

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred and Sixth

Legislature

OF THE

STATE OF MAINE

1973

KENNEBEC JOURNAL
AUGUSTA, MAINE

SENATE

Wednesday, April 18, 1973

Senate called to order by the President.

Prayer by the Rev. Raymond Richardson of Farmingdale.

Reading of the Journal of yesterday.

Papers from the House

Joint Resolution

STATE OF MAINE

In the Year of Our Lord One
Thousand Nine Hundred and
Seventy-Three

IN MEMORIAM

WHEREAS, on April 12, 1973 this State lost a trusted friend and valued public servant in the death of the Honorable L. Smith Dunnack of Augusta; and

WHEREAS, the Members and staff of the Legislature feel a special sorrow because, among other important callings in life, he served as Revisor of Statutes with loyalty, devotion and conscientious effort from 1931 to 1944; and

WHEREAS, it was he who introduced the present system of striking out and inserting new words in bold type to show the exact changes made in the public laws; and

WHEREAS, those who work with the law have come to know and appreciate the innovative designs of his cumulative index and cross reference tables listing all changes made to date; and

WHEREAS, in recognizing our sorrow and sense of loss on his passing we include the sentiments of all who knew and admired him throughout the Legislature and its several departments; now, therefore, be it

RESOLVED: By the One Hundred and Sixth Legislature of the State of Maine that its Members join countless state officers and employees, all members of the judiciary and the people of the State of Maine in this expression of heartfelt sympathy for Mrs. Dunnack and her family; and be it further

RESOLVED: That a suitable copy of this resolution be sent to Mrs. Dunnack as a token of our esteem. (H. P. 1442)

Comes from the House, Read and Adopted.

Which was Read and Adopted in concurrence.

House Papers

Bills, Resolve, and Resolution today received from the House requiring Reference to Committees were acted upon in concurrence.

Orders

On motion by Mr. Tanous of Penobscot,

WHEREAS, approximately 275 petitions containing approximately 45,000 signatures have been filed pursuant to Article IV, Section 18 of the Constitution of Maine purportedly initiating a bill to establish a Maine Public Power Authority; and

WHEREAS, it has been alleged that State Government employees at taxpayers' expense assisted in the circulation of the petitions; and

WHEREAS, the Chairman of the Judiciary Committee has reported to the President of the Senate and Speaker of the House that a cursory review of some of the petitions reveals that there are a vast number of signatures with similar handwriting contained therein; and

WHEREAS, there are other alleged irregularities in the circulation, preparation and verification of said petitions; and

WHEREAS, the Legislature of Maine has a duty to determine if said petitions have been validly initiated; and

WHEREAS, the Legislature has a further continuing duty to insure that the initiative provisions of the Constitution have not been abused; and

WHEREAS, the Judiciary Committee, because of its inadequate staffing and because of its many other duties is incapable of filling its duty of investigating thoroughly the petitions; now, therefore, be it

ORDERED, the House concurring, that the Joint Standing Committee of the 106th Legislature on Judiciary is authorized to hire such counsel, investigators and clerical assistance as said committee deems necessary to investigate the validity and all circumstances surrounding the circulation of said

petitions. In the conduct of this investigation the committee is hereby authorized to delegate to said staff the right to conduct deposition and issue subpoenas and do whatever else is reasonably necessary to make a complete and full report to the committee and to the Legislature in regard to said petitions; and be it further

ORDERED, that the Attorney General's office and all of the state departments, including but not limited to the Department of Public Safety, is hereby ordered to cooperate with the committee and perform whatever services are requested by the committee and its staff; and be it further

ORDERED, that there is hereby appropriated to said committee from the Legislative Account the sum of \$5,000 to fulfill the purposes of this Order. (S. P. 590)

Which was Read.

The PRESIDENT: The Senator has the floor.

Mr. TANOUS: Mr. President and Members of the Senate: I am sure that most of you are aware of the particular order that I just presented for adoption, and I would like to fill you in on a little bit of the background that the press hasn't filled you in on perhaps relative to this matter.

This petition which has been filed with the Secretary of State was sent to the Judiciary Committee by the legislature for the Judiciary Committee to determine the validity of these petitions and the signatures contained thereon. Now, it is incumbent upon our particular committee to look over these signatures, conduct an investigation into the signatures, examine the various petitions, and to report back to the legislature our findings.

About a month ago we had an executive session in the evening. The entire Judiciary Committee was present, or a vast majority was present, and we immediately undertook the task of going through some of these petitions — this was before our public hearing, I may add — and several of the committee members, in reviewing some of the petitions, ran into signatures which appeared similar in nature, similar handwriting. Now, we are not handwriting experts, but to

many of the members of the committee we felt there were similarities in handwriting. In my opinion, in some instances there were five signatures with similar handwriting, with no attempt made whatsoever to change the signature. On these five signatures I referred to in one instance, all of these five people resided at the same address. The address, of course, had to be written on the petition and, again, the handwriting in this area was similar in nature. So this is one area. Other members of the committee found similar what appeared to be irregularities in the petitions that were filed.

Now, following our initial and very cursory examination of these petitions — there were some 275 petitions filed, and we perhaps examined as a committee 25 of these, or 30 at the most, that evening — following our examination of some of these petitions, we had a public hearing. At the public hearing there were allegations or charges made to the Judiciary Committee that they felt that state funds, state monies, or monies derived from the state, had been used to accumulate some of these signatures. This was an allegation made to the Judiciary Committee.

There were serious questions raised before the Judiciary Committee relative to the acknowledgment on these petitions. Now apparently on February 17, 1973, which I understand was the last day for these petitions to be submitted to the Secretary of State's office, there were at least 25 to 30 of these petitions with the same individual taking the acknowledgment of the circulating petitioner all the way from Fort Kent to Kittery. Now, it is possible that this was done, but to an ordinary prudent man it causes questions in the mind of a person as to whether this could conceivably have been done. I could conceivably be done, but then again, isn't this sufficient cause for the committee to have some apprehension relative to the validity, at least, of the form of these petitions?

Now, I have no question in my mind that of the 35,000 or 34,000 signatures that were finally approved by the town clerks'

offices and the Secretary of State's office that there would be sufficient number of signatures, regardless of the similarities in handwriting. But then again, the form of some of these petitions causes great concern to the committee members.

Following these occurrences, the Judiciary Committee had an executive session, and we were pretty well agreed that with the staff that we have got, with the money available to the committee to conduct this study or examination of these petitions, that it was just inconceivable for our committee to do this within the next two or three months. It would require much more money than what was given to us by the legislature and much more time than we have available. So the committee decided at this point to send a report to the legislature, with reservations, validating these petitions, telling you people of the quandary that the Judiciary Committee has been placed in. We don't have the time, we don't have the money, but based on what has been reported to us by the Secretary of State's office, we give these petitions a questionable validation, in a sense, with reservations, or a conditional approval of the petition, in a sense.

I inquired among some of you as to how you would react to such a report before you and, perhaps rightfully so, indirectly I was told that probably I would be laughed off the floor of the Senate for coming out with such a report. Now, I ask you gentlemen, especially committee chairman or members of the committee, what then would you do in my position? Would you come out with such a report, or would you come out with a report giving these signatures to this petition an unconditional guarantee that they are valid? Or would you present an order asking the legislature to give you more funds so you can get more staff to conduct perhaps an examination of these petitions and to perform the task that is incumbent upon the committee?

I feel it is not an unreasonable request. I think it is only right that, as Chairman of the Judiciary Committee, I approach the Maine

Legislature to request some staff, some funds to hire a staff, to conduct an examination and carry out the duties that have been delegated to us by you.

Now, some of you feel that there are political implications involved, and I know that the Democrats are going to perhaps oppose my motion because they feel that we are trying to cloud the issue. Fine, if this is your feeling, but I have got a job to do as Chairman of the Judiciary Committee. I think this is the only way I can do my job, and I am asking that you lay aside your party politics and join me in trying to do the job that has been charged to me, as Chairman of the Judiciary Committee, and the entire Judiciary Committee as well. I ask you to support me on my order, and I would hope that we could pass this order through without undue delay so we can make a report back to the legislature as it is so incumbent upon us to do. Thank you.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Brennan.

Mr. BRENNAN: Mr. President and Members of the Senate: I would like to say, in reference to some of the last remarks of the good Senator from Penobscot, Senator Tanous, about laying aside party differences, yes, I would like to ask this Senate to lay aside party differences and support the will of 50,000 people who want this to go to referendum.

Now, I attended that public hearing and, as far as I am concerned, there was no case whatsoever made to invalidate any appreciable number of signatures. There was only one witness who appeared, a distinguished lawyer from Waterville, Mr. Marden, representing the C.M.P. He made some statements which were mere conclusions. No evidence whatsoever was presented. Besides that, the signatures have already been O.K.'d by the town clerks, they have been O.K.'d by the Secretary of State, they have been O.K.'d by the circulators; they have been verified by at least three levels.

What I am concerned about is the chilling effect on future initiatives that this action might have.

How do you think the sending around of some detectives to ask questions of people, say, an elderly citizen, will affect signers of future petitions? I think this threat of the use of subpoenas is abominable, frankly. They cannot, like President Nixon's lawyers, his associates, his campaign staff, say "No, I don't have to go; I am privileged, so I don't have to go." I think this is a classic case of intimidation of the many, some 50,000, signers of these petitions by the privileged few.

Now, this order calls for spending \$5,000 of the taxpayers' money. If we have money to burn in Maine, I am unaware of it, and spending \$5,000 this way is as good as burning it, because the only legitimate objective of an investigation would be to disqualify the signatures of enough electors to stop the referendum. But according to the scheme of the Republican Leadership, this issue is going to go to referendum anyway, so disqualification or no disqualification, as I understand the Republican Leadership, there will be a referendum. That is if we can really count on that commitment and they can produce. And a \$5,000 investigation would have no effect whatsoever, so the only thing we would be left with is a \$5,000 white elephant. When we have so many legitimate unmet needs in this state among the people of this state, I do not believe we should spend two cents, let alone \$5,000, on an investigation to satisfy Central Maine Power Company's curiosity.

The purpose of this investigation, obviously, is not to determine whether or not this issue will go to the people, because the Republican Leadership says it will go to the people. It is, in my judgment, to impugn the integrity of the people who signed these petitions. It is to gather ammunition for a campaign to discredit public power. It is to discourage use of the referendum in the future. I object to spending \$5,000 of the people's money to possibly secure some advantage for the power companies in their fight against public power. I do not believe this legislature should subsidize the

power companies' efforts to block public power. This is exactly and exclusively what this order proposes to do.

Finally, I think we ought to raise some practical questions, if we are going to do some subpoenaing, we are going to get some investigators, and we are going to have a big investigation, as to just how this \$5,000 will be spent. Who is going to conduct this investigation? Private detectives with their reputations, or are we going to exploit the state police to do this? Will those subpoenaed be informed of their rights? Will they be given the right to counsel? Most of these people will be indigent, so are we going to appoint counsel for them? Who is going to appoint counsel — the Republican Leadership? And what are we really going to do with \$5,000? The order says that we are going to investigate all the circumstances surrounding these petitions. I think that is absolutely ridiculous. We couldn't come close to investigating all the circumstances surrounding these petitions with \$5,000. We have already appropriated \$800; I don't know what we have done with it. Does the \$5,000 include witness fees? If so, how much per day are we going to give to each witness?

