

IMPROVING MAINE'S JUSTICE SYSTEM: A SIGNIFICANT EFFORT IN PROGRESS

Introduction

By Andrew Ketterer

This edition of *Maine Policy Review* turns a welcome spotlight on the separate and equal branch of government that is, arguably, the least understood and appreciated by Maine citizens—the judiciary. While the executive and legislative branches of government often bask in the attention given them by the media and citizenry in general, the judicial branch toils in relative obscurity.

Among the reasons for this is that the chief executive of our state, the governor, as well as members of the House and Senate, are popularly elected. With the act of going to the polls every four and two years, respectively, Maine citizens engage in the sort of free and participatory government upon which this country was founded.

Members of the bench, with the exception of part-time county judges of Probate, are not elected in Maine, but appointed. While the average citizen instantly recognizes the impact a governor or legislative act can have on his or her life, the same cannot be said as to the impact of a court decision. Many people think of the judiciary simply in terms of court actions involving them directly as a party, without giving consideration to the overriding social impact the courts have on all of us.

Yet who among us would argue that the United States Supreme Court, through its rulings, has not affected our privacy rights, reproductive rights, or the rights of those accused of crimes to a fair trial? Likewise, who would question the effects that such suits as the multistate actions against the tobacco companies or

Microsoft Corporation have had on the way business is conducted in this country? This lack of appreciation for, and understanding of, the potentially overriding role in our lives of both the state and federal judiciary, has, all too often, led to reduced or level funding for the judicial branch, thus negatively impacting all of us.

We have all heard the expression, “justice delayed is justice denied.” Justice delayed can take many forms ranging from the inability to have a civil trial scheduled in a timely manner to a failure to implement innovations proven to be successful in other jurisdictions, or the inability to compensate an attorney for pursuing a civil matter. The articles in this edition of *Maine Policy Review* show how members of the judicial branch of government, including judges, lawyers and court administrative staff, have worked together to turn “justice delayed” into “justice today,” and “justice denied” into “justice for all.”

The first article by Senior United States Circuit Judge of the First Circuit Court of Appeals Frank M. Coffin draws out the common theme presented by current reform efforts in Maine. Judge Coffin observes that today’s “re-form” efforts are driven by “a new awareness of the importance of making our justice system user-friendly.” With minimal resources, judges, lawyers and litigants are seeking new ways to deal with ascendant problems and to widen access to the courts. They reflect Maine’s civic culture at its best.

Maine Law Court Associate Justice Jon D. Levy describes how the implementation of drug courts in Maine has led to a profound change in how the court system treats those accused of drug crimes. As Justice Levy explains, judges in drug courts “concern themselves with

whether the offender has maintained sobriety, become employed, gained his or her GED, obtained a job, paid child support, and numerous other issues associated with measuring the offender's post-sentence experience. Success is not merely whether the state achieved a conviction and imposed a punishment, but also whether the sentence successfully targeted the offender's personal risk factors associated with recidivism."

You will learn how steps have been taken to alleviate the delay incurred in bringing civil cases to final resolution. Maine Superior Court Chief Justice Nancy Mills brings our attention to two developments that are worthy of note for two reasons: first, they have been successful in expediting the administration of justice, and second, they have been implemented with no additional cost to the state. Both developments have occurred within the context of the Single Justice Assignment that was begun in Cumberland County Superior Court in 1993. Under this concept, all civil actions are specially assigned to one of the Superior Court justices involved in the project. By eliminating the learning curve required when a new justice picks up the file of an existing case, the period of time from initiation of suit to final resolution is reduced. The second development noted by Justice Mills consists of having those justices involved in the project preside over settlement conferences in civil cases not assigned to them. By encouraging settlement prior to trial, both time and court resources are saved, while the parties stand to achieve timely resolution to their conflict.

District Court Judge John David Kennedy and Family Division Director Wendy Rau detail the aspect of Maine's court system that many Maine residents know all too well—the recently conceived

Family Division of the Maine District Court. Expediting the process in divorce and other family law matters has eased the often wrenching process of obtaining a divorce in Maine. In family law matters especially, justice delayed meant justice denied not only for litigants, but the innocent bystanders in a divorce proceeding—the parties' children. Detailing the administrative and legislative actions that led to its creation, Kennedy and Rau show how the utilization of case management conferences and case management officers (CMO) has, even when the limitations on the CMO's authority are taken into account, made the process move more smoothly.

Finally, those who have the greatest exposure to delayed and denied justice are Maine's elderly and other vulnerable members of our state. As Calien Lewis reminds us, the Maine Constitution guarantees to every citizen that "right and justice shall be administered freely and without sale, completely and without denial, promptly and without delay," (Art. 1 19). Unfortunately, for too many Maine citizens access to the courthouse in civil cases has been blocked for lack of funds. While those accused of crimes are guaranteed court-appointed counsel, those seeking civil remedies are not. Calien Lewis leads us on the long and often tortured history of the efforts of volunteers, mostly members of the Maine Bar, to bring home to all Maine citizens the promise of access to justice for all.

As you read the articles making up this symposium, I trust that you will develop a renewed appreciation for the judicial branch of Maine government. Those who strive on a daily basis to assure within our courts fairness and efficiency, and equal justice under law deserve our heartfelt thanks. 🐟

Andrew Ketterer graduated magna cum laude from Connecticut College in 1971 and earned a Juris Doctorate degree from Northeastern University School of Law in 1974.



He was elected to two terms in the Maine House of Representatives and was elected to three terms as Maine's Attorney General. He is immediate past president of the National Association of Attorneys General. In January 2001 he returned to the private practice of law in Norridgewock, Maine.