

An interview with Attorney General Michael Carpenter

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Maine Attorney General Michael Carpenter has stood at the center of several controversies in his four years as the state's chief law enforcement official. From the investigation into the shooting death of Katherine Hegarty to the investigation into ballot tampering by a top legislative aide to a number of conflicts with regional district attorneys, Attorney General Carpenter has become the object of often harsh criticism from one source or another. Rather than debilitate him, the controversies seemed to have more fully engaged him in efforts to correct the dysfunction that accompanied these events. For example, in response to the Hegarty shooting, Carpenter has joined with a number of police chiefs to push for reform of law enforcement training. In the case of an Old Town police officer whose court cases had not been prosecuted by the district attorney for several years, Carpenter worked with all parties to achieve an ultimate settlement of that long-standing dispute.

Thrusting himself into the crucible is not exactly foreign to the Houlton resident. A military veteran who saw his share of combat action in Vietnam, Carpenter served 12 years in the Legislature, most of that time as the Democratic Senator from Southern Aroostook. When former Attorney General James Tierney lost his gubernatorial bid in 1990, Carpenter was elected attorney general by a democratically controlled legislature. He was reelected to the post in 1992.

In a recent interview with Maine Policy Review, Carpenter, who is planning to seek another two-year term as attorney general, discussed the notable public policy challenges facing his office, specifically, and Maine law enforcement, generally.

MPR: What policy issue involving the Office of Attorney General concerns you most?

Michael Carpenter: One of the issues that is constantly on the middle burner relative to my position is the manner in which the attorney general is selected in this state. We are the only state in the nation in which the legislature chooses the attorney general. This is always a subject of great discussion and debate. But for this selection process to change, the legislature would have to give up that power. One supposes it could happen in the future, but my guess is that it could only happen as the result of some sort of a scandal involving the attorney general or his office or if it became apparent that the legislature had somehow wielded undue influence with the attorney general.

Governor McKernan has proposed that the attorney general be appointed by the governor. But that is clearly the wrong way to go. Look at the situation that Janet Reno recently found herself in with regard to the appointment of a special prosecutor for the so-called White-water investigation. The federal model has had its problems. The administrations of John Mitchell under Nixon and Ed Meese under Reagan are examples of these problems. Electing the attorney general in Maine would bring other problems, such as campaign financing inequities. It would likely make it a position dominated by candidates from the larger population areas. I am sensitive

to that, because being from northern Maine, I would never have a chance at a statewide election where I had to raise \$750,000. This would tend to freeze out a lot of folks.

In many of the offices around the country where the attorney general stands for popular election, there has been far greater turnover at the policymaking level in the attorney general's office than there has been in Maine's office. In Maine, the major players in the office (such as the deputy attorneys general) generally stay the same whether the attorney general is Jim Tierney, Joe Brennan, or Dick Cohen. It is very apolitical, although some people have a difficult time imagining that. In direct election states, attorneys general usually surround themselves with individuals personally loyal to them.

On the positive side, a popularly elected attorney would not face as many perceived or real partisan political pressures. Similarly, the elected attorney general policy would have a statewide constituency with the ability to find a broader audience for issues of importance to the office.

MPR: If it came down to a choice between a popular election for attorney general or a gubernatorial (rather than a legislative) appointment, which is the better option?

Carpenter: By far the former, popular election. Appointment by the governor presents a major problem for the Office of Attorney General, because the single most important attribute of any attorney general's office is independence from all three branches of the government. While there is little to worry about in its relations with the judicial branch, there are significant concerns in regards to the executive and legislative branches. I did a chart of Maine government, I am not even sure where the attorney general would be positioned. But my guess is that the office would fall under the legislative branch because the attorney general is elected by the legislature. Despite this, the office has been able to maintain a real independence from the legislature in terms of dispensing legal advice, in terms of investigations of the government, and in all of its functions, going back to well before I became attorney general.

MPR: In a recent case involving alleged improprieties in the handling of state funds by a legislative staffer (while he held a prior state government position), there was a call for a special prosecutor. How do you characterize the hiring of special prosecutors? Is it good public policy?