I am also very interested in knowing when these hearings are going to be held. As I understand it, we are in session five days a week, so are we going to have them at night, or during the weekends? Is the Judiciary Committee to be both prosecutor and judge? Will the Central Maine Power Company be allowed to intervene? Why not? They have about everything else around here.

A legislative body, as far as I am concerned, is perfectly ill-equipped to handle a judicial matter. If they think there is criminal conduct, then they should take their complaints to the Attorney General, take them to the state police, and get a proper investigation. If they think it is a charade, which I think it is, I think they ought to admit it now and let this go to the people. As far as I am concerned, they don't have enough

evidence to take to the Attorney General. And as far as I am concerned, they don't have enough evidence to spend two cents of the money of the people of the State of Maine.

I move the indefinite postponement of this order and ask for a roll call.

The PRESIDENT: The Senator from Cumberland, Senator Brennan, moves that Senate Paper 590 be indefinitely postponed, and a roll call has been requested.

The Chair recognizes the Senator from Aroostook, Senator Kelley.

Mr. KELLEY: Mr. President and Members of the Senate: I rise today to express the outrage felt by Maine citizens over this order. My good friend from Penobscot, Senator Tanous, and those for whom he speaks, state that they want the nearly 50,000 signatures investigated. Yet they say "We are not against the people voting because we assure you, the people of Maine, that we will amend Senator Kelley's power bill with a referendum rider. In other words," they say, "we want to check out the petitions, and if they aren't valid we promise you, the citizens of Maine, that you will still have the opportunity to vote for public power." I don't share this confidence.

The only way this issue will definitely go to the people is through the petition vote; the Maine Constitution guarantees it. But first the 50,000 signatures must be validated, and that is just what this order is designed to prevent.

Some distinguished members of this body have stated in the press that I have gathered these petitions to run for higher office. They flatter me. I would like to believe that this order is not politically motivated, that Senator Tanous and those for whom he speaks have only the public's interest at heart by this order. My fellow Senators, the apparent purpose of investigating these petitions is to prevent the people of Maine from voting on the issue of public power.

What is Senator Tanous and those for whom he speaks afraid of? Certainly they realize that the municipal clerks have very carefully scrutinized the signatures.

They realize that the Secretary of State, with the assistance of the Attorney General's office, has carefully reviewed these petitions. They also realize that, at best, only a few hundred signatures out of nearly 50,000 could be technically incorrect due to inadvertence and the complexity of the petition process. They also realize that the Secretary of State has said that the petitions validly contain over 2,300 signatures more than the minimum required of 32,500. They also realize that the petitions to remove the big box received, at best, only a cursory view. And finally, they realize that only after Central Maine Power suggested by hearsay reports that there were irregularities did they respond and start questioning.

Do any of you remember that members of this legislature were prevented from even looking at the big box petitions? Yet this year, under the guise of right to know, Central Maine Power was permitted into this State House building to Xerox for two weeks these petitions. So why the fuss? Very simply, there are some who are afraid that the good citizens of this state will pass the public power bill.

Some people have suggested that some Senators are mortgaged to the private power companies. I hope their suspicions are incorrect. But this order indicated that the mortgage may have become—

The PRESIDENT: The Chair would ask the Senator if he would please repeat the last sentence.

Mr. KELLEY: I said some people, Mr. President, have suggested — I am not suggesting — that some Senators are mortgaged to the private power companies.

The PRESIDENT: The Chair would caution the Senator to be very careful in making any veiled insinuations about any Senators in this body, by name or otherwise.

Mr. KELLEY: I will, Mr. President. But this order indicates that the mortgage may become too heavy to bear. What we may be witnessing here today is the foreclosure of the mortgage by the private utilities. I hope not.

I speak here today not mortgaged to any special interests. I am especially not encumbered by the utilities. My responsibility today is to the nearly 50,000 Maine signers of this petition. Their signatures come from every part of the State, from Fort Kent to Kittery and from Calais to Rumford.

What are the citizens trying to tell us with their signatures? Quite simply, they are saying that they do want to finally become heard on the issue of the high cost of and potentially scarcity of electricity in Maine. They feel, quite frankly, that the legislature has thwarted their common goal of public power in the past. And if you don't believe me, conduct your own poll in your Senate districts. The citizens also feel that the P.U.C. has not effectively represented their consumer interests in rate hearings in the past.

In short, Maine citizens want the right to vote for public power through their signatures, and not through any other guise. To deny validity to the signatures is to cheat them, to rob them of the one vehicle that offers them the opportunity to vote for what they regard as being in their best interests. So your vote today means much to the trust which Maine citizens hold for the Maine Senate. Don't suggest to them that some are mortgaged to the utilities, for you have a chance today to prove me wrong, to prove that the mortgage is not too heavy, to prove that this order is nothing but an ill-disguised ploy to prevent the citizens' right to vote on this issue come November.

In closing, the feelings of Maine's citizens are perhaps best expressed in a speech to this legislature two years ago on the big box, and I quote: "You know, you can sit here so long and feel the partisan winds blow across your face, but you know, you sit here and you think about partisan politics, and you look up at the Chair and see the American flag on your left, and you see the flag of the State of Maine on your right, and you see a member of the cloth representing the people of the State of Maine before us, and you know, you

suddenly realize that there is something greater than the barriers of a political party in our state, and that is the ultimate right perhaps of the people. And when you are talking about an initiated referendum, as we have before us today, and as we did have on another issue some time ago, that is what is at stake here, the rights of the people, and this is what we should be concerned with. We should be concerned with whether we should use dilatory tactics to abridge the rights of the people that have been granted to them under the Constitution of the State of Maine, and this is foremost in my mind. This is why I don't feel that partisan politics ought to play a part when you are talking about the rights of the people as granted to them by the Constitution of the State of Maine. This particular right, in my opinion, should override the barriers of either political party. Now, what we have been asked to do in voting on this particular bill", and I continue my quote, "today is not changing any of our political advantages as a party, so to speak. All we are asked to do is to approve a report of a committee, as we have done in other instances. We have been asked to send a question to the people to determine whether the will of the people will accept a particular change. Now, it matters not whether it be the income tax repeal question, it matters not whether it be a removal of the big box at the top of the ballot for ballot reform, so to speak, the issue is unimportant as to the content of the particular referendum. What is most important and what is primary in our minds is the rights of the people, the rights of the people as granted to them by the founding fathers of our Constitution, and this is the important thing." End of quote.

This speech was given by Senator Tanous, who today would have you appropriate taxpayers' money in an effort to thwart the will of the people and to discredit the efforts of the municipal clerks, the Attorney General and the Secretary of State, and the Committee of Citizens for Cheaper Electrical Rates.

I support the motion to indefinitely postpone.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President and Members of the Senate: The good Senator from Aroostook, Senator Kelley, speaks of a sense of outrage over the introduction of this order. Mr. President, I would like to speak of a sense of outrage over the kind of remarks that have been made this morning in opposition to this order.

The remarks that have been made so far would have the people of the State of Maine believe that the thrust of this order and that the purpose of this order is to deny to them, to the 50,000 signatures on these petitions, the opportunity to vote on the issue of public power. Mr. President, nothing could be further from the truth and, in the words out of the mouth of the good Minority Leader, the Senator from Cumberland, Senator Brennan, "this is not the case." The Republican Leadership, the Majority Party of this Senate, has indicated that a referendum will go to the people on the issue of public power, that they do have, and have indicated, a desire to have the opportunity to vote on this issue, and that it is not the purpose of this order or the Majority Party in this Senate to thwart that desire or to deny them that opportunity. This has been admitted and has been stated very clearly by the Minority Leader of this Senate. It is the case, and yet we have heard innuendos, insinuations, that the Majority Party wishes to thwart that opportunity and deny that opportunity to the people.

Mr. President, the Committee on Judiciary had a very heavy responsibility before it when we were referred these initiative petitions. We had the duty to verify the authenticity of not only the petitions before us that day, but we had the duty to uphold the integrity of the entire petition process that is granted to the people of the State of Maine, that the people have reserved to themselves through their Constitution.

There were two questions before the Committee on Judiciary: one verifying the petitions on the public power issue itself, and the second, the question of whether or not the petition process itself was followed in this particular case.

It became evident to those of us on the committee that 50,000 people, or the vast majority of the signers, did indeed want the opportunity to vote on the issue of public power; that became clear. And for that reason, the Committee on Judiciary tended to wish to report to this body that the petitions should be verified. Yet it also became clear, in going over some of the petitions, that perhaps — and I say perhaps, Mr. President — that perhaps some of the processes that are laid down by law and are written into the Constitution of this state were not followed as they should have been. And to place an unconditional verification on the petitions under those circumstances would have been to abrogate our responsibilities to uphold the integrity of the petition process itself, and thus, the dilemma of the Committee on Judiciary in wishing to report out a conditional acceptance of the petitions, knowing full well that there were enough names there to send this issue to the people, and yet knowing as well that there were enough questions raised to wonder about the process that was used to obtain those names.

So, Mr. President, we have this order to attempt to arrive at an answer to the second question, and that is whether or not the process itself, the petition process, has been subverted in some way by the methods that were used to obtain these names. Yet we also have the very clear indication and the responsibility that there will be sent to the people the bill on public power and that the people will have the opportunity to vote on that issue, as they have indicated they wish.

The good Senator from Cumberland indicated that these petitions were verified on three levels. Well, I would like to clarify that just a bit. The clerks in the various towns verify only to the fact that the name that appears on the

petition is in fact on the voting rolls. They have no way of verifying, and do not intend to verify, whether or not the name that appears on the petition is in fact an authentic signature. Neither do they have any verification as to the circulating signature, as to whether or not that was a valid verification of the petition.

The good Senator from Cumberland has raised a number of emotional issues. He speaks of this order being the tool of the Central Maine Power Company, knowing full well that he is attempting to raise the emotional level and raise the Central Maine Power as a red herring in this particular issue. He speaks of elderly individuals being questioned by investigators of this committee pursuant to this order. Well, I don't think it is the intent of this committee to send out investigators all over the State of Maine to question elderly individuals who may or may not have happened to have signed these particular petitions, but there are circulators of these petitions, Mr. President, and verifiers of these petitions who are very well aware of the process that they should have been following under the Constitution of this state, and that is what we wish to find out, whether or not the process that those who were circulating these petitions should have followed was in fact followed.

So there are two issues that are before us: one, the desire of the people, the recognized desire, to vote on the issue of public power. That desire will be met and the issue of public power will be put out to referendum. But we have an equally important issue, the second issue in this case, and that is whether or not the integrity of the petition process itself is to be upheld, and it is that issue to which this Order addresses itself. I hope that we oppose the motion of the good Senator from Cumberland to indefinitely postpone this order.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President and Members of the Senate: It did me good to sit here and listen to the calm tones of the Senator from

Kennebec, Senator Speers, because it gave me a good chance to calm down.

