as the chief executive officer, has responsibility for the operation of judicial functions, court management, and business functions. The Chief and the Supreme Judicial Court, in consultation with the chiefs of the trial courts, should establish the vision, overall goals, and major policies of the Judicial Branch and be responsible for overseeing the courts' progress toward those goals and mission.

### 2. Chain of Command

The Chief Justice and the Supreme Judicial Court should establish clear lines of authority and a chain of command for implementing policy and for operations and reporting.

### 3. State Court Administrator

The Chief Justice should be assisted by a State Court Administrator, directly answerable to the Chief Justice, who serves as a chief administrative officer for both the management and business functions. The Court Administrator should be knowledgeable about the judicial functions of the court as well as having strong administrative and personal relations skills.

### 4. Clarification of Roles

Given the existing, and probably inherent, tension among judicial functions, management of day-to-day court operations and the business functions of the court, an ongoing collaborative discussion process with representatives from the various functions should be undertaken in order to maximize the contributions of each and minimize misunderstandings.

### 5. Participatory Decision-making

In order to further its quest for excellence and enhance the morale of its personnel, the Judicial system should incorporate the concept of participatory decision-making as a guiding principle.

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### *Commentary*

To maximize and enhance its personnel, physical, and financial resources in a world of ever-expanding demands, the Judicial Branch must establish a system of self-management and planning which is clear, comprehensive, efficient, and flexible. The Commission's recommendation clarifies roles and lines of authority for both the administrative and judicial functions of the courts. It also encourages participation by all the discrete elements of the judicial system in policy and administrative decision-making to gain the benefits of diversity and to garner consensus. The Commission supports the recommendations of the Special Commission on Governmental Restructuring on these issues.

The Commission acknowledges and applauds the efforts already begun under the leadership of Chief Justice Wathen to develop participatory decision-making and to promote greater efficiency in the use of resources.

## **B. PLANNING CAPABILITY**

### **1. Planning Capability**

A permanent planning capability should be established, and sufficiently staffed, in the Administrative Office of the Courts. It should be charged with establishing short-range, strategic, and long-range goals and objectives and should continually evaluate the work of the Judicial Branch both in its business and judicial functions. It should monitor trends both in society and in court management to enable the courts to be responsive to the ever accelerating pace of change.

### **2. Long-Range Planning Committee**

The Chief Justice should create or revitalize a long-range planning committee, such as the Judicial Council, but supported by sufficient staff resources and with the long-term commitment of the Judicial Branch.

### **3. Statistical Information**

The Administrative Office of the Courts should collect relevant statistical information on the use of the courts to enable it to plan and monitor operations.

- a. To the extent that it is technically possible, desired information derived from filings, records, and adjudications should be simultaneously computerized so that it can be retrieved instantaneously.

- b. The Administrative Office of the Courts should possess sufficient analytical capacity to make the maximum use of such statistics to formulate policy for the allocation and reallocation of judicial resources.
- c. "Relevant information" should include at least:
  - (1) Method of access to justice by type of litigant (*pro ses*, clients serviced by Volunteer Lawyers Project, Legal Services for the Elderly, Pine Tree Legal, and Cumberland Legal Aid Clinic) and by method of obtaining representation (court-appointed, pay own attorney, legal services), and by disposition;
  - (2) Information on indigent defense representation by type of case, outcome, geography, and cost;
  - (3) Tracking of cases from filing to resolution to determine causes and stages of delay and to document the matters which return to court repeatedly;
  - (4) Demographic information on litigants;
  - (5) The impact of *pro se* litigants on the productivity of the Courts; and
  - (6) Time and cost data on the use of court-connected Alternative Dispute Resolution.
- d. Data collection protections must be in place to assure the privacy of Maine's court users.

*Commentary*

The Commission's work was hampered at times by the unavailability of statistical information in the Administrative Office of the Courts (AOC) about the courts' operations. Statistics on the numbers of cases filed, the participation of unrepresented litigants and case processing times were either unavailable or tallied by hand on a court-by-court basis. The AOC does not have an organized system, adequate resources to collect needed information, or adequate personnel to analyze those statistics that are being compiled. The institutionalized planning capability which the Commission recommends depends directly on the creation of a meticulous, standardized, timely system of data collection, storage, and analysis.

## C. EVALUATION AND MEASUREMENT OF COURT PERFORMANCE

### 1. Performance and Time Standards

The court should adopt performance standards which include time standards for the movement of cases through the system as well as



productivity measurements for clerical and judicial performance. In the design of standards for Maine, the *Trial Court Performance Standards*, published in 1990<sup>3</sup>, and its supplement, *Measurement of Trial Court Performance Standards* should be used.

Performance standards should contain criteria for performance which are measurable and fair as well as standards for courtroom demeanor and decorum. Such standards must reflect an understanding that the effectiveness of judicial performance must be evaluated in both quantitative and qualitative terms. Design and implementation of such standards must be predicated on an understanding that speed is subservient, but not necessarily contrary, to the overarching goal of providing justice.

## 2. Peer Review.

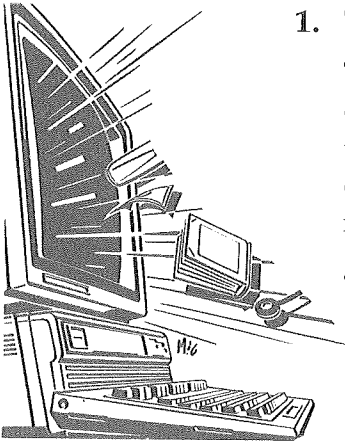
The court should develop a peer review system for judges to assist each other in attaining the highest possible standards for professional behavior.

## D. TECHNOLOGY

### 1. Technology Master Plan.

The Judicial Branch, with the assistance of the Administrative Office of the Courts, should establish a master plan for the utilization of technology in the Judicial Branch which should be consistent and compatible, to the extent possible, with an overall, long-range, interbranch state technology plan.

- a. The plan should set priorities and a time table for the introduction and upgrading of technology. Although almost all purchases should be in accordance with this plan, some flexibility is needed to accommodate procedural change and equipment and software breakthroughs. Careful system analyses should be made before the introduction of any additional technology lest chaos is computerized and scientific innovations are used to electronically perpetuate inefficiency.
- b. Every clerk's office, whether in a traditional, full-service courthouse or in a single satellite office, must be fully computer capable. Examples include: optical imaging to enter and store data and computers to make all docket entries, complete most sentencing paperwork, calculate timeframes, print out judgements and forms, as well as post, receipt, account, and distribute revenue and other money intake.

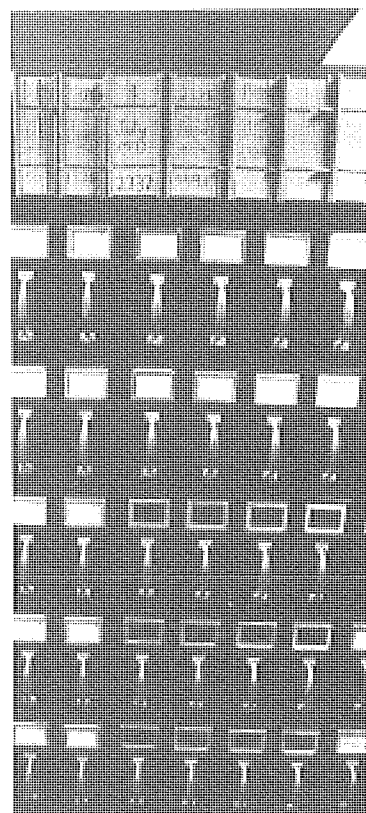


<sup>3</sup>Trial Court Performance Standards was published as a joint project of the Bureau of Justice Assistance, U.S. Department of Justice, and the National Center for State Courts.

- c. Every clerk's office must also be electronically linked to every other clerk's office as well as to other pertinent offices in state government. Other data bases should be easily accessible, in particular the records of the Department of Motor Vehicles and the State Bureau of Identification.
- d. Technology services for judges and their staff are needed if productivity is to be increased. Personal computers and local area networks are needed to support judicial chambers in the future and to provide communication with other chambers and to such services as case tracking and management data, E-Mail, and legal research. The "Guidelines for Judicial Computer Support" developed by the State Trial Judges Conference of the Judicial Administration Division of the American Bar Association should be looked to as a starting point.

## 2. Technological Expansion of Access

- a. The court system should acquire the technology for electronic filing when it becomes available. When that happens, the Maine Rules of Civil Procedure should be amended to allow electronic data transmissions and should address signature and other authentication issues. Where necessary the rules and statutes should be amended to allow requests for emergency orders such as temporary restraining orders, emergency protection from abuse orders and others to be filed via electronic filing and reviewed by a judge without requiring the physical filing of "papers" or the presence of counsel and litigants.
- b. Electronic access cannot be limited to court personnel. The public and attorneys should be able to obtain information from the system and interact with it.
  - (1) The courts should explore technology which provides general and case-specific information to users and which allows individuals to schedule dates and enter pleas without personal appearance. Such devices substantially expand the potential services available to the public in proposed satellite locations.
  - (2) Computer access points need to be user friendly and must be fully accessible to all users and employees including people with disabilities and special needs.
- c. Access to such systems would have to be designed to protect the confidential nature of some information, to



prevent any interference with the database and to assure long term preservation of the information.

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### **3. Telecommunications Among Courts and Others**

The explosion of technology makes it possible to, in effect, reduce the physical distances from court to court and between the courts and other related sites of the justice system, such as jails and police stations. The courts should actively promote the development and use of interactive television, video computer systems, and phones for hearings and conferences to reduce the need for live appearances. Such an improvement would eliminate transportation costs and delay, reduce security concerns, and expand courtroom and judicial availability.

### **4. Registries**

All information in the present Registries of Probate and Registries of Deeds should be computerized. These data bases should be accessible, subject to restrictions on confidentiality, throughout the state from other Registries of Probate and Deeds, public libraries, courts, and law offices.

