

Davidson Law Office, L.L.C.

Attorneys at Law

86 Court Street

Machias, Maine 04654

(207) 259-3411

JEFFREY W. DAVIDSON

Admitted in LA and ME

CYNTHIA DAVIDSON

Admitted in LA, of counsel

February 17, 2021

Maine House of Representatives  
Judiciary Committee  
2 State House Station  
Augusta, Maine 04333

Re: LD 1967 Resolve, Authorizing the Establishment of Prosecutorial Districts in  
Downeast Maine

Dear Sirs:

Please accept this letter as a summary of my public testimony in favor of LD 272. I am an attorney who has practiced law solely in Washington County, Maine for the past 17 years. The majority of my practice focuses on criminal defense. I accept appointments for indigent defendants from the Maine Commission on Indigent Legal Defense and I am the county's Resource Counsel. I am the only criminal defense attorney who lives in Washington County who is qualified through MCILS to accept homicide cases and sexual offenses. In the past 17 years, I have defended more criminal cases in Washington County than any other attorney and I have tried more criminal cases than any other attorney. As this has been the focus of my practice, I have worked with the District Attorney's Office on a daily basis for that entire 17 years. I have been able to observe the people, policies and priorities of that office during the past 17 years and I believe I have a clear understanding of the functioning of that office.

I am in favor of the Legislature authorizing the establishment on a new prosecutorial district for Washington County, Maine. The reasons it is necessary for this to happen are numerous, but I would like to begin by discussing the history of the office during the time I have practiced here. When I first opened my office in 2004, Michael Povich was the District Attorney. He was primarily based in Ellsworth and it was over a year before I even met him. He very rarely ever came to Washington County, unless there was a budget meeting with the County Commissioners or a case which had publicity or notoriety. Mr. Povich had a Deputy Assistant in Washington County, and he basically let that person run the prosecutor's office. The prosecutorial district has always had four attorneys primarily serving in Hancock County and three attorneys serving in Washington County. Mr. Povich had been the first District Attorney elected when the law was changed to move from County Attorneys to Prosecutorial Districts and he kept that office until he retired.

It was well known that he spent very little time in Washington County because he simply did not need to be here. He had a competent deputy to run the county and he knew that the population of Hancock County was almost twice the population of Washington County. That population difference forms the crux of why Washington County has never been fully served by the District

Attorney's Office. Prosecutorial District 7 consists of Hancock and Washington Counties. While they are geographically connected, the differences between the two counties are vast, and the main difference for purposes of an elected official is the population. In every single election Mr. Povich carried the Hancock County vote. When he decided to retire, his hand picked successor Caretta Bassano actually moved from Washington County to Hancock County one year before the election because everyone knew that her chances of being elected would be greater if she lived in Hancock County. She also carried the vote in Hancock County.

After Ms. Bassano left office, Mr. Matthew Foster was elected as District Attorney. Prior to his election he was relatively unknown in Washington County and had no prosecutorial experience. He ran in the primary against Paul Cavanaugh, a prosecutor who had been in the District Attorney's Office for 20 years, and who was well known in Washington County. As could be expected, Mr. Foster won the vote in Hancock County and Mr. Cavanaugh won the vote in Washington County. Because of the disparity in population, Mr. Foster won the primary and later the election against another Hancock County attorney. The result of the composition of the electorate of the two counties is that no attorney who lives in Washington County has ever been Washington County's District Attorney. With the population trends, it is obvious to any observer that Washington County will never by its vote get to elect the District Attorney that they favor if Hancock County has a resident running for the office.