I have been here since the 101st Legislature, and this is the highlight of my existence because my integrity was impugned today like it never has been before, and I look upon the remarks of the Senator from Aroostook, Senator Kelley, as a personal attack on the fellow who represents the district where Central Maine Power is located. I resent, Mr. President, any implication at all that any member of this Senate is under mortgage to anybody, whether it is organized labor, whether it is private power or public power. I think the remarks were completely inappropriate, and I wanted to express my personal resentment. Talk about operation overkill — operation overkill, boy I have witnessed it here today.

The remarks of the Minority Floor Leader were equally offensive to me, personally offensive. "Central Maine Power owns everything else around here", he said. I guess this is my fourth term in the Senate, and I have been pretty proud. I think this is the best Senate I have ever served in. I think individually we have got the best Senators I have ever seen in this 106th Legislature, but the remarks this morning were not of the high caliber in keeping with the high quality of the people here, and I want to express my disappointment at the nature of the remarks that I have witnessed this morning.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Brennan.

Mr. BRENNAN: Mr. President and Members of the Senate: I would ask the members of the Senate to look at this order just to see what kind of power we are going to delegate to these investigators that the good Senator from Kennebec, Senator Katz, might be concerned with.

It says here, "In the conduct of this investigation the committee is hereby authorized to delegate to said staff the right to conduct deposition and issue subpoenas and do whatever else is reasonably necessary. . ." We are going to get

some private detectives, I suppose, and give them subpoena power. I find that absolutely obnoxious.

In reference to the remarks of the good Senator from Kennebec, Senator Speers, he spoke about me making reference to elderly citizens, the people I have talked to say a lot of elderly citizens did sign this petition, a lot of elderly citizens are concerned with their light bills. And there isn't any question; we are only playing games here. We don't think that Central Maine Power Company and the power companies have been terribly influential in the Maine Legislature over the years; there is no question about that. I say I think we are just ignoring the obvious. Central Maine Power and all the power companies have been very, very powerful. I have been around this legislature four or five terms, and it is my recollection that the power companies session after session have had no problem whatsoever killing this bill, and as a result of that a statutory initiative was started, and 50,000 people signed that so they would have a chance to vote on it. That is what this is all about, so why play political games.

If I understand some of the speakers here, they say well, we think there is an ample number of signatures. Why don't we let it go through the process? Let it have the hearing and go on that process. Why should the Republican Party attempt to steal the initiative? I mean, it is a rank political ploy, all emotion set aside. 50,000 people did sign this, they want to vote on it, so why can't we go the tradition of the clean-cut way. Again, I urge you to support the motion to indefinitely postpone this order.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Richardson.

MR. RICHARDSON: Mr. President and Members of the Senate: I share with the Senator from Kennebec, Senator Katz, the thought that I am awfully glad that quite a little time has elapsed since the statements were made by my good friend from Aroostook County and my friend from Cumberland, Senator Brennan, because I think

that having served two terms as Majority Leader in the other branch, and having heard some pretty rank partisan debate, today we are changing to some sort of low point in characterizing the motives of others.

Without dwelling at undue length on the faults of the opposition, I would like to indicate to you, first of all, that I supported and voted for the bill which would permit initiated constitutional changes. I fully support the right of the people to make this determination. I decided long prior to this rather ugly debate this morning to vote in favor of submitting the public power issue to the people of Maine.

I was asked a week or so ago what would I do if I were in this situation, and I said "If you are going to put out a report granting conditional approval, then don't bother to ask for my support for that kind of program; I think it stinks." I really believe that. I think the initiative process deserves protection; I really believe that.

Now, stealing political issues: that is an issue to be solved in political campaigns. The issue here is whether or not these petitions can be validated by the Judiciary Committee. And in the view of a substantial number of them, and I might add of both sides, there is a problem. I think it is perfectly appropriate to investigate this possible abuse of the petition process. Right to counsel? Certainly. Who says all these people are indigent? I don't know. But if they are, they can certainly secure competent representation, and I hope the committee does take the step to provide counsel for persons who are called to testify in the event that it is necessary for them to plead the Fifth Amendment to the Constitution of the United States in order to avoid incriminating themselves.

As far as the overriding issue, and that is the question of the public's right to vote, that is guaranteed. As far as I am concerned, I think that the presiding officer of this body and the elected majority leadership of this party is entitled to your respect and belief when they indicate that this

is a bill that they are going to support to send this issue to the people. So all you are talking about really, in the last analysis, is concern that some of these signatures were gained under circumstances which are illegal. If that is what your concern is, then it doesn't seem to me that the way to prevent these facts being known is to fight this order, not really. Thank you.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS: Mr. President and Members of the Senate: I would like to perhaps for the record straighten out a few remarks that were made. First of all, to my knowledge, we only had approximately 45,000 signatures presented to the committee, and not 50,000. It makes quite a difference when you are talking 5,000 in numbers.

Senator Kelley did come in at the public hearing with 5,000 more signatures. Of course, we didn't get to look at these because they had not been submitted to the Secretary of State. So I assume he is including 5,000 signatures in his remarks here this morning that were not even submitted and, for the record, that should be mentioned, I feel.

I am sure that in a petition of this type, properly conducted, that someone could at least obtain 100,000 signatures. Really numbers, perhaps, don't matter. I agree that there are a sufficient number of people who have requested a right to vote on this issue in referendum.

Senator Kelley from Aroostook quoted my remarks made two years ago, and I might add that I still mean what I said two years ago. I have not changed, and I am pleased that he got my same remarks from the record in the 106th. I mention that because it is quite interesting. This was the majority report of the committee in that particular instance two years ago that he was quoting my statements made on this floor.

I am sorry that he didn't continue and read the statement of former Senator Harding from Aroostook County. The statement of Senator Harding from Aroostook County back then would have

sounded much like perhaps the statement that I made this morning, that we should examine the signatures on these petitions, the Judiciary Committee is not fulfilling its obligation to the legislature and to the State of Maine by refusing to investigate these petitions and these signatures. I am not surprised because good attorneys — Senator Kelley is an attorney, and he is not going to present the case for the prosecutor, so to speak. But those were the remarks of the Minority Floor Leader two years ago. And maybe I was wrong as Chairman two years ago of the Judiciary Committee. Perhaps I should have listened to Senator Harding, and maybe we should have looked into those petitions a little more than we did at that time. I was convinced that there was such a vast number of signatures that exceeded the required amount, I personally felt at that time that it probably wouldn't have solved anything.

I might also add that there were no such complaints made two years ago relative to the circulation of petitions, relative to similarities of signatures, relative to state monies being used to obtain signatures, and relative to the individual acting as the notary public on the signatures of the circulating petitioners. There was no such evidence presented to the Judiciary Committee two years ago. So I think that the record should show these matters.

I am not concerned with the issue of public power; this is up to the people to decide. I am concerned with the job that has been made incumbent upon the Judiciary Committee.

I would like to pose a question to my good friend, Senator Brennan from Cumberland. When we took our preliminary vote on the report that we were going to submit to this body, I polled each individual one by one relative to the report with reservations and conditions. Each member was polled. Each member was aware of the proposed contents of this report, and 13 members voted to sign a report with reservations, including Senator Brennan. I ask my good friend, Senator Brennan

of Cumberland, why is it this morning that you have no more reservations about the validity of the petitions?

I would also like to mention to my good friend, Senator Brennan of Cumberland, that if this order is successful, and we are granted these funds to conduct an investigation, a study, or an examination of these various petitions, I assure you, Senator Brennan, that the entire Judiciary Committee will have a voice in how we are to conduct our examination of these petitions. It will not be a one-man rule; it will be a rule of the entire committee. We will vote on each and every single issue in the Judiciary Committee as to how this study is going to be conducted, what personnel we are to hire, hearings, if we are going to have any, if necessary. So fear not, this will be done with the full knowledge of the entire committee.

We have made a commitment to the people, the Republican Leadership, the Republican Party, to send the question to the people, regardless of the outcome of our examination. I think it is a perfect opportunity, as Senator Speers from Kennebec has mentioned, to look into our system to see whether we need some amendments to our laws relating to our initiative system. I think we have a living example here, a petition which on the face of it appears to have quite a few irregularities, and I think we have a perfect living example of a study that we could delve into to see if we do need some corrections in our initiative system in the State of Maine.

Finally, I would like to ask the opponents of my order what are you scared of? What do you have to hide? Can't we in a manner required of us look into these petitions without being involved in partisan politics? Can't we conduct a study or an examination of these petitions without hollering bloody murder? I think it is incumbent upon our committee to do this, and I don't see why there should be opposition to doing what a committee has been delegated the responsibility to do. Thank you.

The PRESIDENT: The Chair

recognizes the Senator from Cumberland, Senator Brennan.

Mr. BRENNAN: Mr. President and Members of the Senate: Very briefly, there were no signed reports, that I know of, that the good Senator from Penobscot, Senator Tanous, speaks about. The condition he talked about, as I recall the situation in the committee, was that the committee, I think, was in agreement that there were ample signatures. He was going to look at one petition that allegedly had an improper verification, which may have amounted to 200 signatures. As far as I was concerned, I didn't care if they threw out 2,000 signatures, as long as there was enough to go to the people, and that seemed to be the gist of that committee's executive session agreement. That was the heart of it.

In reference to "what are you afraid of?": If you think there is something wrong, if anybody does, why don't they go down to the Attorney General, go to the state police, go to the proper agencies. I challenge you to do that.

Thirdly, in reference to this initiative process, this sudden concern about the statutory initiative process, why are you superimposing it on the public power issue, I ask you? I will support any order to study the statutory initiative process, but I do not think that it is fair to the people of the State of Maine to superimpose that on the public power issue, to cloud that issue and make that issue less likely to pass, but I again — and I think the Democratic Party will support me on this — we will give you all the support you want to study statutory initiatives, all summer if you like. But again, I do not think it is fair to superimpose it on this issue.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President and Members of the Senate: I can recall two years ago when we had the initiative petitions on the big box and also on the income tax, and I recall the debate that took place at that time. But this morning the remarks of the good

Senator from Aroostook, Senator Kelley, certainly leaves me in some sort of a quandary, primarily because I recall only too vividly that many citizens and many members of this legislature were denied access to the petitions that were submitted two years ago for examination. There was practically an armed guard standing over them. And relative to the statement that Senator Kelley, the good Senator from Aroostook, has made this morning, I would pose a question to the Chairman of Judiciary, the Senator from Penobscot, Senator Tanous, as to whether or not Central Maine Power Company, or their representatives, actually have that much influence within these halls as to the fact that they were able to get these petitions Xeroxed prior to the public hearing held by the Judiciary Committee.

The PRESIDENT: The Senator from Cumberland, Senator Conley, has posed a question through the Chair which the Chairman may answer if he desires.