### **5. Legal Research Capability and Access**

Legal research capabilities must be enhanced and made available to the public as well as to professionals. Law library materials and computerized research must be expanded to maintain a quality justice system with access for all.

- a. There should be a central location with staff from which to obtain research through the Westlaw and Lexis systems, as well as similar databases which might become available. In addition, there should be a method to access that information from more remote locations.
- b. With the increasing use of technology for legal research, provision needs to be made for those members of the public who are not technologically literate.

### *Commentary*

The possibilities for utilizing technology in the judicial branch are unlimited. State-of-the-art technology allows computers to enter, process, and retrieve data. Optical imaging in connection with computers is even more efficient. Hearings and trials can be conducted by interactive television or computer video conferencing. Material may be filed with the court electronically and information about a case accessed the same way. Police can use hand held computers to write out tickets and have the information simultaneously entered into a database at the court. Portable computers are used by traveling judges to access files. Hearings and trials can be recorded by voice, video, and computer assisted transcripts. Touch kiosks in some states give information to users. Other places, kiosks generate and give assistance in filling out small claims petitions and child support guideline worksheets. Computer simulations have already been used in major trials. Artificial intelligence has been used to determine cause and predict possible outcomes of litigation.

Because of insufficient resources for major capital investment in technology, Maine courts have embraced technology on an ad hoc basis usually as the result of money available from some limited purpose grant. To the extent the courts are computerized, most systems are incompatible with other court systems and with other databases which are vital to the operation of the courts. It is, therefore, important that there be an interbranch long-range technology and communication plan in which the unique needs of the judicial system are made known.

The Commission's technology expert advised that the best bet for cost containment and cost reduction is in the technology area. Maine has to chose the areas of emerging and existing technology which best fit its needs. New technology requires an investment, and Maine has to be sure that its decisions lead to the best return on that investment.

## **E. TRAINING AND EDUCATION FOR COURT PERSONNEL**

### **1. Orientation and Training**

Budget constraints notwithstanding, initial orientation and training and periodic education of judges and court personnel must be acknowledged as a fundamental component of the entire system, and as a matter of highest priority. Use of the interactive television system should be explored for training purposes.

### **2. Mandatory Training**

Mandatory training for all court personnel including judges should be established and include:

- a. Sensitivity to gender, race, creed, age, national origin, disabilities, and economic and cultural differences;
- b. The use and potential for current and future technology;

- c. Appropriate methods of interaction with the public, unrepresented litigants, and professionals. Such training should reinforce the service or customer orientation of the Judicial Branch; and
- d. Familiarity with concepts, methods, and practices of alternative dispute resolution.

### **3. Judicial Training**

Judicial education and training should be mandatory and encompass procedural and substantive law in addition to the training recommended in VI.E.2. New judges must have special training prior to assuming judicial responsibilities. Judges should also be given training in facilitating the resolution of cases as well as in adjudicative skills. Other examples of important subjects for training include: domestic violence, child development, and juvenile issues.

- a. In-state training should be supplemented by attendance at national educational institutions and educational sessions of national judicial and bar association conventions or seminars to broaden judges' perspectives and to allow Maine judges to be exposed to judicial innovations and experiences in other jurisdictions.
- b. Regular meetings of judges should be held to reduce the sense of isolation and maximize the exchange of information statewide and beyond.
- c. Consideration should be given to the institutionalization of a sabbatical leave for judges who have served a specified period of time on the bench and indicate an intention to return to service after the respite.

### **4. Cross Training**

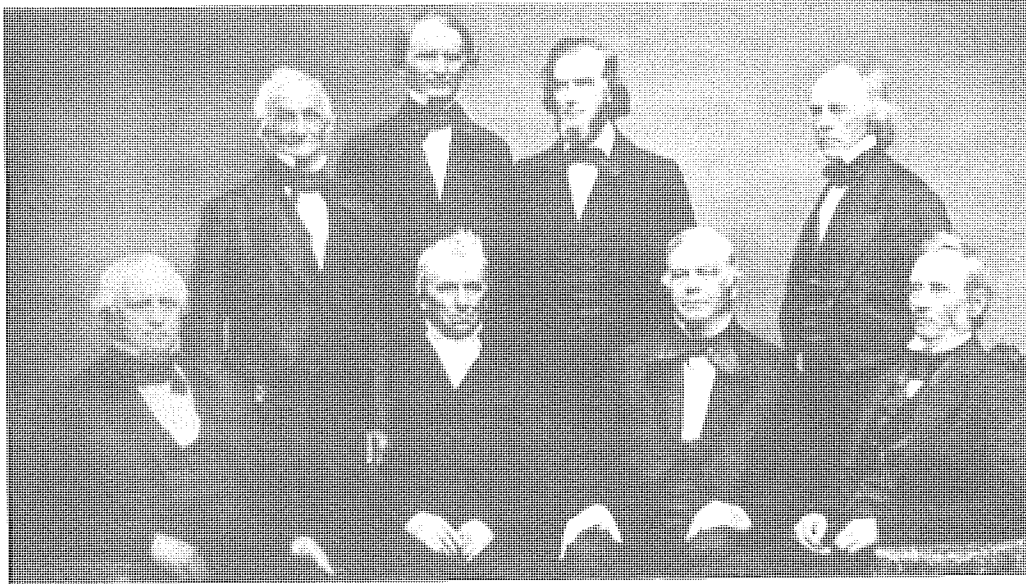
Superior and District Court clerks should be cross-trained to allow them to assume the functions of either court in those locations where the courts are consolidated and in those situations where cross-assignment of clerks is practicable.

#### *Commentary*

Despite all the benefits to be gained from an organized, standardized utilization of technology, justice must still have a human face. The quality of court personnel, from clerks to justices, must be ensured through a program of orientation, training, and evaluations. One goal of such an approach is to have judges who can conduct any type of proceeding in any court with ease and comfort.

## THE BENCH AND THE BAR

*What's Past is Prologue: New Dimensions for Justice*



### **Members of the Maine Supreme Court 1859 - 1862:**

*(standing)* Daniel Goodenow, Richmond D. Rice, Woodbury Davis, John Appleton;  
*(sitting)* Edward Kent, Seth May, Chief Justice John S. Tenney, Jonas Cutting



### **Panelists, 1992 Alumni Dinner, University of Maine School of Law:**

*(standing)* Chief Justice of the Supreme Court Daniel E. Wathen; Peter Mills, President, Maine Trial Lawyers Association; Rebecca H. Farnum, President, Maine Bar Association; Kathryn Monahan Ainsworth, Project Director, Commission to Study the Future of Maine's Courts  
*(sitting)* Chief Justice of the Superior Court Thomas E. Delahanty II, Chief Judge of the District Court Susan W. Calkins, Chief Judge of the Administrative Court Dana A. Cleaves

## **F. JUDGES**

### **1. Judicial Compensation**

Compensation for the state court judges, including both salary and benefits, should be increased to levels that are competitive with compensation for positions of comparable experience and judgment in the public and private sectors.

### **2. Judicial Travel**

Judges should expect to do some traveling within the state in order to prevent constant interaction between the same judges and the same lawyers, enhance cross-fertilization, and help avoid burnout by providing variety. However, the benefits of such travel should be balanced against the need to provide sufficient stability for judges in their personal and family lives.

### **3. Vacancies**

All judicial vacancies should be filled as soon as possible.

#### *Commentary*

The 1988 recommendation of the Maine State Compensation Commission that there should be a correlation between federal and state judicial salaries in Maine reflects the Compensation Commission's commitment "to maintaining a level of judicial compensation which will continue to attract and retain well-qualified individuals to Maine's bench while also maintaining the uncompromising commitment to justice upon which Maine's citizens depend." While realizing that Maine judicial salaries can never achieve parity with the federal benchmark, the Compensation Commission believed that they should bear a reasonable relationship to those salaries. The 1988 recommendation was not implemented; as a result there is now a huge salary disparity between federal judges and Maine's judges. Furthermore, Maine judges did not receive the increase in salaries afforded other state employees between 1989 and 1991 and were subject to a deferment of the statutorily required cost of living adjustment for judges in 1992.

While the Judicial Branch certainly is not immune from the budgetary shortfall with which all state government must cope, the Futures Commission strongly recommends that the Compensation Commission's recommendations be implemented as soon as possible. In the short run, as a minimum, money should be appropriated for the 1993 cost of living adjustment.

## G. MAGISTRATES

### 1. Conflict of Interest

Any magistrate system which uses attorneys in private practice is not acceptable to the Commission. Such a system would raise the same conflict of interest issues that are now so troublesome in the Probate Court system.

### 2. Future Use When No Conflict Exists

The Commission does not intend to preclude future consideration of the use of magistrates who do not practice law to assist with child support determinations and reviews, or other issues.





## SEPARATE BUT CO-EQUAL BRANCH

***I**n the 21st Century, an independent Judicial Branch will operate and be recognized as a co-equal branch of government. It will have adequate resources to fulfill its constitutional and statutory duties and will have the ability to allocate those resources without undue interference from the other two branches of government.*

*Cooperation and communication with the other two branches will be standard operating procedure.*

## A. BUDGET

### 1. Direct Presentation

Currently the budget bill presented by the Governor includes the Governor's recommendation concerning the Judicial Branch budget and not the request submitted by the Judicial Branch. As a co-equal branch of government, the Judicial Branch's request should be presented directly to the Legislature.

The courts should

### 2. Sufficient Resources

The Legislature should provide sufficient resources to enable the Judicial Branch to carry out its constitutional and statutory functions. Although the Judicial Branch creates substantial revenue, such receipts do not cover its operating costs. The courts should never be forced to render "cash register justice" or be viewed as a revenue source to balance the state budget.