Carpenter: The hiring of a special prosecutor lends itself to more political rhetoric than substance. In the general's office conducting investigations of legislative matters or legislative personnel. But if people agree we did a credible job in the ballot temporizing case, then we can do a credible job on any investigation related to legislature. Even the chairman of the state Republican part admitted that we did a good job in our handling of the ballot case. Granted, I was able to get the U.S. Attorney Richard Cohen (a Republican) as an equal participant in that investigation. That was very helpful politically. Admittedly, there will always be suspicion if an attorney general is investigating someone in his own party.

My concern about a special prosecutor statute involves the processes for establishing the prosecutor's independence, as well as those for determining whether or not a case should be handled by a special prosecutor. One legislator proposed that for legislative investigations, the Senate President, the Speaker of the House, and the Governor should jointly make the

determinations of when we call in a special prosecutor and who that individual should be. But that approach flies in the face of prosecutor independence. If the state wanted to move in that direction, I would suggest an approach similar to the federal law. The attorney general would make the call, and if that is not possible, then apply to have a court pick someone. My reluctance in going that route is that I might be tacitly acknowledging a lack of capacity in the attorney general's office to handle such matters. However, I realize that circumstances may arise that will threaten the integrity of the attorney general's office, so I must be prepared to act to protect that integrity. I have said publicly that if such a situation actually arose, I would probably support something based on the federal model. After the federal investigation into Androscoggin District Attorney Janet Mills, we went to the University of Maine Law School and picked two people who I think are impeccable in both reputation credentials for doing investigations. Had that resulted in a case that should have been pursued (which it didn't), then I would have chosen somebody from my office to pursue it. That happens in my office. We can end up suing or prosecuting other state agencies or personnel of other state agencies.

MPR: So the special prosecutor concept is less about getting a job done well than it is about satisfying political perception or popular demand?

Carpenter: That's right. The special prosecutor concept presents an interesting situation because I can tell you that I feel absolutely confident that I could investigate and prosecute my chief deputy - a person to whom I am personally and professionally very close. I need not lose sight of the reality that, in such a situation, my office would be perceived overwhelmingly by the public as less than totally independent and objective. If I were to circle the wagons in the face of calls for a new law, I might harm the reputation of the office significantly. I think most career prosecutors do not have political agendas, either with a big "P" or a little "p," and that they are capable of being fairly objective. So the independent prosecutor idea really does relate substantially to public perception

MPR: Is there anything from a policy perspective, other than how the attorney general becomes the attorney general, that would make a difference?

Carpenter: The manner of choosing the attorney general is the most important in that regard. Obviously, in whatever way the attorney general is selected, he or she would still have to go to the legislature for the budget and so on. But popular election, for example, would relieve some of the pressure, mostly perceived pressure, on the attorney general from the legislature. I say perceived because very few legislators have ever said anything to me that I would interpret as threatening my future in office. The ballot case is a good example of this. I never received one bit of pressure, implied or otherwise. Legislators were so sensitive about the appearance of trying to influence me that they did not want to talk to me while that investigation was going on.

Regardless of how the attorney general is selected, I would hope that Maine voters, other elected and appointed state government officials, the press, and public policy analysts would keep a close eye on what happens in the attorney general's office. If a new attorney general comes in and the top-level people start to move out of the office, either voluntarily or involuntarily, that should throw up some red flags. The present staff are good lawyers who have stayed through several administrations. If, on a particular issue, I said that this is the position of the Democratic

Party or Democratic leadership and here's what we want to say, then most of those staff members would dutifully draw up an opinion reflecting that. But they would be gone the next day. They would not stay and work under those conditions. If the attorney general began to operate in that fashion, you would immediately see a steady exodus of current (and many long-time) staff members.

MPR: Other than the issue of how the attorney general is selected, what single policy issue is most vexing and problematic?

Carpenter: Actually, two come to mind. The first is the constant need to be vigilant in maintaining the independence of the office, especially vis-à-vis the legislature. Legislators respect the office a great deal and they rely on the office a great deal. But they do not always like what we have to say and that is a source of ongoing tension. Keeping the office divorced from partisan politics is a never-ending battle.