The Chair recognizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS: Mr. President and Members of the Senate: I would indeed be pleased to answer that question. Two years ago when the petitions for an initiative referendum were submitted to the Judiciary Committee, they were impounded by the Judiciary Committee and held under lock and key by the Secretary of State's office. You will recall that, Senator Conley, I am sure.

This year, the moment that the order was put through this legislature, both bodies, and passed by both bodies — and as I recall, it was on a Thursday afternoon — I immediately dictated a letter to the Secretary of State impounding these very same petitions. I couldn't do this before they were given to the Judiciary Committee; I had no authority to. But once they were, I held an immediate executive session, as Senator Brennan will mention to you, and got the authority to impound these petitions, which I did within the next few hours. The letter was sent to the Secretary of State, and all

photocopying was abandoned at that time.

The PRESIDENT: Is the Senate ready for the question? The pending motion before the Senate is the motion of the Senator from Cumberland, Senator Brennan, that Joint Order Senate Paper 590 be indefinitely postponed. A roll call has been requested. Under the Constitution, in order for the Chair to order a roll call, it requires the affirmative vote of at least one-fifth of those Senators present and voting. Will all those Senators in favor of ordering a roll call please rise and remain standing until counted.

Obviously more than one-fifth having arisen, a roll call is ordered. The pending motion before the Senate is the motion of the Senator from Cumberland, Senator Brennan, that Joint Order Senate Paper 590 be indefinitely postponed. A "Yes" vote will be in favor of indefinite postponement; a "No" vote will be opposed.

The Secretary will call the roll.

ROLL CALL

YEAS: Senators Aldrich, Brennan, Cianchette, Clifford, Conley, Cyr, Danton, Fortier, Kelley, Marcotte.

NAYS: Senators Berry, Cox, Cummings, Graffam, Greeley, Hichens, Huber, Joly, Katz, Minkowsky, Morrell, Olfene, Peabody, Richardson, Roberts, Schulten, Sewall, Shute, Speers, Tanous, Wyman, MacLeod.

ABSENT: Senator Anderson.

A roll call was had. 10 Senators having voted in the affirmative, and 22 Senators having voted in the negative, with one Senator being absent, the motion for Indefinite Postponement did not prevail.

Thereupon the Joint Order received Passage.

Sent down for concurrence.

Committee Reports House

The following Ought Not to Pass reports shall be placed in the legislative files without further action pursuant to Rule 17-A of the Joint Rules:

Bill, "An Act Relating to Weight Regulation for Trucks Conveying

Agricultural Products." (H. P. 447) (L. D. 596)

Bill, "An Act Relating to Taxation of Insurance Premiums Paid by Political Subdivisions." (H. P. 1132) (L. D. 1467)

Bill, "An Act to Incorporate the Town of Frye Island, Cumberland County." (H. P. 724) (L. D. 930)

Resolve, to Provide Funds for Purchase of Aerial Ladder Fire Truck for State Buildings in Augusta. (H. P. 416) (L. D. 565)

Bill, "An Act Relating to Costs for Students from Geographically Isolated Administrative School Units Attending Regional Technical Vocational Centers." (H. P. 595) (L. D. 786)

Resolve, Reimbursing the City of Calais for Housing and Detaining Certain Prisoners. (H. P. 1230) (L. D. 1603)

Leave to Withdraw

The Committee on Transportation on Bill, "An Act Relating to Issuance of Motor Vehicle Registrations by Municipal Tax Officers." (H. P. 656) (L. D. 870)

Reported that the same be granted Leave to Withdraw.

The Committee on Transportation on Bill, "An Act to Provide for Evaluation of Traffic Control on Drawbridges." (H. P. 1049) (L. D. 1368)

Reported that the same be granted Leave to Withdraw.

The Committee on State Government on Resolve, Creating the Maine Committee on the Metric System. (H. P. 1065) (L. D. 1389)

Reported that the same be granted Leave to Withdraw.

Come from the House, the reports Read and Accepted.

Which reports were Read and Accepted in concurrence.

Leave to Withdraw

Covered by Other Legislation

The Committee on Appropriations and Financial Affairs on Bill, "An Act Appropriating Funds for Drug Rehabilitation in York County." (H. P. 649) (L. D. 865)

Reported that the same be granted Leave to Withdraw, Covered by Other Legislation.

Come from the House, the report Read and Accepted.

Which report was Read and Accepted in concurrence.

Change of Reference

The Committee on Transportation on Bill, "An Act Relating to Motorcycle Operators' Licenses." (H. P. 1097) (L. D. 1434)

Reported that the same be referred to the Committee on Education.

Come from the House, the report Read and Accepted and the Bill referred to the Committee on Education.

Which report was Read and Accepted in concurrence and the Bill referred to the Committee on Education in concurrence.

Refer to 107th Legislature

The Committee on Legal Affairs on Bill, "An Act to Provide for Municipal Tax Maps." (H. P. 528) (L. D. 710)

Reported that the same be referred to the 107th Legislature.

Come from the House, the report Read and Accepted and the Bill referred to the 107th Legislature.

Which report was Read.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Joly.

Mr. JOLY: Mr. President and Members of the Senate: I wish to explain that the Committee on Legal Affairs looked very favorably on this bill, but after discussing this with some people in the field from the state, we found out that some over 200 municipalities in Maine have thus far had their municipalities tax mapped and that the companies doing this business in the state are now up to their elbows in assignments, which will take them well into the next session of the legislature. There are still over 200 that have not been mapped.

Any of us who believe in property tax reform realize that we need to have all our towns and cities mapped, but they are doing so well now that we saw no need for this legislation at this time. But we do feel the next legislature should look at it and see if the trend is continuing. Thank you.

The PRESIDENT: Is it now the pleasure of the Senate to accept the Committee Report whereby this bill was referred to the 107th Legislature in concurrence?

Thereupon the Report of the Committee was Accepted and the Bill Referred to the 107th Legislature in concurrence.

Ought to Pass

The Committee on Natural Resources on Bill, "An Act Relating to Advertising Costs in Processing Wetland Applications." (H. P. 811) (L. D. 1074)

Reported that the same Ought to Pass.

Comes from the House, the Bill Passed to be Engrossed.

Which report was Read and Accepted in concurrence, the Bill Read Once and Tomorrow Assigned for Second Reading.

The Committee on Public Utilities on Bill, "An Act Relating to Railroad Crossings." (H. P. 815) (L. D. 1082)

Reported that the same Ought to Pass.

Comes from the House, the Bill Passed to be Engrossed.

Which report was Read.

On motion by Mr. Brennan of Cumberland, tabled and Tomorrow Assigned, pending Acceptance of the Committee Report.

The Committee on Judiciary on Bill, "An Act to Create a Commission to Prepare a Revision of the Probate Laws and the Administration Thereof." (H. P. 1045) (L. D. 1373)

Reported that the same Ought to Pass.

Comes from the House, the Bill Passed to be Engrossed as Amended by House Amendment "A" (H-217).

Which report was Read and Accepted in concurrence and the Bill Read Once. House Amendment "A" was Read and Adopted in concurrence and the Bill, as Amended, Tomorrow Assigned for Second Reading.

Ought to Pass — As Amended

The Committee on Fisheries and Wildlife on Bill, "An Act Increasing Non-resident Hunting License Fee." (H. P. 188) (L. D. 265)

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-201)

Comes from the House, the Bill Passed to be Engrossed as Amended by Committee Amendment "A".

Which report was Read and Accepted in concurrence and the Bill Read Once. Committee Amendment "A" was Read and Adopted in concurrence and the Bill, as Amended, Tomorrow Assigned for Second Reading.

The Committee on State Government on Bill, "An Act to Provide for Nomination of the Commissioner of Educational and Cultural Services by the State Board of Education." (H. P. 654) (L. D. 868)

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-214).

Comes from the House, the Bill Passed to be Engrossed as Amended by Committee Amendment "A".

Which report was Read and Accepted in concurrence and the Bill Read Once. Committee Amendment "A" was Read.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President and Members of the Senate. I just want to call the Senate's attention to the effect of this amendment because I think each of you has a decision to make, and I think it will be a personal decision.

In years back, the Commissioner of Education has been chosen by the State Board of Education. During government reorganization the procedure was changed slightly, and the impact of the amendment would make the appointment of the Commissioner of Education a direct appointment by the Governor, with confirmation by the Executive Council. This flies in the face of our practice in the State of Maine for many, many years, and I think essentially, if you believe that Education is no different from other departments and should get a direct gubernatorial appointment, that you will support the amendment. Otherwise, if you feel that Education should be layered away from politics because it is unique, because it involves such enormous expenditures and it lays its hand

so heavily on so many people, you will vote against the amendment.

Personally, I would like to see it get layered away just a little bit from the normal political routine, so I move that the Committee Amendment be indefinitely postponed.

The PRESIDENT: The Senator from Kennebec, Senator Katz, now moves that Committee Amendment "A" be indefinitely postponed.

The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President and Members of the Senate: I am very happy that the good Senator from Kennebec, Senator Katz, rose to speak on this matter. Because the amendment on the bill as reported out of committee changes the import of the original bill, the title, "An Act to Provide for Nomination of the Commissioner of Educational and Cultural Services by the State Board of Education", would be quite misleading as to the manner in which the bill was actually reported out of committee.

The good Senator, Senator Katz, was quite correct when he mentioned that in the reorganization there was provided for a list of three individuals from whom the Governor could choose his Commissioner of Educational and Cultural Affairs; that list to be provided by the State Board of Education.

This particular bill, when it was introduced, would have reduced that list from three individuals to one individual and, in effect, would have provided that the State Board of Education would be the sole body nominating the Commissioner of Education.

I share the feeling with Senator Katz that education is an extremely important gubernatorial function, governmental function, just as are the other administrative departments in the State of Maine. The Department of Educational and Cultural Affairs is an extremely important department to the welfare and well-being of the people of the state.

I basically feel quite strongly that the Governor, who is responsible to the people of the state, having gone through an election and being elected, and being

answerable to the people, should be the sole individual responsible for appointing the heads of the various departments which administer the laws of this state. That is why the committee in a unanimous report amended the particular bill that was introduced, to put it back to the situation where the Governor, and the Governor alone, is the individual to choose his Commissioner of Educational and Cultural Affairs, one of the largest departments in the state.

I guess it is probably a basic difference in philosophy, but I basically believe that the head of the government of this state should be the one responsible for the appointment of his subordinates.

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Clifford.

Mr. CLIFFORD: Mr. President and Members of the Senate: I rise to concur with the Senator from Kennebec, Senator Speers. The amendment provides that the Governor must consult with the State Board of Education before nominating the Commissioner. It seems to me that if reorganization is going to work — and one of the purposes was to allow the Governor to have a reasonably workable cabinet, a number of people small enough so that he could meet with them on a periodic basis — it seems to me that he should be able to appoint them. And it seems to me we are going in the opposite direction by allowing the State Board of Education to name the Commissioner.