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### 3. Total Appropriation

Money should be appropriated to the Judicial Branch as a total appropriation, and transfers among the Judicial Branch's accounts should occur without need for another branch's approval. Such an appropriation will provide the Judicial Branch with the flexibility needed to assure cost effective management that is compatible with the unique nature of the courts in dispensing justice and protecting the liberty interests of Maine citizens. The total appropriation would, of course, be subject to statutory and constitutional limitations and standard fiscal accounting procedures.

to balance the

state budget.

### 4. Capital Accounts

In order to achieve reduced operational expenses through a sound, long-range, capital improvement program spanning several biennia, the budget process should recognize the necessity for establishing capital accounts to enable the Judicial Branch to upgrade technology and facilities.

### *Commentary*

The Courts must always aggressively protect the constitutional rights and liberties of citizens despite any economic burden which that might involve. In turn, the Legislature has the obligation to provide full funding to meet those basic constitutional responsibilities.

As is true with all other state agencies, the adequacy of the Judicial Branch's budget is threatened by the consequences of the state's budget crisis and the projected shortfalls in revenues in the next biennium. The current budget process, however, essentially forces the Judicial Branch to compete with Executive Branch agencies for limited funds even though it is not an agency of that branch. Both the Legislative and Executive Branches conduct their business with the Judicial Branch as if the Judicial Branch were less than their equal. The number of controls exercised by those branches over the most fundamental operations of the courts is a primary example of this problem.

The Executive Branch's reconfiguration of the budget proposed by the Judicial Branch results in setting of priorities and decisions by individuals unfamiliar with the operational issues and compromises reached in the Judicial Branch in creating original budget requests. By providing for direct presentation to the Legislature, the Judicial Branch would be better able to preserve its assessment of balances and compromises for discussion before that branch.

The Legislature, to a great degree, has the responsibility and the discretion to decide what courts exist and what causes of actions are processed by those tribunals. This discretion, however, is not unlimited for there are certain constitutionally mandated procedures and protections that must be afforded to all citizens despite the monetary consequences. Examples include the right to a jury trial and the constitutional requirement to provide counsel for indigents in criminal cases and in certain Human Service cases involving the rights of parents to the custody of their children. Other types of actions, although not constitutionally mandated, are essential to involved parties. The court has no control over how many people use its services.

The Judicial Branch must cooperate in every way possible in the budget crunch, but must also be heard on the effects of drastic cuts on its responsibility to do justice. When the Legislature supports new programs in the Judicial Branch, it should provide new funding to carry out such programs without reducing other funding. See e.g. Recommendations III.A.7.(ADR), V.A.1.d. (equalization of salaries).

## **B. MANAGEMENT ISSUES**

### **1. Management Flexibility and Independence**

The Judicial Branch must be free to manage its own staff and allocation of resources without undue interference from the other two branches of government. The Judicial Branch is in the best position to decide how its appropriated resources should be allocated but it would, of course, remain fully accountable to the Legislature for the expenditure of public funds.

## 2. Duplication of Effort

Title 4 M.R.S.A. Section 26, requiring the Judicial Branch to abide by the policies and procedures of the Executive Branch and to use their services, should be repealed. The necessity to use Executive Branch services has created significant duplication of effort within the two branches resulting in inefficiencies, higher costs, delays, and much frustration.

Examples of bureaucratic duplication include the bill paying process, personnel management, payroll, and the construction, purchasing or leasing of facilities.

## 3. Centralized Purchasing

The Judicial Branch should be entitled to take advantage of the economies of scale resulting from centralized purchasing for the Executive Branch, but it should not be required to use that process. This is particularly true when goods and services can be obtained more economically from other vendors or when quality of goods and services is of paramount concern.

## 4. Alternative Procurement

The courts should not always be required to purchase new equipment as the only means of obtaining it. Options such as leasing and purchase of used equipment should be explored to establish a basis by which to compare competing methods of procurement.

### *Commentary*

The Commission to Study the Future of Maine's Courts adopts and emphasizes the priority need to implement the recommendation of the Special Commission on Restructuring State Government to the effect that the Judicial Branch should not have undue interference from the Legislature or the Executive Branch.

In being required to conform to Executive Branch policies and use its services (4 M.R.S.A.26) the Judicial Branch is subjected to rules and regulations that in many instances are completely inappropriate for the optimum carrying out of its responsibilities. Bureaucratic duplication and inconsistency in the areas of personnel management, payroll, purchasing, leasing of facilities, and bill-paying ignore the unique needs, expertise, and scale of the Judicial Branch and often result in egregious waste of time and money. Because the Commission was legislatively mandated to use the Administrative Office of the Courts (AOC) to process its finances and the AOC is required to use the Executive Branch's procedures in handling its finances, the Futures Commission itself has been handicapped in its attempts to conduct its study in the quickest, most efficient, and most economical manner. The Commission, however, had the advantage in these day-to-day skirmishes with the Executive Branch's bureaucracy because it will not have a continuing relationship with the bureaucracy. The Commission has been able to resolve most problems on a case-by-case basis. The Judicial Branch's must daily

face the same frustrations and impediments with a number of interfaces that will not allow ad hoc solutions.

The Commission recommends giving the Judicial Branch the flexibility to manage and plan for its own operations so it may use those processes and programs which more fully and cost efficiently use the scarce resources with which it is entrusted. Strict accountability to the Legislature is still a paramount necessity. The Restructuring Commission's recommendation was predicated on establishing lines of responsibility in the Judicial Branch that would make this accountability possible.

## C. INTERBRANCH COMMUNICATION

### 1. Interbranch Forum

Much of the difficulty in interactions between branches arises from a lack of understanding that the Judicial Branch is a separate and co-equal branch and that its functions, structure, and needs differ from the other branches. An interbranch forum should be established to provide for discussions at regular intervals among the top policy makers from each branch of government to address the need for communication and cooperation at all levels.

### 2. Integrated System of Communication

The Judicial Branch must exercise a strong voice in the planning and establishment of an integrated system of communication for all branches. At times the courts, due to their smaller scale in relation to other sectors of government, should be able to choose to decline to participate in plans which are not in their best interests; they should, however, continue to be part of the informational loop.

### 3. Technology Plan

A statewide plan for the introduction, utilization, and obsolescence of technology which includes significant input from the Judicial Branch is needed. This is particularly important in the areas of communications and information storage and retrieval. Wherever possible, computers and information transmitting devices, if not identical, should at least be compatible within state government and also compatible with the private sector. Ultimately, however, the court system must control its own technology and have its own plan that is consistent to the extent possible with the statewide plan.

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Branch is  
needed.

#### **4. Long-Range Planning**

Interbranch coordination should also be mandated for long-range planning and capital improvements so that the unique needs of the judicial system will receive full consideration.

#### **5. Judicial Impact of Legislation**

The Judicial Branch should assert a stronger presence concerning legislation which has a direct impact on the courts, in terms of court time and finances, as well as legislation which is specifically court-related.

Examples of ways this can be accomplished include:

- a. Increasing the presence of the Judicial Branch before the Joint Standing Committees on Judiciary and Appropriations; and
- b. Mandating that the Judicial Branch's assessment of the impact on its personnel and resources of all new laws and amendments involving the courts or court-related legislation be forwarded to appropriate Legislative committees as well as the Office of Fiscal and Policy Review. Executive Orders should also include judicial impact statements whenever appropriate.

#### **6. Public Sector Dispute Resolution**

There should be close cooperation and coordination among the Judicial, Legislative, and Executive Branches in the development of public sector dispute resolution with regard to standards, training, public education, methods of resolution, and institutional structure. See Recommendation III.D.

##### *Commentary*

Even as the Judicial Branch reaffirms its independence, it should also improve its communication and cooperation with the other branches of government. Focus should be placed on creation of comprehensive communication and technological systems which, to the degree possible, recognize the unique needs of all participants. The Judicial Branch must be prepared to articulate and advocate its requirements and recommendations in these planning enterprises and before the other branches when they deal with matters which directly impact on the operation of the courts.

Coordination between branches is essential particularly in the area of criminal justice issues. See Recommendations IV. E.

# IMPLEMENTATION

*The following recommendations are designed to assure that the Commission's report, **New Dimensions for Justice**, is an action plan as well as a blueprint for the future.*

## **A. COURT FUTURES IMPLEMENTATION COMMISSION**

The Commission to Study the Future of Maine's Courts recommends that the Legislature create an independent Court Futures Implementation Commission. The new Commission should be similar to the current Commission but smaller in membership and operation. Its membership should be drawn from among former Commission members or participants and others and should be appointed either by the Legislature or by the existing Commission. The Implementation Commission should be given responsibility to monitor, adapt as necessary, and work to implement the recommendations in this report.

## **B. LIFE SPAN OF COMMISSION AND REPORT TO THE LEGISLATURE**

The Court Futures Implementation Commission should report annually to the Legislature on progress made in instituting the changes outlined in this Report. The Implementation Commission should have a sunset provision so that its final report would be due at the end of calendar year 1996, just prior to the commencement of the 118th Legislative Session. If there were a continuing need for the Implementation Commission, however, the Legislature could authorize its continuation at that time.

Whatever you  
can do, or  
dream you can,  
begin it.  
Boldness has  
genius, power  
and magic in it.

*Goethe*

## C. FUNDING FOR COURT FUTURES IMPLEMENTATION COMMISSION

Due to current budgetary constraints, the Commission recommends funding in the amount of \$5000.00 of public money for each year of the biennium to help cover the expenses of the Court Futures Implementation Commission. The Administrative Office of the Courts and the Office of Policy and Analysis should also be authorized to provide assistance to the new Commission.

### Commentary

The Judicial and Legislative Branches must play the major roles in the implementation of the Commission's recommendations. Although some recommendations can be initiated and completed fairly rapidly, many can be accomplished only through careful planning and measured changes over time. The Court Futures Implementation Commission will provide the advocacy and oversight necessary in working with other institutions and organizations to implement the Commission's recommendations.