The second policy problem, which is difficult to manage, and is made more difficult by the present budget situation, is the hybrid situation that exists between the attorney general's office and the district attorneys. District attorneys are elected in a district comprised of two or three counties. The lawyers they employ are state employees. Their clerical support are county employees. Their office furniture, telephones, and like expenses are paid for by the county. The district attorneys' salaries are paid by the state; they are a separate item in my budget. All of this creates a difficult situation. There is friction; there is a constant tension. I do not see eye-to-eye with several of the DAs on a number of things. My opponent for the Democratic nomination for attorney general a year ago is a district attorney. That lends itself to a natural tension, and that is very troubling. The criminal prosecution system, be it my office or the DAs, has been asked to do an increasingly difficult and growing job with limited resources. Even as the state budget has contracted, more prosecutions have become necessary as the legislature responded to the public's concern about crime. Mandatory sentencing puts a lot more pressure on the prosecutors, and the budget for prosecutions is not increasing.

MPR: How would you address the problems with the district attorneys? Is it a simple case of making their entire offices subsidiaries of your office by removing the county involvement?

Carpenter: Although that might be helpful, it probably is not realistic because it would mean converting what are now elected, countywide positions to appointed positions. There needs to be some way of establishing uniformity in the system. An alternative, which is I think being discussed by some, is to separate the DAs from the attorney general's office altogether.

MPR: Isn't that essentially the old model?

Carpenter: Yes. The DAs would continue to be state employees, but they would be independent from the attorney general's office. As difficult as dealing with the various district attorneys has been, and it probably is the single biggest on-going difficulty that I face, I have great respect for most of them. I am not sure that I would favor a complete break from the attorney general's office. That would move us toward disunity of prosecution rather than toward unity of prosecution.

MPR: Leaving the district attorney issue aside, what is the most pressing law enforcement need confronting the state?

Carpenter: From the prosecution's standpoint, we need greater recognition by the legislature that we cannot continue to provide high quality prosecutions with out additional resources. Presently, attorneys in my office who have dedicated themselves for a minimum of three to five years to working in the attorney general's office make less than mediators. They are making under \$30,000 per year. The very top people in the attorney general's office, two of whom have been there for twenty years and are at the deputy level, each make \$56,000 a year. If they did not love working for the public and did not have the ability to practice law free from political influence, then they would move on. They could double their salaries tomorrow.

The prosecutor in district or superior court is working horrendous hours out of very cramped conditions and is getting paid after two years much less than her compatriots who went into private practice after law school. The public sector lawyer should never earn what the private sector lawyer earns, but we must put more resources into professional staff salaries.

From the police standpoint, probably the most important on-going issue has involved law enforcement attitudes toward the public. Unfortunately, our concern with this arose out of the tragedy of the Katherine Hegarty shooting. We did some things at that point - I stand by those actions and do not regret them - that were very painful and difficult. It was very painful, not only for me but for the entire law enforcement community.

Since that day, through the leadership of people like chief investigator Brian MacMaster in my office, the director of the Chiefs of Police Association Charlie Jackson, and in particular, chief of the Maine State Police Al Skolfield, all of the law enforcement organizations have come a long, long way. We have proposed legislation that will fundamentally change the way that law enforcement officers are trained in this state, including the educational requirements, age requirements, and the commitment to professionalism. If you looked at the bill, another it is just another piece of legislation. But the fact that it is supported by all the groups is amazing. A lot of the credit has to go to Vendean Vafiades, former chief deputy attorney general, who took responsibility for a task force of five police officers and five public members right after the Hegarty shooting. The task force really aired out many of these issues.

Ninety-nine-point-nine percent of the police officers in the state have been doing a great job under very difficult circumstances. But like any profession, there have been problem people, problem issues and problem attitudes. That is changing, however. I personally consider Governor McKernan's appointment of Al Scolfield as not only the best appointment he has ever made, but from my perspective, the best thing that could have happened to the attorney general's office.

MPR: What specifically will the training reform legislation call for?