If we allow it for Education, then sure enough, at the next legislative session it is going to be the other departments, and we are going to be right back where we started from before this reorganization started. I would be opposed to the motion of Senator Katz to defeat the amendment.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President and Members of the Senate: I agree, if you vote on this like political scientists, you will support the committee's position. If you feel

that education is the largest investment we make at the state level in human services and our young people, and if you share my conviction that you want it kept far away from partisan politics, you will support the position to kill the amendment. I think it is that simple.

The PRESIDENT: Is the Senate ready for the question? The pending motion before the Senate is the motion of the Senator from Kennebec, Senator Katz, that Committee Amendment "A" be indefinitely postponed. As many Senators as are in favor of indefinite postponement will please say "Yes"; those opposed, "No."

The Chair recognizes the Senator from Kennebec, Senator Katz.

On motion by Mr. Katz of Kennebec, a division was had. Eight Senators having voted in the affirmative, and 18 Senators having voted in the negative, the motion did not prevail.

Thereupon, Committee Amendment "A" was Adopted in concurrence and the Bill, as Amended, Tomorrow Assigned for Second Reading.

The Committee on Taxation on Bill, "An Act Exempting Blind Property Owners from Real Property Tax." (H. P. 1047) (L. D. 1366)

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-215).

Comes from the House, the Bill Passed to be Engrossed as Amended by Committee Amendment "A".

Which report was Read and Accepted in concurrence and the Bill Read Once. Committee Amendment "A" was Read and Adopted in concurrence and the Bill, as Amended, Tomorrow Assigned for Second Reading.

Ought to Pass in New Draft

The Committee on Public Utilities on Bill, "An Act Relating to Board of Trustees of Bath Water District." (H. P. 158) (L. D. 200)

Reported that the same Ought to Pass in New Draft under Same Title (H. P. 1431) (L. D. 1789)

The Committee on Fisheries and Wildlife on Bill, "An Act Extending Open Season on Bear." (H. P. 187) (L. D. 228)

Reported that the same Ought to Pass in New Draft under New Title: "An Act Relating to Extending Open Season on Bear and Hunting Bear with Dogs." (H. P. 1432) (L. D. 1790)

The Committee on Taxation on Bill, "An Act Relating to Municipal Tax Base Sharing." (H. P. 684) (L. D. 891)

Reported that the same Ought to Pass in New Draft under Same Title (H. P. 1433) (L. D. 1791)

The Committee on Education on Bill, "An Act Increasing Reimbursement to Secondary School Students from Coastal Island for Room and Board." (H. P. 864) (L. D. 1150)

Reported that the same Ought to Pass in New Draft under New Title (H. P. 1434) (L. D. 1792)

The Committee on Fisheries and Wildlife on Bill, "An Act Relating to Open Season on Beaver on Passamaquoddy Indian Lands." (H. P. 1013) (L. D. 1332)

Reported that the same Ought to Pass in New Draft under New Title: "An Act Prohibiting Hunting, Trapping and Fishing on Passamaquoddy Indian Land by Non-Indians." (H. P. 1435) (L. D. 1793)

The Committee on Natural Resources on Bill, "An Act to Validate Land Title in the Wildlands." (H. P. 1098) (L. D. 1435)

Reported that the same Ought to Pass in New Draft same title (H. P. 1436) (L. D. 1794)

Come from the House, the Bills in New Draft Passed to be Engrossed.

Which reports were Read and Accepted, the Bills in New Draft Read Once and Tomorrow Assigned for Second Reading.

Divided Report

The Majority of the Committee on Transportation on Resolve. Designating Part of Route 219 as a State Highway. (H. P. 543) (L. D. 725)

Reported that the same Ought Not to Pass.

Signed:

Senators:

GREELEY of Waldo
CIANCHETTE

of Somerset

Representatives:

WOOD of Brooks
McNALLY of Ellsworth
DUNN of Poland
McCORMICK of Union
BERRY of Madison
STROUT of Corinth
KEYTE of Dexter

The Minority of the same Committee on the same subject matter reported that the same Ought to Pass.

Signed:

Representatives:

JACQUES of Lewiston
FRASER of Mexico
WEBBER of Belfast

Comes from the House, the Majority report Read and Accepted.

Which reports were Read and the Majority Ought Not to Pass Report of the Committee Accepted in concurrence.

Divided Report

The Majority of the Committee on Taxation on Bill, "An Act to Repeal the Law Requiring Publication of a List of Delinquent Taxpayers in the Municipal Annual Report." (H. P. 1112) (L. D. 1448)

Reported that the same Ought Not to Pass.

Signed:

Senator:

FORTIER of Oxford

Representatives:

MORTON of Farmington
DRIGOTAS of Auburn
DOW of West Gardiner
SUSI of Pittsfield
FINEMORE

of Bridgewater
IMMONEN of West Paris
MERRILL

of Bowdoinham
DAM of Skowhegan
COTTRELL of Portland

The Minority of the same Committee on the same subject matter reported that the same Ought to Pass.

Signed:

Senators:

WYMAN of Washington
COX of Penobscot

Representative:

MAXWELL of Jay
Comes from the House, the Majority report Read and Accepted.

Which reports were Read.

Thereupon, on motion by Mr. Fortier of Oxford, the Majority Ought Not to Pass Report of the Committee Accepted in concurrence.

Divided Report

The Majority of the Committee on Legal Affairs on Resolve, to Reimburse Berkshire Mutual Insurance Company for Damage to Property of Leonard Smith by Highway Construction. (H. P. 353) (L. D. 468)

Reported that the same Ought Not to Pass.

Signed:

Representatives:

BRAWN of Oakland
SHAW of Chelsea
COTE of Lewiston
CAREY of Waterville
FECTEAU of Biddeford
FAUCHER of Solon
CONNOLLY of Portland

The Minority of the same Committee on the same subject matter reported that the same Ought to Pass.

Signed:

Senators:

JOLY of Kennebec
ROBERTS of York
ALDRICH of Oxford

Representatives:

EMERY of Rockland
SHUTE

of Stockton Springs
DUDLEY of Enfield

Comes from the House, the Majority report Read and Accepted.

Which reports were Read.

On motion by Mr. Joly of Kennebec, the Minority Ought to Pass Report of the Committee was Accepted in non-concurrence, the Bill Read Once and Tomorrow Assigned for Second Reading.

Divided Report

The Majority of the Committee on Fisheries and Wildlife on Bill, "An Act Relating to Non-resident Big Game Hunting in Maine." (H. P. 1186) (L. D. 1526)

Reported that the same Ought Not to Pass.

Signed:

Senators:

ANDERSON of Hancock
GRAFFAM
of Cumberland
ALDRICH of Oxford

Representatives:

GOOD of Westfield
PARKS of Presque Isle
CHURCHILL of Orland
CAMERON of Lincoln
WALKER of Island Falls
MORIN of Fort Kent
KELLEY of Southport
MILLS of Eastport

The Minority of the same Committee on the same subject matter reported that the same Ought to Pass.

Signed:

Representative:

DOW of West Gardiner

Comes from the House, the Majority report Read and Accepted.

Which reports were Read and the Majority Ought Not to Pass Report of the Committee Accepted in concurrence.

Divided Report

The Majority of the Committee on County Government on Bill, "An Act Relating to the Marking of County-Owned Vehicles." (H. P. 874) (L. D. 1162)

Reported that the same Ought Not to Pass.

Signed:

Senators:

ROBERTS of York
PEABODY of Aroostook
CLIFFORD
of Androscoggin

Representatives:

FARRINGTON of China
CHURCHILL of Orland
SHELTRA of Biddeford
DYAR of Strong
DAM of Skowhegan
TANGUAY OF Lewiston
PONTBRIAND of Auburn

The Minority of the same Committee on the same subject matter reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-219)

Signed:

Representatives:

McMAHON of Kennebunk
WHITZELL of Gardiner

Comes from the House, the Majority report Read and Accepted.

Which reports were Read and the Majority Ought Not to Pass Report of the Committee Accepted in concurrence.

Committee of Conference Report

The Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill, "An Act Reimbursing Teachers for Professional Credits." (H. P. 838) (L. D. 1112)

ask leave to report: that the House recede from its action whereby it accepted the Minority Ought Not to Pass report; accept the Majority Ought to Pass report; adopt Conference Committee Amendment "A" (H-220) submitted herewith; and Pass the Bill to be Engrossed as amended by Conference Committee Amendment "A" (H-220);

that the Senate Recede and Concur with the House.

On the Part of the House:

MURRAY of Bangor
BITHER of Houlton
GARSOE of Cumberland

On the Part of the Senate:

KATZ of Kennebec
MINKOWSKY

of Androscoggin

OLFENE of Androscoggin

Comes from the House, the Bill Passed to be Engrossed as Amended by Conference Committee Amendment "A".

Which report was Read and Accepted and the Bill Passed to be Engrossed, as Amended by Conference Committee Amendment "A", in concurrence.

Senate

Leave to Withdraw

Mr. Marcotte for the Committee on Business Legislation on Bill, "An Act Relating to Duties and Responsibilities of Funeral Directors." (S. P. 305) (L. D. 968)

Reported that the same be granted Leave to Withdraw.

Which report was Read and Accepted.

Sent down for concurrence.

Ought to Pass

Mr. Cox for the Committee on Business Legislation on Bill, "An

Act Relating to Maternity Benefits for Unmarried Health Insurance Policyholders and Minor Dependents of Health Insurance Policyholders." (S. P. 373) (L. D. 1099)

Reported that the same Ought to Pass.

Which report was Read and Accepted, the Bill Read Once and Tomorrow Assigned for Second Reading.

Ought to Pass — As Amended

Mr. Sewall for the Committee on Appropriations and Financial Affairs on Bill, "An Act Appropriating Funds for Expansion and Improvement of the Biddeford Municipal Airport." (S. P. 518) (L. D. 1649)

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (S-82).

Which report was Read and Accepted and the Bill Read Once. Committee Amendment "A" was Read and Adopted and the Bill, as Amended, Tomorrow Assigned for Second Reading.

Divided Report

The Majority of the Committee on Labor on Bill, "An Act Relating to Certain Overtime Exemptions Under Minimum Wage Law." (S. P. 124) (L. D. 301)

Reported that the same Ought to Pass.

Signed:

Senator:

TANOUS of Penobscot

Representatives:

ROLLINS of Dixfield

BROWN of Augusta

CHONKO of Topsham

McNALLY of Ellsworth

FLYNN of South Portland

McHENRY of Madawaska

BINNETTE of Old Town

The Minority of the same Committee on the same subject matter reported that the same Ought Not to Pass.

Signed:

Senators:

HUBER of Knox

KELLEY of Aroostook

Representatives:

GARSOE of Cumberland

FARLEY of Biddeford

HOBBINS of Saco

Which reports were Read.

Mr. Tanous of Penobscot then moved that the Senate Accept the Majority Ought to Pass Report of the Committee.

The PRESIDENT: The Chair recognizes the Senator from Knox, Senator Huber.

Mr. HUBER: Mr. President and Members of the Senate: I rise to oppose the motion of the Senator from Penobscot County, Senator Tanous. I personally don't think the evidence that was supplied during the public hearing will support his position.