The proposed life span of the Implementation Commission will allow it to monitor the implementation of many of its short-term and medium-term recommendations. To the extent that circumstances require the continuation of the Commission, the Legislature could authorize its continuation.

Improving the justice system is primarily a public obligation, and it should be funded primarily with public money. The minimal funding request set forth in this recommendation reflects the Commission's recognition of present budgetary realities.

The Commission wishes to avoid the common pitfall of spending money to develop recommendations for improvements (albeit private funds in this case) and then having no follow-through for the implementation of the improvements. Although private funding will be sought to cover the remaining costs associated with the Implementation Commission, some commitment of public funds is crucial to the success of the private funding efforts.



# Action Plan for Implementing Commission Recommendations

*The Action Plan which follows designates the entities responsible for taking action to implement these recommendations and the timeframes for initiation of implementation. Many recommendations require interbranch, public and/or private, and intergroup cooperation. Abbreviated recommendations appear in the Action Plan; more detail is contained in the body of the Report.*

## **TIMEFRAMES:**

Implementation of the Commission's short-term recommendations should be initiated prior to 7/1/95; those designated medium term should be initiated before 7/1/99; and long term ones thereafter. In many instances, a recommendation has been placed in all three categories to indicate the importance of beginning efforts immediately even though full accomplishment of the objectives can only be achieved over time. It is implicit in many short and medium term implementation efforts that they are intended to continue into the long term.

## **FISCAL REALITIES:**

The Commission realizes that the full implementation of any recommendation that requires an appropriation might have to be deferred until the fiscal year beginning July 1, 1995 because of the current state budget crisis and the fact that the budget for the upcoming biennium (July 1, 1993-June 30,1995) has been submitted well before the submission of the Future Commission's Report. Some such items, however, are still placed in the short-term category to obtain authorization, without

funding, by this Legislature. In other instances, the Commission supports the efforts of other departments or agencies who may independently seek legislative funding in the current legislative session. These instances are identified in the Action Plan through the use of asterisks.

Other recommendations that the Commission believes to be important enough to be implemented in the short term have been reluctantly designated as medium term because of the fiscal implications. These items have been designated by a "+". The "\$" indication in the Plan refers only to requests for expenditures from the General Fund, although the Commission understands there will be other costs associated with these recommendations and a need to reallocate resources within agencies and entities.

## LEGISLATIVE PACKAGE:

The Commission proposes to submit legislation in this session which includes all recommendations designated for legislative action in the short term (including legislation requiring the study of certain proposals) except for those legislative items with asterisks. Those items are already being addressed by legislation submitted by others.

## Action Plan for Implementation of Commission Recommendations

		Short Term Prior to 7/1/95	Medium Term 7/1/95 to 6/30/99	Long Term 7/1/99 & beyond
<b>I. Public Voice and Customer Focus</b>				
A.1, 2	Institutionalize public input about the operations of the courts. Instill customer focus throughout all levels of court.	Jud		
A.3	Process complaints against judges in a timely and effective manner with complaint procedures well publicized.	Jud		
B.1	Develop plan to provide general information about court procedures at all courthouses and libraries, and submit budget request for next biennium. Encourage informational programs for matters that involve many unrepresented people.	Jud		
	◦ Expand public information program on court procedures.	Bar; Serv Pro		
	◦ Implement plan to provide general information at courthouses and libraries.		Jud; Leg for \$+	
B.2	Establish information and screening dispute resolution pilot programs in some courts. <i>(See III A.4 below)</i>		Jud; Leg for \$+	
	◦ Establish statewide dispute resolution information and screening functions in all courts. <i>(See III A.4 below)</i>			Jud; Leg for \$
C.1	For planning purposes, broaden the concept of "access" from access to courthouses to access to court services.	Jud		
	◦ Develop a plan to provide access to court services in remote areas without constructing traditional courthouses. <i>(See I C.2)</i>		Jud	
	◦ Provide access to court services through non-traditional means and close or consolidate courthouses no longer needed.			Jud; Leg for \$
C.2	Undertake a statewide analysis of access for different levels/types of judicial services for planning purposes.		Jud; Leg for \$	

C.3	Establish objective criteria and procedures which include public input to determine court locations.		Jud; Leg	
C.4	Expedite efforts to have all court facilities and services fully accessible for all people.	Jud	Leg for \$+	
D.1	Educate public about the role and functions of courts.	Jud; Bar	Jud; Bar	Jud; Bar
D.2	Encourage education on the functions of courts and other conflict resolution methods at all educational levels.	Exec	Exec	Exec
D.3, 6	Educate lawyers about access and dispute resolution issues. Promote public awareness about attorney-client rights and responsibilities.	Jud; Law S; Bar	Jud; Law S; Bar	Jud; Law S; Bar
D.4, 5	Establish a relationship with the media to improve public awareness of legal system, and continue the use of cameras in the courtroom.	Jud	Jud	Jud

## II. Access to Legal Services

A.1	Increase funding for legal services. ◦ Provide sufficient funding for legal services.	Leg*; Fed	Leg for \$+; Fed	Leg for \$; Fed
A.2	Coordinate approaches of legal service providers including centralized intake and referral.		Serv Pro	
A.3	Consider possible merger of legal service providers being careful to preserve current advantages.			Leg; Fed; Serv Pro
A.4	Enhance ability to do public advocacy and law reform work.	Fed; Serv Pro		

**KEY to ABBREVIATIONS:** ADR Prac - ADR practitioners, Bar - legal organizations, Const Amend - constitutional amendment, Ed Insti - educational institutions, Exec - Executive Branch, Fed - federal government, Jud - Judicial Branch, Jud Comp Comm - Judicial Compensation Commission, Law S - University of Maine School of Law, Leg - Legislative Branch, Leg\* - Commission will support legislation submitted by others to implement recommendation, Leg and \$ - statutory change and general funds needed, Leg for \$ - general funds needed, Leg for \$+ - Commission has designated for medium-term implementation due to budget constraints, Local Govt - local government, Serv Pro - legal service providers

		<b>Short Term</b> Prior to 7/1/95	<b>Medium Term</b> 7/1/95 to 6/30/99	<b>Long Term</b> 7/1/99 & beyond
A.5	Expand free and low-cost clinics for family law matters and volunteer courthouse assistance projects.	Jud; Bar; Serv Pro		
A.6	Explore use of non-lawyers to handle certain matters in court.	Leg for Study		
	◦ Implement study result on use of non-lawyers to handle certain matters in court.		Jud; Leg	
A.7	Require qualified interpreters and signers when needed in court and administrative proceedings.	Leg		
	◦ Provide qualified interpreters and signers when needed in court and administrative proceedings.		Leg for \$	
A.8	Create an educational loan program to enable law school graduates to repay by doing civil legal work for the poor.		Leg and \$; Fed	
A.9	Expand public interest fellowship programs to subsidize law student internships for civil services.		Fed	
	◦ Expand for-credit clinical programs and the number of students participating in them.		Law S	
A.10	Expand <i>pro bono</i> referral programs to include referrals of the near poor who can pay something for services.		Bar; Serv Pro	
B.1	Ensure adequate funding for current court-appointment system.	Leg*	Leg for \$+	Leg for \$
B.1, 3	Study the court appointment system and indigency screening.	Leg for Study		
	◦ Make receipt of public benefits a presumption of eligibility for court-appointments and fee waivers.	Leg		
	◦ Revise the court-appointment and indigency screening systems.		Leg; Exec	
B.2	Explore the right to court-appointed counsel in certain types of civil cases.		Leg for Study	Leg for \$

C.1	Encourage expansion of private bar efforts for low cost legal services.	Bar	
C.2	Encourage attorneys to accept a certain number of <i>pro bono</i> referrals per year or contribute to a fund.	Bar	
C.3	Encourage attorneys to advise clients of ADR options.	Jud; Bar	
C.4	Encourage employers to provide pre-paid legal insurance services for employees.		Bar
C. 5	Increase number of continuing legal education courses on poverty issues and offer them free or at lower cost for <i>pro bono</i> attorneys.	Bar	
C. 6	Develop a contract system between service providers and the private bar to provide free/reduced fee services in some geographic areas.		Bar; Serv Pro

### III. Dispute Resolution Alternatives

A. 1a	Establish a planning and oversight function within the Judicial Branch for ADR programs.	Jud	
A.1b	Establish an administrative office for ADR within the Judiciary.		Jud; Leg for \$
A. 2a	Allow trial judges to recommend, require, or employ appropriate ADR in all civil actions.	Jud	
A. 2 b- d	Begin putting ADR plan into effect with rule amendments and monitoring. <ul style="list-style-type: none"> <li>◦ Continue implementation and monitoring of ADR plan.</li> </ul>	Jud	Jud; Leg for \$

**KEY to ABBREVIATIONS:** **ADR Prac** - ADR practitioners, **Bar** - legal organizations, **Const Amend** - constitutional amendment, **Ed Insti** - educational institutions, **Exec** - Executive Branch, **Fed** - federal government, **Jud** - Judicial Branch, **Jud Comp Comm** - Judicial Compensation Commission, **Law S** - University of Maine School of Law, **Leg** - Legislative Branch, **Leg\*** - Commission will support legislation submitted by others to implement recommendation, **Leg and \$** - statutory change and general funds needed, **Leg for \$** - general funds needed, **Leg for \$+** - Commission has designated for medium-term implementation due to budget constraints, **Local Govt** - local government, **Serv Pro** - legal service providers