Carpenter: The legislation proposes eliminating separate training for the state police and municipalities. Although all officers will be trained together, the state police will train a bit longer because they have some specialized skills to learn. Over time, the minimum age for an officer will be raised to 21. Another requirement in the legislation is that over time a police

officer will need to earn an associate's degree or the equivalent thereof. That is not to say that a college educated police officer is a better police officer than one who has not received post-secondary education. But police officers tend to socialize with other police officers and post secondary schooling will, at the very least, get them out into another world. The proposed legislation will add more public members to the Maine Criminal Justice Academy's board of trustees. Additionally, we are in the process today of taking away police officers' licenses, based on some legislation passed a couple of years ago, for reasons other than criminal conviction. Previously, only a criminal conviction would warrant such action. The new law would prevent an officer who is discharged from one job because of less than criminal wrongdoing from keeping his certification and being hired by department. I hope we can continue to make progress in these areas.

(Editor's note: Prior to adjournment in April, the 116th Legislature enacted into law several of the law enforcement training reforms noted above. However, any provision of the proposed legislation that required the state or municipalities to spend additional tax dollars was removed from the proposed legislation, including a provision that would eventually require eligible officers to hold associate degrees. Additionally, the new law calls for two public members to be added to the Academy's board.)

MPR: Many of these issues seem to get back to the Hegarty case. Didn't that case raise questions about adequacy of training, about established protocols for handling such situations, and about police attitudes toward the public?

Carpenter: That case involved a series of very unfortunate circumstances. It pointed out some real problems in the system. We had had problems before I became attorney general where attempts were made to involve agencies in some sort of informed review process. That did not happen because some parts of the police community felt that if there was a review after a tragic event like this, then the review process was itself somehow a black mark on them. As I told the Chief of State Police after the Hegarty case, we certainly went through such a review in my unit in Vietnam. When we came back from a mission we analyzed it, we scrutinized it, we critiqued it regardless of whether it had gone well or poorly. It is the only way to learn.

Such systematic review is becoming the norm now. For example, you may recall the nine-hour standoff down in Berwick earlier this year. Following that incident, eight different law enforcement departments met with the Maine State Police in my office for a full day's critique of that. Although I did not attend, my staff told me the meeting was incredibly positive. When it was all done, the participants were saying this is the way it should have been done all along. To have law enforcement agencies come that far since the Hegarty incident is satisfying.

MPR: Somewhat related to this reflective posture is state government's adoption of the principles of total quality management (TQM). While it might seem a bit incongruent that law enforcement agencies, with their paramilitary structures, would similarly embrace TQM, do you see a potential for TQM in police organizations?

Carpenter: The potential is there. Total quality management emphasizes "from the bottom up" flow of information and communication. Some police officers or younger chiefs have started to

move toward this bottom- up process. Some of the leading lights, if you will, of the profession have been more resistant to such change. The proposed legislation that I mentioned earlier would require the police academy to de-emphasize the so-called stress training or paramilitary training and move instead toward a community-policing model. This model recognizes that the police officer always has to be vigilant, but does not have to adopt the typical us-versus-them attitude. Many of the chiefs are adopting or trying to adopt a form of total quality management. As we get officers who are a little bit more mature, who are thinking about educational requirements beyond high school, I think we will see more of that sort of change. So I do not see TQM and law enforcement as totally inconsistent.

MPR: County government is involved not only with the prosecutorial functions through district attorneys, but also with the law enforcement functions through the sheriff, and with criminal justice issues through county jails. Do you subscribe to a less-stratified, more consolidated approach to criminal justice in Maine?

Carpenter: The county sheriffs serve a dual purpose: They are the chief law enforcement officers of the county and they are in charge of the county jail. In recent years, they have done a lot of positive things in terms of up-grading the quality of personnel and the service delivered. At some point, however, the legislature has to make a decision either to expand the state police force to subsume county sheriff offices or to find some other way to coordinate better police and jail activities in the state. Counties, other than jails and sheriffs, have become a bit of an anachronism in the state. Most functions of county government are being funded by local property taxes, the most regressive tax we have. They could be just as easily done by the state. A more integrated system would have just as much local involvement and local control through a district legislator or the legislative process, generally, as through the current county elections.