The bill is a department bill, sponsored by the Senator from Penobscot, Senator Tanous. At no time during the hearing was evidence presented to the committee by the proponents of the bill that any survey of any kind had been made by the department, either with the different restaurants or hotels throughout the state, nor with their respective associations, as to the possible effects on the workers, the employees nor, for that matter, the overall operations of the hotels, motels, and restaurants in the state.

On the other hand, the opponents to the bill did give the committee the results of the survey that they had made as to how it would affect the operations of the various establishments, motels, hotels, and restaurants, but more importantly, how it would affect the workers and their take-home pay. We were told in cold, hard facts that the industry could not pay overtime without drastically raising food and lodging prices. The committee was told that it would be the workers who would suffer, that employees would be cut back to a 40-hour week and that part-time workers would be hired to pick up the extra hours that the industry needed to continue serving the public, as they are now doing.

The committee heard that workers would be sent home during slack periods and then asked to come back during busy periods again. Incidentally, right now during that slack period, these are periods in which they are being paid, although not producing.

Under the present federal minimum wage law, the food and

lodging industry is now exempt from the overtime provision. Presently Congress has four minimum wage bills before it, and none of the bills attempts to do away with the overtime exemptions now enjoyed by the industry.

The committee was told that in the states in which the industry is unionized, almost without exception, the union recognizes the peculiar problems peculiar to the industry, and the union contract does not call for overtime until the 49th hour.

I ask that you vote against the motion of the Senator from Penobscot County, Wakine Tanous.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS: Mr. President and Members of the Senate: I hate to stand up here and oppose my good friend, Senator Huber, who happens to be on the Labor Committee, relative to this bill, but I would like to briefly acquaint you with this particular phase of the law.

Title 26, Section 664, has a list of exemptions under the overtime provisions of our law, and this deals strictly with the exemptions noted under the overtime provisions. All of our provisions on the exemptions deal with your agricultural and fishing industry, your storing, freezing, drying, marketing, and so forth, and this provision that relates to hotels, motels, restaurants, and other eating establishments, was not in the original law enacted by the State of Maine as an exemption. This exemption was included, I think, by the 103rd Legislature, so that they then became exempt, this particular facet of our industry, as to payment of overtime after 40 hours. This has nothing to do with the minimum wage, because all of these people are bound to pay the minimum wage as required under law, but after 40 hours they are not bound to pay any overtime provisions.

Relative to the public hearing, the lobbyist for the industry and myself talked about the pending public hearing, and I thought it

would be a timesaver if neither one of us brought in 30, 40, or 50 people to a public hearing. We sort of agreed, you know, "I won't bring in waitresses, cooks, and janitors, if you don't bring in the industry, and let's let the bill rise and fall on its own merits", so to speak. Many of the employees involved in this industry feel that if we did remove the exemption of overtime that they would lose hours of work as a result and, therefore, lose money. So that we do have — I am trying to be impartial in telling you this — so we do have, I feel, many of these people who don't want to have the overtime exemption removed from the law because they feel that it is going to cost them money because their hours will be reduced.

But most of these people, I think, are waitresses. Now waitresses do well; there is no question about it. I am sure that all of you are equally generous when you go to an eating establishment, and waitresses, as a rule, do real well as far as tips are concerned, so maybe they are not too interested in removing the overtime exemption. But I bring to your attention the cooks, chambermaids, the dishwashers, the janitors, and everybody else related to this industry; they don't get tips, nor do they get overtime pay.

You know, I am really interested in this facet of our employment law, and if I am successful in getting my majority report accepted, I am going to propose an amendment that this provision will not apply to waitresses, but it will cover the remainder of the motel-hotel employees. I think it is only fair that these other people who don't have the benefit of tips should at least have the privilege of pay under our overtime law.

To give you an example, I received a letter from a chef in one of our restaurants in the State of Maine who had worked 61 hours and took home \$117. Now, he doesn't get any tips, and he has a family of four children to support on \$117 for 61 hours of work. Now maybe that employer would cut him out at 40 hours and hire somebody else; that is possible, I grant you. But is this the intent of the

law? Is this what the intent of the law is supposed to be? I don't feel it is. I don't feel that this is a method of perhaps getting even or trying to survive by cutting the overtime out of some of these employees.

Most of our good restaurants pay good pay to our cooks that covers the overtime provision, but some of them don't, and I feel that these are the people who ought to have at least the overtime coverage under our law. I would ask you to support me in my request for acceptance of the majority report.

The PRESIDENT: Is the Senate ready for the question? A division has been requested. The pending motion before the Senate is the motion of the Senator from Penobscot, Senator Tanous, that the Senate accept the Majority Ought to Pass Report of the Committee on Bill, "An Act Relating to Certain Overtime Exemptions Under Minimum Wage Law." As many Senators as are in favor of accepting the Majority Ought to Pass Report of the Committee will please rise and remain standing until counted. Those opposed will please rise and remain standing until counted.

A division was had. Five Senators having voted in the affirmative, and 20 Senators having voted in the negative, the motion did not prevail.

Thereupon, the Minority Ought Not to Pass Report of the Committee was Accepted.

Sent down for concurrence.

Divided Report

The Majority of the Committee on Business Legislation on Bill, "An Act to Provide Free Choice of Practitioners for Visual Service under Health Insurance Contracts." (S. P. 257) (L. D. 754)

Reported that the same Ought Not to Pass.

Signed:

Senator:

COX of Penobscot

Representatives:

TIERNEY of Durham

JACKSON of Yarmouth

HAMBLE of Gorham

DONAGHY of Lubec

TRASK of Milo

DESHAIES of Westbrook

The Minority of the same Committee on the same subject matter reported that the same Ought to Pass.

Signed:

Senators:

KATZ of Kennebec

MARCOTTE of York

Representatives:

BOUDREAU of Portland

CLARK of Freeport

MADDOX of Vinalhaven

O'BRIEN of Portland

Which reports were Read.

Mr. Hichens of York then moved that the Senate Accept the Minority Ought to Pass Report of the Committee.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Cox.

Mr. COX: Mr. President and Members of the Senate: L. D. 754 states, in essence, that if and when any coverage performed by an optometrist covered under any insurance contract then they want to be included.

This is similar to a bill that we voted down last week whereas we are mandating under the law insurance coverage. We have several more of these coming. I think the committee has been consistent in its stand to this point; they have voted in the majority not to accept the report. I would ask for a division.

The PRESIDENT: A division has been requested.

The Chair recognizes the Senator from York, Senator Hichens.

Mr. HICHENS: Mr. President and Members of the Senate: I would bring your attention to the statement of fact on this bill. "The foregoing amendments to chapters 33 and 35 of Title 24-A are enacted to permit individuals insured under private health and group health insurance policies to recover benefits for eye treatment rendered by a qualified optometrist as well as by an ophthalmologist, contrary provisions in the policy itself notwithstanding. The provisions are similar in scope to a number of so-called "free choice laws" passed in other jurisdictions in response to the practice of certain insurance companies which limit their eye care coverage according to the

type of practitioner rendering service.

"By these amendments the opportunity for selection presently in effect for non-profit health care plans is extended into the private insurance field."

I feel that this is a free-choice law and that we should accept it.

The PRESIDENT: Is the Senate ready for the question? The pending motion is the motion of the Senator from York, Senator Hichens, that the Senate accept the Minority Ought to Pass Report of the Committee on Bill, "An Act to Provide Free Choice of Practitioners for Visual Service under Health Insurance Contracts."

A division has been requested. As many Senators as are in favor of accepting the Minority Ought to Pass Report will please rise and remain standing until counted. Those opposed will please rise and remain standing until counted.

A division was had. Seven Senators having voted in the affirmative, and 21 Senators having voted in the negative, the motion did not prevail.

Thereupon, the Majority Ought Not to Pass Report of the Committee was Accepted.

Sent down for concurrence.

Second Readers

The Committee on Bills in the second Reading reported the following:

House

Bill, "An Act Relating to Overinsurance Provision in Health Insurance Contracts." (H. P. 537) (L. D. 719)

Bill, "An Act Relating to Licenses for General Lines Insurance Agents." (H. P. 804) (L. D. 1053)

Bill, "An Act Declaring Violations of Home Solicitations Sales Act to be Violations of Unfair Trade Practices Act." (H. P. 925) (L. D. 1223)

Bill, "An Act Revising the Itinerant Vendor Law." (H. P. 1139) (L. D. 1474)

Bill, "An Act Increasing Indebtedness of Calais School District." (H. P. 1238) (L. D. 1579)

Which were Read a Second Time and Passed to be Engrossed in concurrence.

House — As Amended

Bill, "An Act Providing Funds for Purchase of Tourmaline, Maine's Official Mineral." (H. P. 34) (L. D. 41)

Bill, "An Act to Create a Commission to Prepare a Revision of the Insurance Laws Relating to Insolvent or Delinquent Insurers." (H. P. 659) (L. D. 1066)

Bill, "An Act Relating to Private Consumer Remedies." (H. P. 725) (L. D. 931)

Bill, "An Act to Require Certificates of Death to be Typewritten." (H. P. 746) (L. D. 959)

Which were Read a Second Time and Passed to be Engrossed, as Amended, in concurrence.

Senate

Bill, "An Act Establishing the Maine Training Fund." (S. P. 587) (L. D. 1805)

Resolution, Proposing an Amendment to the Constitution Providing for Regulation of Municipal Borrowing by the Legislature. (S. P. 586) (L. D. 1804)

Which were Read a Second Time and Passed to be Engrossed.

Sent down for concurrence.

Bill, "An Act Providing a Moratorium on Oil and Heavy Industry Development Along the Maine Coast." (S. P. 589) (L. D. 1807)

Which was Read a Second Time.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Richardson.

Mr. RICHARDSON: Mr. President and Members of the Senate: Yesterday in discussing the oil moratorium bill I indicated to you that there was before the Supreme Court of the United States an appeal from a ruling by a three-judge federal court which had ruled the Florida statute, which was copied virtually verbatim from ours, unconstitutional. This sense of timing is not typical of the way I handle things. Today I am simply delighted to report to you members of the Senate that the Supreme Court of the United States, in an opinion by Justice William O. Douglas, said that there is no constitutional or statutory federal barrier which would prohibit the State of Florida to establish rules

and regulations for the handling of oil on its coast.

This is an extremely significant decision to our statute since the oil companies, when they decided to impose their own moratorium, among the claims that they made was that the constitutional pre-emption theory in admiralty applied to this legislation.

So I think that what I am saying today is simply that one significant issue with respect to our legislation has been resolved. There would now not seem to be any reason why the Supreme Judicial Court of Maine cannot proceed promptly to a decision on the case which it has before it. However, I would appreciate an opportunity to review the decision of the Supreme Court of the United States and, hopefully, to secure copies of it for the members of the Committee on Natural Resources and other members of the Senate who might be interested.