		<b>Short Term Prior to 7/1/95</b>	<b>Medium Term 7/1/95 to 6/30/99</b>	<b>Long Term 7/1/99 &amp; beyond</b>
A.3a	Publish lists of ADR resources.	Jud		
A.3b	Provide Court ADR services.		Jud; Leg for \$	
A.4	Create pilot projects where all claims for civil relief will be screened and the parties advised in choosing dispute resolution methods. ( <i>See I. B.2</i> )		Jud; Leg for \$	
	◦ Establish statewide screening system for all civil claims for relief with assistance to parties in choosing appropriate dispute resolution methods. ( <i>See I B.2</i> )			Jud; Leg for \$
A.5	Develop pretrial screening pilot projects to divert criminal matters to appropriate ADR.		Jud; Leg; Exec	
A.6	Increase the knowledge of judges, other court personnel, lawyers and parties about ADR.	Jud; Bar		
A.7c	Plan and begin study of costs and benefits of court-connected ADR.	Jud		
	◦ Continue study of costs and benefits of court-connected ADR.		Leg for \$+	
A.7	Ensure adequate funding for court-connected ADR.			Leg for \$
B.1	Establish a Community Dispute Resolution Planning Council.	Jud		
B.2, 3	Establish pilot project community dispute resolution centers and explore a statewide program.		Leg and \$	
C.1	Improve sources of information and referral to private dispute practitioners.	Bar; ADR Prac		
C.2	Develop a code of ethics and standards for private dispute resolution practitioners.	ADR Prac		

D.1	Establish public sector advisory committee to develop plans and policies for public sector dispute resolution.	Leg;Exec		
D. 2	Encourage more use of ADR by state agencies in rule-making and dispute settlement.	Leg; Exec	Leg for \$	
D.3	Encourage use of ADR by local government and quasi-governmental entities for dispute settlement.		Local Govt	
D.4	Establish a State Center for Dispute Resolution for agency and other public sector disputes.		Leg and \$; Exec	
E.1	Convene educational planning group to introduce ADR in schools.	Exec; Ed Insti		
E. 2,3,5	Teach and encourage use of ADR in graduate schools, colleges, professional programs, private non-profit leadership programs, and adult education programs.		Law S; Ed Insti	
E. 4	Encourage Maine business and law firms to develop their own ADR practices.	Bar		

#### IV. Trial and Case Management

A.1, 2	Review and simplify rules to maximize efficiency and fairness and to increase ease of use by unrepresented persons.	Jud; Serv Pro	Jud	Jud
B.1, 2	Review procedures to enhance efficiency including expansion of single judge assignment.	Jud	Jud	Jud
B.3	Control flow of cases through early and decisive judicial intervention.		Jud	

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		<b>Short Term Prior to 7/1/95</b>	<b>Medium Term 7/1/95 to 6/30/99</b>	<b>Long Term 7/1/99 &amp; beyond</b>
B.4	Curtail discovery abuses and consider mandatory disclosure rule.	Jud		
C.1	Reduce burdens placed on jurors by more efficient selection, empanelment, and scheduling.	Jud		
C.2	Institute a "one week-one trial" system of jury management when technology and resources are available.		Jud; Leg for \$	
D.1, 2	Standardize and simplify forms and procedures for court use at all levels.	Jud; Serv Pro	Jud	Jud
E.1, 2	Support statewide pretrial services and alternatives to incarceration.	Leg*	Leg and \$+	
E.3, 4 a,b	Coordinate more closely among various segments of the criminal justice process and providers of social and mental health services.	Jud; Exec		
E.4c	Expand testing and treatment resources in prisons, jails, juvenile facilities, and community settings for probationers.	Leg*	Leg for \$; Exec	
E.5	Improve juvenile justice system by closer coordination with the family docket, judicial training, written policies on court-appointments, and time limits.	Jud; Leg		
	◦ Enhance juvenile justice system by providing meaningful probation.		Leg for \$+; Exec	
E.6	Enhance involvement of victims in some criminal procedures.	Leg; Exec		
	◦ Expand services for victims.		Leg for \$+	
E.7	Make grand jury use discretionary with District Attorneys and the Attorney General.	Leg; Const Amend		
	◦ Monitor use of grand jury.		Exec	

## V. Structure and Jurisdiction of the Court System

A.1a	Use cross-assignment of all trial judges to maximize use of personnel and facilities.	Jud		
A.1b	Abolish resident judge system.	Leg		
A.1c	Change titles so that every trial judge has the title "judge."	Leg		
A.1d	Establish equal pay for District and Superior Court judges within 5 years with Judicial Compensation Commission to recommend plan for phase-in.	Leg; Jud Comp Comm	Leg for \$+	
A.1e	Merge support personnel and records where Superior and District Courts are co-located.	Jud		
A.1f	Use cross-assignment of clerks as needed between the Superior and District Courts.	Jud		
A.1g	Implement a uniform docket numbering system for all courts.		Jud	
A.1h	Establish a central filing system to minimize public confusion so that claims may be filed from all court locations.			Jud; Leg for \$
A.2a	Design a non-adversarial administrative forum with social services for family matters.		Jud; Leg and \$+	
	<ul style="list-style-type: none"> <li>Implement non-adversarial administrative forum with social services for family matters.</li> </ul>			Leg; Exec
A.2b	Continue and expand Family Court Pilot Project.	Leg		

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		<b>Short Term</b> Prior to 7/1/95	<b>Medium Term</b> 7/1/95 to 6/30/99	<b>Long Term</b> 7/1/99 & beyond
A.2c	Create a Family Division of the District and Superior Courts in those areas where the Family Court Pilot Project exists.	Jud		
A.3	Transfer appellate functions of the Administrative Court to new Appellate Division of Superior Court and trial functions to the District Court.	Leg		
A.4a	Bring Probate Judges into state system by replacing part-time elected judges whose terms expire after 7/1/95 with fewer full-time Probate Judges.	Leg	Leg for \$	
A.4b	Incorporate Probate Courts and Registries fully into the state system.			Leg and \$
A.5a	Create an Appellate Division within the Superior Court.	Jud		
	◦ Provide for direct appeal of family matters to the Supreme Judicial Court and, by agreement, final resolution by the Superior Court Appellate Division for all District Court matters.	Leg		
A.5b	Increase discretionary jurisdiction for the Supreme Judicial Court.		Jud; Leg	
A.5c	Amend Rule 72 to establish by-pass procedure from Superior Court to the Supreme Court for some matters.	Jud		
B.1	Study the overlapping jurisdiction of the Superior, District, and Probate Courts.		Leg for Study	
	◦ Change overlapping jurisdiction.			Leg
B.2	Establish administrative forums for processing routine cases that do not require judicial attention.		Leg and \$	
B.3	Review judicial functions to determine which are purely ministerial and make recommendations to the Legislature.	Jud		
	◦ Relieve judges of functions that are purely ministerial.		Leg	

B.4 Raise Small Claims jurisdiction to \$3,000 with a periodic review of that limit.

Leg

## VI. Administration of the Judicial Branch

A.1 Establish a vision for the Judicial Branch.

Jud

A.2, 4 Establish clear lines of authority and clarify management and judicial roles.

Jud

A.3 Designate the State Court Administrator as chief administrative officer for both management and business functions.

Jud; Leg

◦ Require the State Court Administrator to be knowledgeable about judicial functions.

Jud

A.5 Incorporate participatory decision-making throughout the Judicial Branch.

Jud

B.1 Establish a short and long-range planning capability for the Administrative Office of the Courts.

Jud; Leg for \$+

B.2 Revitalize a long-range planning committee for the Judicial Branch with sufficient resources.

Jud

Leg for \$+

B.3 Collect and analyze statistical information to plan and monitor operations.

Jud; Leg for \$

C. 1 Adopt trial court performance and time standards.

Jud

C. 2 Adopt a peer review system for judges.

Jud

**KEY to ABBREVIATIONS:** ADR Prac - ADR practitioners, Bar - legal organizations, Const Amend - constitutional amendment, Ed Insti - educational institutions, Exec - Executive Branch, Fed - federal government, Jud - Judicial Branch, Jud Comp Comm - Judicial Compensation Commission, Law S - University of Maine School of Law, Leg - Legislative Branch, Leg\* - Commission will support legislation submitted by others to implement recommendation, Leg and \$ - statutory change and general funds needed, Leg for \$ - general funds needed, Leg for \$+ - Commission has designated for medium-term implementation due to budget constraints, Local Govt - local government, Serv Pro - legal service providers

		<b>Short Term Prior to 7/1/95</b>	<b>Medium Term 7/1/95 to 6/30/99</b>	<b>Long Term 7/1/99 &amp; beyond</b>
D.1	Establish a master plan for use of technology incorporating careful system analysis. ◦ Fully computerize clerks' offices and link them with each other and other state databases. Provide technology for judges and staff.	Jud		
			Leg for \$	
D.2	Acquire technology for electronic filing when it becomes available and provide electronic access to all interested parties and agencies.		Jud; Leg for \$	
D.3	Promote use of telecommunications among courts and between courts and jails and police stations.	Jud	Jud; Leg for \$+	Jud; Leg for \$
D.4	Computerize Registries of Probate and Registries of Deeds.		Counties	
D.5	Enhance capability for computerized legal research so that it is available to the public and professionals.		Jud; Leg for \$	
E.1	Provide initial orientation and training and periodic continuing education for judges and staff.	Jud; Leg*	Leg for \$+	
E. 2	Provide for mandatory training for all personnel in sensitivity to diversity, technology, interpersonal skills, and ADR.		Jud; Leg for \$+	
E.3	Train judges in substantive and procedural law, and in both resolution and adjudicative skills; provide regular meetings for judges; explore sabbatical leave for judges.		Jud; Leg for \$+	
E.4	Cross-train clerks in functions of both trial courts as appropriate.	Jud		
F.1	Increase compensation for state judges to competitive levels.		Leg for \$+	
F.2	Balance travel for judges between needs of system and personal/family lives.	Jud		
F. 3	Fill judicial vacancies as soon as possible.	Exec		