I do not want you to think that I have negative opinion of the people who have been the District Attorneys in Prosecutorial District 7. In particular, I think that Mr. Foster has at least attempted to be more present for the voters of this county than his predecessors. However, he is not here sufficiently to serve the people of Washington County in a manner that they deserve. Since he has been in office, Washington County has had numerous Assistant District Attorneys serving here. Most of them had very little to no experience when hired and they did not stay in the office long enough to form the bonds with the local police departments that are required to effectively prosecute crimes in Washington County. The reason for this is simple. Young professionals simply do not want to move to Washington County and settle down, because the County offers very little by way of lifestyle for a young professional. Eighteen months ago, the Washington County District Attorney's Office had two young attorneys and one octogenarian. They were all fine people and I consider all of them to be personal friends. However, they simply did not win many trials. We now have two full time attorneys and one half time attorney, however one of the full time attorneys splits his time between the two counties. The effect of this is that when there was attrition in the district, it was Washington County that lost out. We now have the equivalent of two full time attorneys and it is not sufficient, particularly in light of the exploding dockets due to the covid pandemic.

Prosecutors have the sole discretion to charge cases, to offer plea negotiation and to determine which cases will ultimately go to trial. They should be able to evaluate the strength and weaknesses in their cases and negotiate accordingly such that they win most, if not all, of their trials. In working with previous prosecutors, it was obvious to me that they were not sufficiently trained or supervised. Mr. Foster simply could not spend the time that was necessary to do so because most of his time was necessarily spent in Hancock County. I don't fault him for this personally, but it is clear that a structural problem exists which redounds to the detriment of Washington County. All three of those prosecutors left the office and Washington County around a year ago. Since then, Mr.

Foster has simply not been able to fill the positions in a way that meets the needs of Washington County. He has sent one of his prosecutors who was working primarily in Hancock County to work half of the time in Washington County and he has made an extraordinary arrangement with the Attorney General's Office to hire another local attorney part time.

For the past year, this County has been functioning with less than its normal allotment of Assistant District Attorneys. While they are doing an admirable job, it is clearly not sufficient. There are more than 1,000 cases, both criminal and civil, prosecuted in Washington County in both Calais and Machias courts each year. With the current functional equivalent of 2 attorneys, that is a case load of 500 cases per year, simply because it is so difficult to recruit attorneys to work and live in Washington County. That is a ridiculous number of cases and well above the case load recommended by responsible bar associations.

The result of this situation is that the Assistant District Attorneys simply do not have the time to work their cases appropriately or to communicate effectively with the officers who bring those cases to the office. As an example, it was recently the policy of the office to have one prosecutor handle all cases brought in by the Maine Drug Enforcement Agency. That prosecutor primarily worked in Hancock County. I have never seen him appear in court in Washington County. When his cases come up on the docket in Washington County, one of the local attorneys or Mr. Foster "stands in" for them, obviously having never read the complete file and working off of notes from the person responsible for the case. This often results in delays which cause extra expense to the county for those defendants who are held in jail. I would suggest that it also results in negotiations which are based on incomplete knowledge and an inconsistency on how those defendants are handled.

Considering that the drug crimes in Washington County are perhaps the biggest concern we have in the criminal system due to the associated violence, overdoses and other crimes which it brings, it is clear that Washington County needs its own District Attorney. We need someone who is answerable to us in an election. We need someone who is present every day to work with the police, set consistent policies, gain institutional knowledge of our County, knows the cases that are pending and be available to work with the courts and defense counsel. We need someone who can train and oversee the office on a daily basis, not one or two days a week.

The nature of crime in Washington County has changed dramatically in the past five to ten years. We are now regularly seeing out of state drug dealers who have no concept of the value of life. We now have cases where people are killed over drugs, where people disappear altogether, where people are burned in their homes after being shot, where children are sexually assaulted. Our community is not accustomed to this type of crime. We do not want to become use to it. I see that our police have tried to improve their intelligence collection and proactive community policing. They need a partner in the prosecutors office who is available full time to work with them on these issues. It is time that the Legislature recognize this need and do what is necessary to provide Washington County residents with their own District Attorney who is answerable solely to them to address the rising cost of crime on our residents. Thanking you in advance for your courtesies, I am,

Very Truly Yours,

Jeffrey W. Davidson