Therefore, I would very much appreciate it if this legislation could be tabled perhaps for several days in order to permit the Committee on Natural Resources and its Chairman, the good Senator from Sagadahoc, Senator Schulten, an opportunity to review the decision and to make a decision with respect to the oil moratorium bill now before us.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Berry.

Mr. BERRY: Mr. President and Members of the Senate: I do not rise to table it, but I am sure it will be shortly. I just must add a word to say that this is a burst of light on a long, long dark trail, and it is really an historic occasion, the news that Senator Richardson of Cumberland has given us.

This was the innovative legislation that was passed by a previous legislature. It was immediately attacked, as we discussed yesterday in the debate, and to think that this law has been upheld by the highest court in the land certainly gives everybody great cause for rejoicing.

The PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Schulten.

Thereupon, on motion by Mr. Schulten of Sagadahoc, tabled and specially assigned for April 24, 1973, pending Passage to be Engrossed.

Senate — As Amended

Bill, "An Act to Establish a State Veterans Home." (S. P. 436) (L. D. 1340)

Which were Read a Second Time and Passed to be Engrossed, as Amended.

Sent down for concurrence.

Enactors

The Committee on Engrossed Bills reported as truly and strictly engrossed the following:

An Act Relating to Bilingual Education. (S. P. 62) (L. D. 165)

An Act Relating to Fees of Bail Commissioners. (S. P. 300) (L. D. 949)

An Act to Create a Commission to Study the Needs for a Traffic Court System. (S. P. 316) (L. D. 982)

(On motion by Mr. Greeley of Waldo, placed on the Special Highway Appropriations Table.)

An Act Authorizing File of Abstracts in Registry of Deeds in Guardianship, Conservatorship and Intestate Estates. (S. P. 352) (L. D. 1017)

An Act Increasing Certain Fees of Registers of Deeds. (S. P. 354) (L. D. 1018)

An Act to Designate One Dollar of Income Tax Refunds or Tax Liability to Political Parties. (H. P. 321) (L. D. 439)

(On motion by Mr. Berry of Cumberland, tabled and Specially Assigned for April 20, 1973, pending Enactment.)

An Act Authorizing Legislature to Change Specific Line Categories in the County Estimates. (H. P. 1166) (L. D. 1501)

Which, except for the tabled matters, were Passed to be Enacted and, having been signed by the President, were by the Secretary presented to the Governor for his approval.

Emergency

An Act Creating the Maine Veterans Small Business Loan Authority Board and Establishing

a Mortgage Insurance Fund. (S. P. 164) (L. D. 419)

(On motion by Mr. Sewall of Penobscot, tabled and Tomorrow Assigned, pending Enactment.)

Orders of the Day

The President laid before the Senate the first tabled and today assigned matter:

House Reports — from the Committee on Legal Affairs — Bill, "An Act Limiting Sunday Harness Racing." (H. P. 900) (L. D. 1188) Majority Report — Ought to Pass; Minority Report — Ought Not to Pass.

Tabled — April 12, 1973 by Senator Hichens of York.

Pending — Acceptance of Either Report.

Thereupon, the Majority Ought to Pass Report of the Committee was Accepted in concurrence, the Bill Read Once and Tomorrow Assigned for Second Reading.

The President laid before the Senate the second tabled and today assigned matter:

Senate Reports — from the Committee on Judiciary — Bill, "An Act Creating the Free Flow of Information Act." (S. P. 43) (L. D. 99)

Report A — Ought to Pass in New Draft under Same Title. (S. P. 583) (L. D. 1795)

Report B — Ought Not to Pass.

Report C — Ought to Pass.

Report D — Ought to Pass in New Draft under New Title of: "An Act Relating to Testimony before Grand Jury by News Media." (S. P. 584) (L. D. 1796)

Report E — Ought to Pass as amended by Committee Amendment "A" (S-74).

Tabled — April 12, 1973 by Senator Tnous of Penobscot.

Pending — Motion of Senator Shute of Franklin to Accept Report "C" — Ought to Pass.

The PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Shute.

Mr. SHUTE: Mr. President, a parliamentary inquiry: If the motion to accept Report "C" fails, what then transpires? Do we go to "A", "B", "D", "E" to this

shredded report? What is the procedure we follow, sir?

The PRESIDENT: If your motion fails, Report "A" fails, Report "D" fails, and Report "E" fails, the Chair would probably say "Is it now the pleasure of the Senate to accept Report "B", Ought Not to Pass?"

Mr. SHUTE: That is what I was afraid of, sir. Mr. President and Members of the Senate: I think perhaps one of the reasons we have so many reports is the fact that so much information was made available to the Committee on Judiciary, because of the depth of this subject matter, and because of the seriousness of it. Again, I ask you to review L. D. 99, the original document, L. D. 1795, L. D. 1796, and S-74; these are the four viable reports.

Now, as relates to L. D. 1795, Sections 511 and 512 are similar to my original bill, L. D. 99. Section 513 would make it possible for a newsman to be hailed before a Superior Court Justice, which court could then order the newsman to divest himself of the privilege and order the newsman to disclose his sources of information.

L. D. 1796 would exempt the newsman from going before a grand jury, but it does not preclude a newsman from being issued a subpoena from a legislative or other judicial body to require him to reveal his sources of information, nor does it protect in any way a person who formerly was in the employ of any news gathering organization.

Now, S-74, the Senate Amendment offered by Representative Gauthier, limits the privilege to the disclosure of any source of any news obtained by those who are eligible for such privilege. It does not protect a person who has taken tapes, film and notes on a news story but has not used these unpublished items or other forms of news. In other words, it makes available as court material everything that the newsman has gathered but has not used.

Now, all these amendments, in my view, would be in direct contradiction to Section 4, Article I of the Maine Constitution, which states, in part, "Every citizen may

speak freely, write and publish his sentiments on any subject, being responsible for the abuse of this liberty; no laws shall be passed regulating or restraining the freedom of the press." L. D. 99 is but an extension of the First Amendment to the United States Constitution which guarantees that the freedom of the press shall not be abridged.

I brought this legislative document before the Legislature because of my concern of the pressures of the press which have occurred with alarming regularity in the past year or so. For the purposes of clarification, the word "press" refers to both the electronic and the printed media.

From colonial times to the present, a free press has been recognized, and officially acknowledged in the First Amendment, as a key protector of the rights of American citizens. Through the years from the beginnings of our country, legal battles have been fought to safeguard the public's right to know. Fred Graham in his author's preface of his 1972 book "Press Freedoms Under Pressure", which I have here, states that a corollary to the guarantee of the public's right to know, probably more implied than stated because it was rarely challenged, was the newsman's right to gather news and report, and the assumption that in doing his job he would be secure from government interference or intimidation. Yet relations between government and press have always and inherently been of an adversary nature. As one commentator has noted, "if anything is clear about our press-government relationships throughout our history, it is this: in theory, America's leaders have wanted a free and independent press as a check upon government; in practice, they wanted no such thing." Indeed, our first president spoke testily about "infamous papers calculated to disturb the peace of the community." On the other hand, we have the view of one-time Secretary of State, John Milton Hay, who said, "Freedom of the press, like chastity, must be absolute."

While it is true that the press was free, it is also true that it was not always responsible. The press was in many respects a vehicle for a publisher rather than public opinion. It was not until the great press combines, such as the Associated Press, United Press, International News Service and its merged UPI, came into being that reporting on a national scale began to strive for objectivity. Through the years, then, the position of the press shifted; it became more responsible and the reporter came into his own. His function became more and more investigative and the number of his antagonists mounted. Although he was sought out for the publicity he could give to both policies and politicians, he was also condemned if his reporting did not please his sources or the subjects of his news stories. Yet his role was accorded much of the protection that surrounds the lawyer-client, doctor-patient, cleric-penitent relationships. Incidentally, the State of Michigan specifies all four in its statutes, declaring their communications privileged and confidential.

It is not unusual for the press to be under attack. But this time the issue isn't bias but confidentiality. As our media have grown—mass media now with instant communication available to Americans, over 6,941 AM and FM radio stations and 775 TV stations — a national impact developed from reporting; the status of the newsman became more prominent and more sensitive. It was inevitable that his presumed immunities would come under challenge.

We have seen in these recent years the Age of Confrontation, the dissidence emerging from the Vietnam war, the counter-culture generation taking advantage of a growing permissiveness in our society, the new consciousness of minority groups finding abrasive expression in radical militancy, drugs and social shock of all other kinds. It is little wonder that society at large would see reason to attempt to control or even suppress manifestations of this dissidence and that it would call upon a more conservative administration to do the job. It follows

that the press, in consequence, would find itself under pressure to act as witness as well as reporter. The news media soon discovered it had to look to the law for protection. The press could not be free if it were compelled to join hands with government law enforcers. To carry out its constitutional duty to inform the public, it had to guard against being used by government as either witness or publicist. And the press felt it had to guard against having its freedom compromised by infringements on its confidentiality.

Within the past year, reporters and broadcasters have been placed behind bars or threatened with jail because of refusal to reveal their sources. You've heard of the case of Peter Bridge of the Newark News, 21 days in jail last October for refusing to tell a county grand jury whether he knew more than he printed about a local housing official's charge that she was offered a bribe. Newsman William Farr, jailed in Los Angeles for 46 days for refusing to tell a judge in the Manson murder trial which of six attorneys gave him incriminating evidence he published in violation of the judge's publicity-gag order. Farr, as you know, is out pending appeal of his case. And there are more involving broadcasters as well as newsmen.

Why do we seek a "shield law" for Maine newsmen, rather than relying on Congress? To date, the evidence coming from the Congressional hearings on newsmen's privilege, and there have been many since early in February, evidence seems to indicate that even if Congress does pass legislation, it would deal only with problems at the federal level. The chairman of the Senate Committee, Sam Ervin, has already given that indication. The Supreme Court decisions would indicate that the Court says that the states and Congress may create a newsman's privilege by legislation if they see fit. More background: more than 150 subpoenas were served on newspaper-radio-television stations in the first two years of the Nixon administration by federal prosecutors, state prosecutors, and defense attorneys. There is no count on

the number since then, but two trends are clear: federal subpoenas are down sharply as a result of new press-subpoena guidelines issued by the Justice Department in 1970. But state and local subpoenas are up sharply. Those seeking to explain why, point to these Supreme Court decisions that newsmen feel are chipping away at the constitutional underpinnings of press freedom.

Last June, the matter of press subpoenas was brought before the high court. Earl Caldwell of the New York Times, Paul M. Branzburg of the Louisville Courier-Journal and Paul Pappas of WTEV-TV in New Bedford, Massachusetts, were subpoenaed and refused to testify. Each one is a different case. The Branzburg case, which was the first one, involved the situation where people were making hashish out of grass. Caldwell and Pappas were both involved with Black Panther groups. In each instance, secret grand jury testimony was demanded. Mr. Caldwell and Mr. Pappas were called to testify about black radicals; Mr. Branzburg was to be questioned about alleged marijuana and hashish offenses. Each man asserted that to testify would destroy his confidential relationships with his sources and impede the flow of information to the public. The Supreme Court, in a five-to-four decision, said that reporters have no automatic right to refuse to divulge information learned in confidence. Many who are in the legal profession view the five-to-four Branzburg-Pappas-Hayes case an abrupt and radical departure from the mainstream of judicial interpretation of the First Amendment. It assumed that a journalist called before an investigating agency stands on the same footing as any other witness asked to provide information. Yet, the First Amendment singles out the press as a very special and favored group in our society, a status constitutionally afforded to no other profession or function.