## VII. Separate But Co-Equal Branch

A.1, 3	Establish independent legislative budget and appropriation process for Judicial Branch with accountability.	Leg		
A.2	Provide sufficient resources to enable the Judicial Branch to carry out its constitutional and statutory functions.	Leg*	Leg for \$+	Leg for \$
A.4	Establish authority for the Judicial Branch to have capital accounts spanning biennia for technology and facilities.		Leg and \$	
B.1-4	Establish management flexibility for Judicial Branch, independent of undue Executive and Legislative interference. Eliminate requirement that the Judicial Branch use the services and procedures of the Executive Branch.	Jud; Leg; Exec		
C.1-4, 6	Establish interbranch forum among top policy makers to promote better communication. Ensure the Judicial Branch has an equal voice in an integrated state communications system, technology plan, long range planning, and public sector ADR.	Jud; Leg; Exec		
C. 5	Increase judicial presence before the Legislature.	Jud		
	◦ Require that Judicial Branch's assessment of the judicial impact of legislation be forwarded to legislative committees.	Leg		

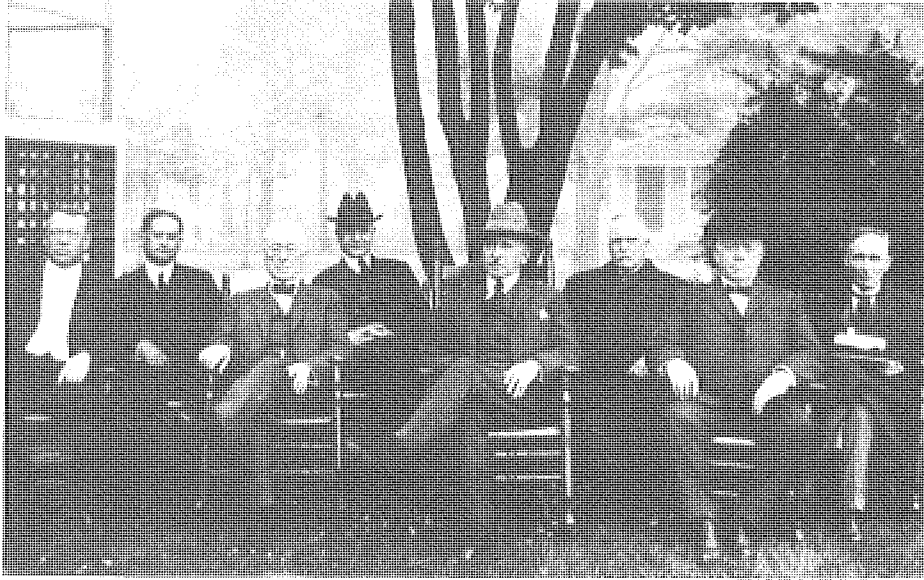
## VII. Implementation

A., B.	Create a Court Futures Implementation Commission and require annual reports to the Legislature through 1996.	Leg		
C.	Provide \$5000.00 each year of the biennium for the Implementation Commission	Leg for \$		

**KEY to ABBREVIATIONS:** ADR Prac - ADR practitioners, Bar - legal organizations, Const Amend - constitutional amendment, Ed Insti - educational institutions, Exec - Executive Branch, Fed - federal government, Jud - Judicial Branch, Jud Comp Comm - Judicial Compensation Commission, Law S - University of Maine School of Law, Leg - Legislative Branch, Leg\* - Commission will support legislation submitted by others to implement recommendation, Leg and \$ - statutory change and general funds needed, Leg for \$ - general funds needed, Leg for \$+ - Commission has designated for medium-term implementation due to budget constraints, Local Govt - local government, Serv Pro - legal service providers

## THE BENCH AND THE BAR

*What's Past is Prologue: New Dimensions for Justice*



### **MAINE SUPREME JUDICIAL COURT, 1921:**

Hon. Warren C. Philbrook, Hon. Scott Wilson, Hon. Albert M. Spear, Hon. Charles J. Dunn,  
Chief Justice Leslie C. Cornish, Hon. John A. Morrill, Hon. George M. Hanson,  
Hon. Luere B. Deasy



### **MAINE DISTRICT COURT JUDGES, 1992:**

*(Seated left to right)* Hon. Clifford R. O'Rourke, Chief Judge Susan W. Calkins,  
Hon. Michael Westcott, Hon. Alexander A. MacNichol, Hon. Rae Ann French,  
Hon. Andre G. Janelle

*(Standing left to right)* Hon. Douglas A. Clapp, Hon. John Romei, Hon. Jessie B. Gunther,  
Hon. Joseph H. Field, Hon. Ellen A. Gorman, Hon. Leigh I. Saufley, Hon. Jane S. Bradley,  
Hon. Peter J. Goranites, Hon. Robert E. Crowley, Hon. John B. Beliveau,  
Deputy Chief Judge S. Kirk Studstrup

# APPENDICES

- A. Commission Background and Methodology
- B. Commission Members, Task Force Members, Consultants
- C. Key Reports Generated for the Commission
- D. Highlights of Commission Activity
- E. Glossary of Terms
- F. Legislation Which Created the Commission to Study  
the Future of Maine's Courts
- G. Acknowledgments



# Commission Background and Methodology

*The Commission to Study the Future of Maine's Courts was created by the 114th Legislature to study the future of Maine's court system and to make recommendations to ensure a system of justice that will meet the needs of the citizens of Maine in the 21st Century.*

The Commission was also specifically directed to examine eight issues of immediate concern to the Legislature. The 1990 enabling legislation contained no appropriation, prohibited any expenditures that affected the General Fund, but authorized the Commission to seek outside sources of funding. Grants from the State Justice Institute and the Libra Foundation enabled the Commission to begin functioning in April 1991. Subsequently, the Commission received an additional grant from the National Institute for Dispute Resolution [NIDR] as well as other financial and in-kind contributions for specific projects.

The Chair, jointly appointed by the Chief Justice, the Governor, the President of the Senate, and the Speaker of the House of Representatives, and twenty-eight other statutorily designated representatives of the bench, bar, and the public comprised the Commission's membership. The Commission was staffed by one full-time project director, a half-time secretary/administrative assistant, and a part-time writer.

To take advantage of the experiences of other jurisdictions and to tap the best thinking in the United States about challenges facing the courts in all phases of their operations, the Commission contracted with nationally recognized consultants to advise the Commission in the areas of their expertise. Interviews and research were conducted and information was compiled by volunteers and paid assistants on a

project-by-project basis. Commission members, serving as volunteers, made significant contributions to the work of the Commission; without their assistance the job could not have been accomplished. Many other persons in-state and some out-of-state also donated their time and expertise.

To facilitate its inquiry, the Commission was organized into four task forces:

- Access to and Quality of Justice
- Alternative Dispute Resolution
- Productivity and Utilization of Resources
- Structure

Each task force invited additional people to participate in its assignment in order to broaden its perspective and to enhance the diversity of experiences represented. A Commission-wide Futures Coordinating Committee was created to help maintain a futurist focus in all task forces.

The Commission Chair, the Project Director, and the Chair and Vice-Chairs of all the Task Forces and the Futures Coordinating Committee comprised the Steering Committee, which operated as an Executive Committee. The Project Director served as staff to the Steering Committee, the Task Forces, and the Commission as well as assisting in the planning and oversight of Commission undertakings and special projects sponsored by individual task forces. The NIDR grant provided funds for additional consultative assistance to the Alternative Dispute Resolution Task Force.

The Commission began its first meeting with an orientation in futures thinking and goals. During its first year of operation the Commission, working through the four task forces, concentrated on identifying problems, designing research projects, selecting consultants to assist in identifying material to address identified issues, and overseeing or conducting the gathering of the needed data. The results of this process were compiled in the Commission's *Phase I Report* to provide a common basis for deliberations in all task forces.

The second year of operation began with additional futures training for Commissioners and task force members. Each task force then began to study the compiled research and to request its

consultants to recommend possible solutions to previously identified problems. Over the summer, each task force continued its deliberations, formulated recommendations, and issued a task force report. The four task force reports were synthesized into draft Commission recommendations. After Commission modification of the draft, the Commission's *Preliminary Recommendations* were widely distributed in Maine and made available for comment at a series of public meetings held throughout the state. Access to these meetings was enhanced by use of the interactive television network of the University of Maine system for a number of sessions. In addition, conventional public hearings were held in Augusta, Bangor, and Portland.

The Commission carefully considered all public comments about its *Preliminary Recommendations*, including critiques by Commission consultants, before adopting its final recommendations. Priorities for action were established and the entities and organizations designated as bearing primary responsibility for implementation were set forth. Proposed language for any constitutional amendments and statutory enactments to implement these recommendations are contained in a supplementary document which is available upon request.



*Associate Justice of the Maine Supreme Judicial Court John Appleton, Chairman of the Appleton Commission on court reform in 1852.*



*Judge Harriet P. Henry, first women judge in Maine and Chair of the Commission to Study the Future of Maine's Courts, 1992.*

# Commission to Study the Future of Maine's Courts

**Chair: Judge Harriet P. Henry**  
*Maine District Court, Ret.*

**Vice-Chair: Justice Kermit V. Lipez**  
*Maine Superior Court*

**Kathryn Monahan Ainsworth, Esq.**  
*Project Director*

**Ann Gosline, Esq.**  
*Consultant for the  
ADR Task Force*

**Prof. Craig McEwen**  
*Consultant for the  
ADR Task Force*

**Christine Foster, Esq.**  
*Writer*

**Susanna Adams**  
*Administrative Assistant*

## COMMISSION MEMBERS

Titles and affiliations listed are those at the time of initial participation with the Commission.