We have major problems in corrections. Actually, some of the best correctional programs in the state are in the county jails. Because they are smaller, they are more manageable and it is more readily apparent when there have been some successes. Sheriff Ed Reynolds has done some positive things in Penobscot county and former Kennebec County Sheriff Frank Hackett introduced innovative programs such as 48 hours sleepovers for OUIs in his county. Progressive thinking sheriffs are becoming more and more the norm in Maine. Having said that, I am not convinced that there ought to be two separate correctional systems in the state. There has to be uniformity of police work. Similarly, there has to be uniformity of correction policies. The legislature tries to accomplish this but the counties tend to resist such uniformity, by arguing that they have some level of independence from the state.

MPR: In the wider policy arena, is there any issue that you would like addressed in this year's gubernatorial campaign?

Carpenter: I have not spent much time analyzing the various themes from all the campaigns. But as important as any one issue is the notion of one's belief in the governor. I spent twelve years in the legislature before leaving in 1986, and it was, generally speaking, a very positive experience. There were many good people, Republicans, Democrats, and Independents. I served under Governor James Longley and Governor Joseph Brennan. When I returned to state government in 1991 as attorney general, it was a different experience. It had become angry,

bitter, divisive, and polarized. There was much more cynicism among members of the public with whom I interacted.

Recently, just walking around the Bangor Mall, I chatted with several people who stopped me to talk. People are very cynical about their governor. Our next leader has to bring to the office a strong sense of integrity, of morality, and of ethics.

We desperately need some campaign finance reform in this state. I raised \$8,000 for a state senate seat in Aroostook County in 1980. I was ashamed that I had to raise that much money. Today, that is a paltry sum. There are six-figure state senate campaigns. It is crazy. However, I do not think we can do anything meaningful about how much money is in the electoral system until we are able to convince the public that they must invest in the electoral process. The public complains about special interest groups, about special interest money, and about the abuses this gives rise to in the electoral process. Yet, those same people reject the idea of public financing of elections. But campaign finance reform must happen either at the state or federal level.

The other troubling aspect of public life is the propensity of too many people to tear down, rather than build up our governmental institutions. If there is a valid reason for the attack or for questioning somebody's ethics or ability to do 'a job, then that is fine. That is appropriate. But if it is just for political purposes, for some sort of political gain, that is not right. It serves to undermine the office as much as the person occupying it. I have never run for anything in my life by trying to tear it down. But that is more and more the way it is done.

As a society, we have become very cynical and it is our own fault. We have allowed it to happen. While there always needs to be a healthy level of cynicism about our government, it seems we have gone way beyond that healthy level. When the cynicism comes down to your local legislative members in your own state, that's troubling. After all, each state representative represents 7000 to 8000 people. Almost everybody knows them. They are part-time legislators and full-time community members. So we might ask, how come people are cynical about legislators in general but not about their own? Is the legislator from Orono really so much different from the legislator from Houlton? Are the people of those communities fundamentally different? When I was a legislator from Houlton, everybody thought I was an okay guy, but it was "the rest of those bums," including the bum from Orono or the bum from wherever, who were "the problem." I cannot speak to the federal level, but at the state level I deal with both Republicans and Democrats and they are some of the most dedicated, hard-working, committed people I have ever known. There is a certain percentage of deadwood and a certain percentage of self-aggrandizers, but by and large in Maine, we get tremendous bang for the buck from our legislators. I wish the public were more appreciative of this fact.

MPR: In your opinion, what might Maine citizens do to enhance the quality of public life in Maine?

Carpenter: As I have said already, I am extremely concerned about the issue of integrity in government and people's perception of it. The citizens of Maine have what I consider a significant opportunity to get involved in political campaigns this year. Personal involvement in

the campaigns may provide some citizens with a more positive perception of the level of integrity in our state government.

Right now, we have a positive group of people in the legislature. The worst thing that the public can do is to turn off to these people. I truly believe we have turned the corner in Augusta. We have new legislative leadership and we will have a new governor. Senate President Dutremble and House Speaker Gwadosky already have set just the right tone for all of us to operate in this more positive environment. I believe all of this bodes well for additional positive efforts in the near future.

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Michael E. Carpenter has been Attorney General for the State of Maine since 1990. His public service has included terms of office in the Maine Senate, the Maine House of Representatives, and as an Assistant District Attorney.