**Anita Alexander**  
*District Court Clerks Association*

**Rep. Cushman D. Anthony**  
*Joint Standing Committee on Judiciary*

**Michael P. Asen**  
*Maine State Bar Association—Family Law Sec.*

**Ralph W. Austin**  
*Maine State Bar Association*

**Dana R. Baggett**  
*State Court Administrator*

**Sally A. Bourget**  
*Superior Court Clerks Association*

**James C. Chute**  
*Clerk of the Supreme Judicial Court*

**Chief Judge Dana A. Cleaves**  
*Administrative Court*

**Judge Bernard M. Devine**  
*Maine District Court—Active Ret.*

**John Devine\***  
*Office of the Governor*

**Nan Heald**  
*Executive Director, Pine Tree Legal Assistance*

**Barry J. Hobbins**  
*Joint Standing Committee on the Judiciary, 1988-90*

**Sen. Muriel D. Holloway**  
*Joint Standing Committee on Judiciary*

**Roger D. Katz**  
*Maine Trial Lawyers Association*

**Derek P. Langhauser\***  
*Office of the Governor*

**Alan D. MacEwan**  
*Verrill & Dana*

**Rep. Carolyn T. Mahany**  
*Taxation Committee*

**Janet T. Mills**  
*District Attorneys' Association*

**Judge Richard M. Morton**  
*Probate Judges Assembly*

**Rep. Patrick Paradis**  
*Joint Standing Committee on the Judiciary*

**John H. Rich III\*\***  
*Perkins, Thompson, Hinckley & Keddy*

**Justice David G. Roberts**  
*Supreme Judicial Court*

**Paul L. Rudman\*\***  
*Rudman & Winchell*

**Judge John C. Sheldon**  
*Maine District Court*

**Theodore R. Tracy**  
*Association of Registers of Probate*

**William K. Tyler**  
*Conflict Solutions*

**Vendean V. Vafiades**  
*Chief Deputy Attorney General*

**John B. Wooten**  
*Dirigo Investments*

**Prof. L. Kinvin Wroth**  
*University of Maine School of Law*

\* John Devine was appointed by the Governor to replace Derek Langhauser when Mr. Langhauser left government service.

\*\* John Rich was appointed by the Governor to replace Paul Rudman as a public member when Mr. Rudman was appointed Associate Justice of the Supreme Judicial Court.

# Commission to Study the Future of Maine's Courts

## Task Force and Subcommittee Membership

### ■ Access to Justice

Nan Heald, Chair  
Vendean V. Vafiades, Vice-Chair

Anita Alexander  
Ralph W. Austin  
James Chute  
Sen. Muriel D. Holloway  
Rep. Carolyn T. Mahany  
John B. Wootten

#### *Additional Task Force Members*

Sumner T. Bernstein, Bernstein Shur Sawyer & Nelson  
William Burney, Mayor of Augusta  
Hugh Calkins, Calkins & Wuesthoff  
Michael E. Carpenter, Attorney General  
Justice Margaret J. Kravchuk, Maine Superior Court  
Andrew Stewart, Exec. Director Legal Services  
for the Elderly  
Donald L. Zillman, Dean, University of Maine  
School of Law

### ■ Alternative Dispute Resolution

Prof. L. Kinvin Wroth, Chair  
William K. Tyler, Vice-Chair  
Rep. Cushman D. Anthony  
Derek Langhauser

#### *Additional Task Force Members*

Marc P. Ayotte, Maine Labor Relations Board  
Justice G. Arthur Brennan, Maine Superior Court  
Paul G. Charbonneau, Court Mediation Service  
Elmira Gearheart, Mediator  
Cheryl Harrington, Mediator  
Bernard J. Kubetz, Eaton Peabody Bradford & Veague  
S. Peter Mills, Wright & Mills, PA

#### *Additional ADR Subcommittee Members\**

Judge Roland Beaudoin, Maine Administrative Court  
Judge Jane Bradley, Maine District Court  
Linda Christ, Pine Tree Legal Assistance  
Alice Clifford, Office of District Attorney, Bangor  
Kay Evans, Maine State Retirement Board  
Rep. Susan Farnsworth, Joint Standing Committee on  
the Judiciary  
Martha E. Freeman, Office of Policy & Legal Analysis

#### *ADR Subcommittee Members (cont.)*

Judge Peter J. Goranites, Maine District Court  
Pat Jennings, Midcoast Regional Planning  
Nancy Markowitz, Youth Alternatives of So. Maine  
James A. McKenna, Office of Attorney General  
David Plimpton, Mediator  
Pamela J. Plumb, Mediator  
Jonathan W. Reitman, Mediator  
Sally M. Wagley, Bureau of Elder & Adult Services  
John Walker, Maine Consensus Project

### ■ Productivity and the Utilization of Resources

John H. Rich III, Chair\*  
Judge John C. Sheldon, Vice-Chair

Dana R. Baggett  
Sally A. Bourget  
Janet T. Mills  
Paul L. Rudman  
Theodore R. Tracy

#### *Additional Task Force Members*

Justice Donald G. Alexander, Maine Superior Court  
Justice Paul A. Fritzsche, Maine Superior Court  
Jeffrey Henthorn, Administrator, Maine Superior Court  
Deborah A. Hjort, Clerk, Maine District Court  
Judge Michael N. Westcott, Maine District Court

\* John Rich replaced Paul Rudman as Chair of the Task Force and as a public member when Mr. Rudman was appointed Associate Justice of the Supreme Judicial Court.

### ■ Structure

Justice Kermit V. Lipez, Chair  
Alan D. MacEwan, Vice-Chair

Michael P. Asen  
Judge Dana A. Cleaves  
Judge Bernard M. Devine  
Barry J. Hobbins  
Roger J. Katz  
Judge Richard M. Morton  
Rep. Patrick E. Paradis  
Justice David G. Roberts

#### *Additional Task Force Members*

Sen. N. Paul Gauvreau, Co-Chair, Judiciary Committee  
Murrrough H. O'Brien, Judicial Council

# Commission to Study the Future of Maine's Courts

## Consultants

### ■ Futurist

**Clem Bezold**  
Institute for Alternative Futures  
Alexandria, Virginia

### ■ Public Survey

**Christian Potholm**  
Command Research  
South Harpswell, Maine

### ■ Access and Quality of Justice

**F. William McCalpin**  
ABA Consortium on Legal Services and the  
Public  
Lewis, Rice and Fingersh  
St. Louis, Missouri

**Hon. John A. Dooley, III**  
Associate Justice  
Vermont Supreme Court  
Montpelier, Vermont

### ■ Alternative Dispute Resolution

**Margaret Shaw**  
Institute of Judicial Administration  
Garrison, New York

**Hon. Marie L. Garibaldi**  
Associate Justice  
New Jersey Supreme Court  
Jersey City, New Jersey

**Frank E. A. Sander**  
Professor of Law  
Harvard University  
Cambridge, Massachusetts

**Hon. Robert Tompkins**  
Family Division  
Connecticut Superior Court  
Hartford, Connecticut

**Susan Terry**  
ADR Consultant  
St. Johnsbury, Vermont

### ■ Productivity and the Utilization of Resources

**Larry P. Polansky**  
Technology Consultant  
Alexandria, Virginia

### ■ Structure

**David Steelman**  
Former Vice President of  
National Center for State Courts  
Manchester, New Hampshire

**Lorraine Adams**  
Consultant  
National Center for State Courts  
Bradford, Massachusetts

**Robert Tobin**  
Consultant  
National Center for State Courts  
Denver, Colorado

**Sam D. Conti**  
Assistant Director  
Trial Court Services  
Administrative Office of the Courts  
Trenton, New Jersey

## Key Reports Generated for the Commission and Task Forces

*(Available Upon Request)*

1. *Report of the ADR Task Force* (September, 1992).
2. *Report of the Task Force on Productivity and the Utilization of Resources* (September, 1992).
3. *Structure Task Force Recommendations* (September, 1992).
4. *Access Task Force Recommendations* (August, 1992).
5. Commission's Public Opinion Survey conducted by Command Research (January, 1992).
6. Commission's Legislative Survey conducted by Commission staff (January, 1992).
7. Responses to Letter of the Access Task Force Requesting Comments from Organizations (1991).
8. Adams, Lorraine M., David C. Steelman and Gary S. Wolfe. *Phase I Report to the Task Force on Structure of the Commission to Study the Future of Maine's Courts*. (Includes surveys and interviews with judges, legislators, court personnel, attorneys and others) (March, 1992).
9. Cleaves, Hon. Dana A., Hon. Peter J. Goranites, Hon. Roland Beaudoin. *Interim Report of the Family Court Pilot Project to the Commission to Study the Future of Maine's Courts* (January 6, 1992).
10. Conti, Samuel D. *Some Comments and Recommendations on the Structure of the Courts of Maine* (May, 1992).
11. Dooley, John A. III. *Comments on Preliminary Recommendations of Commission to Study the Future of Maine's Courts* (access issues) (November, 1992).
12. Foster, Christine. *Exploring Maine's Future: Symposium on Court Structure, Pros and Cons of a Unified Trial Court and A Family Court for Maine?*, West Publishing (January, 1992).
13. Garibaldi, Marie L. *Review of Recommendations of the Commission* (ADR issues), (November, 1992).

14. McCalpin, F. William. *A Review of the Commission's Preliminary Recommendations* (access issues) (November, 1992).
15. McEwen, Craig A. *An Evaluation of the ADR Pilot Project — Final Report* [York and Knox Counties] (January, 1992).
16. Polansky, Larry A. *Comment on Preliminary Recommendations* (productivity and technology issues) (November, 1992); *Observations and Comments Re: Technological Possibilities for the Future of Maine's Courts* (October 26, 1991).
17. Sander, Frank E.A. *Non-Court Use of ADR in Maine* (February 4, 1992).
18. Shaw, Margaret. *Outside Review of Report of the ADR Task Force* (November, 1992).
19. Shaw, Margaret, Susan Terry and Robert Tompkins. *Maine's Court Mediation Service: A Report to the Commission to Study the Future of Maine's Courts, ADR Task Force*, (February, 1992).
20. Steelman, David C. *Financial and Implementation Observations on Preliminary Recommendations Relating to Structure* (November, 1992); *Recommended Structure for the Maine Courts* (May, 1992).
21. Tobin, Robert. *Maine Court Structure* (May, 1992).



## HIGHLIGHTS OF COMMISSION ACTIVITY

- Orientation and training by futurist about goals and methods of futures thinking.
- Interviews with and questionnaire responses from judges, clerks, legislators, lawyers, and other members of the legal community and broader justice system.
- Responses from advocacy groups helping to define problems facing the justice system.
- Questionnaire responses from lawyers and ADR professionals regarding the use of ADR.
- Presentation by consultant on technology for Productivity Task Force, Commission members, and invited representatives from the Judicial Branch and executive agencies of state government.
- Evaluation of the Court Mediation Service by ADR consultants.
- In cooperation with the Maine State Bar Association, a two-day Symposium on Court Structure. The first session dealt with a unified trial court with presenters from six states relating the experience in their jurisdictions. The second session dealt with the desirability of a family court for Maine with presenters from two states with family courts.
- Commissioning of a scientific public opinion survey to determine public attitudes about our courts and the justice system.
- Publication of the Commission's Phase I Report.
- Initiation of a *Futures Newsletter* for the Commission and courts.
- Preliminary research on the numbers of unrepresented litigants in certain types of matters.
- Participation with Maine State Bar Association and Maine Bar Foundation in presenting a *Symposium on Access to the Courts* at a summer meeting of Maine State Bar Association.
- Consultant's briefing on Total Quality Management for Commission members and the Judicial Branch.
- Traditional public hearings as well as hearings held via interactive television to reach eight more remote locations for public input.

## GLOSSARY OF TERMS

### *Deposition*

Recorded testimony of a potential witness under oath for use in preparation for trial, and, under some circumstances, in lieu of live testimony at trial.

### *Discovery*

Pretrial procedures that can be used by one party to obtain facts and information about the case from the other party in order to assist with preparation for trial. Examples of these procedures include: depositions, written interrogatories (questions), and production of documents or things.

### *Grand jury*

Jury of persons convened in private session who evaluate accusations against persons charged with crime, on the basis of evidence presented by the state, to determine whether there is sufficient evidence for the accused to be required to stand trial.

### *Guardian ad litem*

Special guardian appointed by the court to represent a child or ward of the state in a particular case.

### *Indigent*

Person who is impoverished and not able to pay costs and attorney's fees associated with legal proceedings.

### *In forma pauperis*

Describes permission given to a person who is impoverished to proceed without paying court fees or costs.

### *Motion in limine*

A pretrial motion asking a judge to determine the admissibility of evidence prior to trial.

### *Paradigm*

A mental model of reality.

### *Pro bono*

Legal services performed free of charge.

### *Pro se*

A litigant without an attorney.

# Legislation Which Created the Commission to Study the Future of Maine's Courts

## CHAPTER 891

H.P. 1682 - L.D. 2328

### An Act to Implement the Recommendations of the Court Jurisdiction Study

Be it enacted by the People of the State of Maine  
as follows:

#### PART B

**Sec. B-1. Commission established.** There is established the Commission to Study the Future of Maine's Courts.

**Sec. B-2. Commission membership.** The commission consists of the following members:

1. Three members appointed by the presidents of the respective court clerks associations to represent the Supreme, Superior and District Courts;
2. The President of the Probate Court Judges Association or a designee;
3. The President of the Registers of Probate Association or a designee;
4. Five Legislators, including 2 Senators, one of whom must be a member of the Joint Standing Committee on Judiciary, appointed by the President of the Senate; and 3 members of the House of Representatives, at least 2 of whom must be members of the Joint Standing Committee on Judiciary, appointed by the Speaker of the House of Representatives;
5. A representative of the Governor's office appointed by the Governor;
6. Four members of the public appointed by the Governor;
7. The President of the Maine State Bar Association or a designee;
8. The Chair of the Maine State Bar Association, Family Law Section, or a designee;
9. The Executive Director of Pine Tree Legal Assistance or a designee;
10. The President of the Maine Trial Lawyers Association or a designee;

11. The President of the Maine Prosecutors Association or a designee;

12. The Attorney General or a designee;

13. The Dean of the University of Maine School of Law or a designee; and

14. The State Court Administrator or a designee.

All appointments must be made no later than 30 days following the effective date of this Act. The appointing authorities shall notify the Executive Director of the Legislative Council and the State Court Administrator when the appointments have been made.

The Governor, the Chief Justice of the Supreme Judicial Court, the President of the Senate and the Speaker of the House of Representatives shall jointly appoint the chair of the commission no later than July 25, 1990. The chair may be appointed from among the members of the commission or from outside the membership.

The chair shall request the Chief Justice of the Supreme Judicial Court to appoint 5 advisory members, 4 of whom are Active Justices and Judges representing the Administrative, District, Superior and Supreme Courts and one of whom is an Active Retired Justice or Judge.

If the commission has received sufficient funds to begin its duties, the chair shall call the first meeting no later than November 15, 1990. If the commission has not received sufficient funds by November 15, 1990, the commission may not meet.

**Sec. B-3. Compensation.** To the extent that the commission has funds to pay per diem and expenses:

1. Legislative members are entitled to legislative per diem as defined in the Maine Revised Statutes, Title 3, section 2, for each day's attendance at commission meetings; and

2. All other members are not entitled to compensation, but may, except state employees, be reimbursed for reasonable expenses as provided in the Maine Revised Statutes, Title 5, section 12002-A, subsection 1.

**Sec. B-4. Administrative and staff services.** The commission may contract for administrative, professional and clerical services with available funds. The Administrative Office of the Courts, the Judicial Council and the Legislative Council may furnish clerical and other support services to the commission. The commission may request assistance with the preparation of any recommended legislation from the Legislative Council.

**Sec. B-5. Duties.** The commission shall study the future of the court system in the State and make recommendations as necessary to ensure that the judicial needs of citizens will be met in the 21st century. The commission shall examine, but not limit its examination to, the following issues:

1. Integration of the jurisdictions of the various court systems, including the feasibility, cost and method of creating a unified trial court system in this State;

2. Appellate review, including the feasibility of establishing or designating an intermediate appellate court along with discretionary review by the Supreme Judicial Court in selected or all cases;

3. Expansion of the availability and use of alternative dispute resolution mechanisms. This includes the consideration of ways to increase the use of referees under Rule 53 of the Maine Rules of Civil Procedure, including, but not limited to, rule changes, the education of lawyers and judges, mandatory use of referees, the development of guidelines for the use of referees and other ways to encourage the use of referees;

4. Parity among judicial salaries within the court system;

5. Further evolution of the Probate Court system, particularly the conflict-of-interest issue concerning part-time Probate Court judges, considering, as a possibility, establishing full-time judges of probate who travel a circuit;

6. Any recommendations of the Court Mediation Service on expanding mediation services;

7. An evaluation of any pilot project established by the Chief Justice of the Superior Court and the Chief Judges of the District Court and the Administrative Court; and

8. Any recommendations of the Maine Commission on Legal Needs.

**Sec. B-6. Report to Legislature.** The commission, by November 15, 1992, shall report to the Joint Standing Committee on Judiciary and the Office of the Executive Director of the Legislative Council the results of its findings and recommendations together with any necessary implementing legislation. The commission shall report to the Joint Standing Committee on Judiciary with respect to its funding from all sources and detailed expenditures of the commission on November 15, 1991, and November 15, 1992.

**Sec. B-7. Funding.** The commission is authorized to seek and accept outside sources of funding to finance the study provided in this Part. The Administrative Office of the Courts shall administer any outside

funds acquired for the conduct of the study. Expenditures may not be incurred that have an impact on the General Fund. Expenditures may not be incurred relative to this study unless the funding from outside sources has been received by the Administrative Office of the Courts.

**Sec. B-8. Commencement and continuation of commission.** The commencement and continuation of the commission through November 15, 1992, are contingent on the commission's successful solicitation of funds from sources other than the General Fund. The chair is authorized to solicit and receive funds on behalf of the commission before its first meeting.

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## CHAPTER 539

H.P. 1280 - L.D. 1850

### An Act to Extend the Commission to Study the Future of Maine's Courts

Be it enacted by the People of the State of Maine as follows:

**Sec. 1.** PL 1989, c. 891, Pt. B, §B-6 is amended to read:

**Sec. B-6. Report to Legislature.** The commission, by ~~November 15, 1992~~ February 28, 1993, shall report to the Joint Standing Committee on Judiciary and the Office of the Executive Director of the Legislative Council the results of its findings and recommendations together with any necessary implementing legislation. The commission shall report to the Joint Standing Committee on Judiciary with respect to its funding from all sources and detailed expenditures of the commission on November 15, 1991, and ~~November 15, 1992~~ February 28, 1993.

**Sec. 2.** PL 1989, c. 891, Pt. B, §B-8 is amended to read:

**Sec. B-8. Commencement and continuation of commission.** The commencement and continuation of the commission through ~~November 15, 1992~~ February 28, 1993, are contingent on the commission's successful solicitation of funds from sources other than the General Fund. The chair is authorized to solicit and receive funds on behalf of the commission before its first meeting.

## Acknowledgements

In addition to the principal funders listed on the first page of this report, the Commission also wishes to acknowledge the following for their financial and/or in-kind assistance: **Maine State Bar Association, Cumberland County Bar Association, Androscoggin County Bar Association, and Downing and Peters Reporting Associates** for providing assistance which enabled the Commission to conduct its Symposium on Court Structure; **West Publishing** for publishing those proceedings; and the **Maine Bar Foundation** for contributing a substantial portion of the cost of conducting the Commission's public hearings.

Additionally, the Commission wishes to express gratitude to the following people who have made this report possible. Titles and affiliations listed are those at the time of their initial participation with the Commission. Thanks are also extended to judges, clerks, lawyers, and legislators (their identity was not requested) who responded to our questionnaires and to the citizens who testified at our public hearings and/or submitted written comments to the Commission.

<b>Douglas K. Amdahl</b> , Chair, Committee on Standards for Judicial Administration, Div. of Judicial Administration, American Bar Association	<b>L. David Brooks</b> , Judge of Probate, Alfred
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