This is not a battle between government and the press, but fundamentally it is a battle between the government and the people. It is not the journalists'

right which is at issue here; it is every citizens' right. I can't emphasize this point enough, for it was this common understanding of the men who framed the Bill of Rights, and it was at the center of their political philosophy. James Madison advised us that, "A people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information, or the means of obtaining it, is but a prologue to a farce or a tragedy, or perhaps both." And Thomas Jefferson suggested that, "Were it left for me to decide whether we should have a government without newspapers, or newspapers without government, I should not hesitate to prefer the latter."

It was interesting that Mr. Jefferson said this early in his political career. Later, he found himself in the customary adversary position with the press.

A legislative aide, one of the several this legislature has hired, one George Viles, worked under the direction of Senator Tanous in preparing an excellent synopsis of the Branzburg, Pappas and Caldwell decisions and the dissenting opinions from the U.S. Supreme Court. It also had available for its perusal bills presented to Congress relating to the free flow of information. This is a massive bit of information provided for the committee. The committee had available too references to Maine law as it pertains to the other privileges afforded by our law. They had a review of this paperback report, Twentieth Century Task Force on the Government and the Press, to which I have already referred. Incidentally, a member of the Task Force was a highly respected Maine jurist and former Chief Justice of the Maine Supreme Court, the Honorable Robert Williamson. The Committee also had available copies of newsmen's privilege laws from each of the 18 states in which such privilege existed at the time of this testimony, and since that time two other states have joined the ranks in offering some kind of privilege for newsmen. I also provided the

committee with a recently passed amendment to the California law which aids Reporter Farr after his constitutional horse had been stolen.

Perhaps all of this information did overwhelm the committee. Maybe this is the reason why we do have five separate reports, but the issue is indeed a serious one, my fellow Senators, and as with so many other proposals we discuss among our state bodies, I do not believe we should just "wait and see" what Congress does with a newsman's shield bill. A typical Congress may do nothing as it did in the 92nd and, in fact, the administration strongly opposes the imposition of such privilege upon the states. On February 7th, Roger C. Cramton, Assistant Attorney General, Office of Legal Counsel, questioned the authority of Congress to pass such a law, saying that such legislation "Would be at the very margins of the legislative authority of Congress." Cramton, speaking for the administration, said such a move would allow Congress to control what sort of evidence could be brought into state courts. Such legislation could not be tolerated, he said, "if the states are to remain viable units of government, and would be a serious incursion on the legislative and judicial competence of the states."

Let us review the need for this legislation right here in our State of Maine. As we have pointed out, the trend has been clear. Restrictions that have been placed on the freedom of the press in other states could happen here and could interfere with the public's right to know. The source of the news is important and the public is entitled to know it. The decisions in the Caldwell cases that reporters don't have an unqualified right to refuse to divulge their sources to Grand Juries interferes with the reporter's ability to transmit news to the public, and thereby constitutes a severe limitation on freedom of the press.

Without such privilege, I believe that sources would dry up. Government employees would no longer talk to reporters about corruption

in the public business if they thought reporters could be compelled to reveal their names. Persons involved in criminal activity would not give tips to reporters if they thought that would tip off police about themselves. Investigative journalism would suffer. Confidentiality is the keystone of investigative reporting; some of the important stories will not be written because of fear of a jail term or of reprisals. The man in the street will learn a lot less in society because of the threat, and if newsmen could be hauled into courts to reveal the names of confidential informants about crime, for example, they would become the accessories of government, not the independent watchdogs of government.

But the fundamental reason why newsmen should not be forced to reveal confidential sources lies in the First Amendment to the United States Constitution which protects the people against government action abridging freedom of the press. This is not a special right of newspapers, radio and TV stations, or of a journalist. The public could be the loser, not the press. This is the right of the people to know.

It has been amply demonstrated in this day, this age, and this time that the First Amendment guarantee of freedom of the press is insufficient. The Supreme Court has said in its majority opinion, in effect, we do not propose to make law, but we see no harm if the Congress or individual states enact such laws. This is why L. D. 99 is before you, and why today I urge your favorable reaction on creating the free flow of information.

Mr. President, I move the adoption of Report "C". When the vote is taken, I move it be taken by the yeas and nays.

The PRESIDENT: A roll call has been requested.

The Chair recognizes the Senator from Kennebec, Senator Joly.

Mr. JOLY: Mr. President and Members of the Senate: I rise to oppose the motion of my very good friend from Franklin, Senator Shute.

I wonder if perhaps the greatest danger in the passage of any shield law is the danger it potentially holds for the very segment of our society it presumes to protect. Once a shield law is enacted, it would not be long before we are confronted with the problem of defining those covered by the freedom of the press clause of the First Amendment of our Constitution. Who are legitimate newsmen? Could not those involved in extremist groups take advantage of the shield law? Or even those involved in illegal activities? In regard to the latter, one witness at a House committee hearing in Washington recently testified that any law to allow newsmen to keep their sources confidential "would be a greater boon to organized crime than the Fifth Amendment," because practically anyone could pose as a journalist and refuse to testify.

Because of this problem of definition, demands are sure to come forth following passage of such a law to define "legitimate newsmen". Who will this job fall upon? The government, certainly. And, members of the Senate, thus a little control over the press would be granted to the government. This I dread and so should every newspaperman and every man or woman associated with the media of our country.

One further point I would make in regard to this matter: it has been said that a shield law is merely an extension of the universally recognized confidential relationship between doctor and patient, lawyer and client, husband and wife, or priest and confessor. However, in each of these the confidentiality is required for the benefit of the person making the disclosure — the patient, client, confessor or husband or wife. The major beneficiary of a newspaper informant's statement that is confidential, on the other hand, are the reporter and his newspaper, not the informant.

Actually, members of the Senate, I honestly believe that if reporters and editors are reasonably competent, responsible, and understanding of their job, they do not need shield laws. When you really

come down to the point, it is certainly an irresponsible reporter who writes a story on the uncorroborated statement of a so-called "confidential source", and it is an irresponsible editor who does not insist upon such corroboration as a test of the truth or falsity of the confidential information.

My good friend from Franklin, Senator Shute, mentioned the Peter Bridge case in New Jersey, and I understand that in his case this reporter, Mr. Bridge, referred to a woman who referred to an unknown person, and certainly I don't think this is very responsible.

Too often we have harmed citizens by trying to be helpful. Government has been too anxious in recent years to jump in when the need is not really present. Our nation's entire agricultural program, which was meant to help the farmers, has driven millions off the farm. I could enumerate countless other instances where government interference has hurt, not helped. Here, I fear, is another example of good intentions because a handful of newspapermen have encountered difficulty and some jailed. Here, once again, we could be doing harm to thousands in the media field in our attempt to help a few.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Cummings.

Mrs. CUMMINGS: Mr. President and Members of the Senate: The ramifications of this bill go far beyond the understanding of most of us here in this room. A vote for its passage is a vote of confidence in the strength and integrity of the future of Maine and of the United States. Our founding fathers were well aware of the importance of the freedom of the press to the success of their daring experiment in a democratic form of government. They knew that without the constant awareness of public scrutiny, many a government official would work for his own best interests rather than those of his office.

We are all aware of times when this didn't work, when graft and corruption held sway in political places. But there was always a

Lincoln Steffans to rake the muck away and clean the slate clear for newsmen. We have survived the evils of the yellow press of the last century. We have survived the frightening power tactics of a Joseph McCarthy, with his destructive investigations. But we cannot survive a hobbled press.

History teaches us that the first step necessary in the ultimate destruction of democracy is curtailment of freedom of the press. We must not take that first step, even though it seems small and insignificant right now. True, there will undoubtedly be unscrupulous reporters who will distort, garble and manipulate their stories to the discredit and, perhaps, permanent ruin of some men's careers. But are we going to put a gag on the honest research of someone investigating a possible infraction of the rules? Are we going to stop eating oysters just because one bad one made us sick? Surely one pusillanimous pen pusher out to make a name for himself at the expense of anything and anyone will be taken care of by his fellow newsmen and women. Automobiles are no more necessary to the life and development in our democratic form of government than is freedom of the press. Do we prohibit all cars because a few harm and kill? No more should we curtail freedom of reporters to investigate and report on their findings with impugnity. We must have faith in the future, the future of our state and nation, as well as our future citizens. We should cast our votes not from fear but with courage.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS: Mr. President and Members of the Senate: I rise this morning to support my good friend, Senator Shute from Franklin, on his position relative to the shield law, although he and I part company about half way through, and this is why the majority report of the committee came out with Report "A".

There has been quite a bit of discussion about the shield law, and I would like to try to recap the whole question of the

newspapermen's position and very candidly place it to you. To me, it boils down to the question of whether or not — mind you, we are not repressing the press or their right to publish articles; this is not the intent of this legislation. It isn't aimed in this area. What we are concerned with, I think, basically is the fact that is a member of the press going to be made an arm of the government. That is what it boils down to.

Now, assuming that a person from the press is involved in reporting a story, and he is able to obtain information relative to a crime that has been committed, the issue comes up as to whether or not the courts or legislative bodies should have the right to subpoena that individual to come to court to reveal his information, source of that information, and perhaps anything else relating to the story that he has written. So, in essence this is what Senator Shute's bill attempts to do. It is to protect the newspaper from having to reveal his information in court. It certainly is not needed to protect the press from writing stories, for instance. This freedom they have, and there is no law that can prevent them from printing any story that they see fit to print. But if they don't have the shield, then the source of their information is going to dry up. They feel that if they don't have the shield that when they go out and get a story to print, publish, or report to the people, that they won't have the cooperation because they will be subject to being forced to go to court, if necessary, to reveal where they get their information or who they get their information from.

So then it comes back: is this a repression of the press? Is this a sort of vise that the press has been placed in? So, Senator Shute's bill merely says that let us not use the press as an arm of the government. After all, we do have our police departments, state police, sheriff's department, or Attorney General's Department, and these are arms of government. They are involved with enforcing

our laws and prosecuting violators of these laws.

Now, should we categorize the press because they have this information on their own initiative as an arm of the law? Should they be categorized as this? Should they be made an arm of government for this purpose? This is basically the issue. I feel that they shouldn't. That is my position and it is the position, I guess, of the majority of the committee.

What the committee has done is that we have come out with an amendment. And I might add, incidentally, that at the public hearing there were proponents and opponents of this bill, and I dare say that quite a few newspaper people were opposed to a shield law. Several newspaper people wrote to the committee or appeared personally to oppose this shield law. Now, what the committee has done, we have kept Senator Shute's bill intact, except we have added a section which says — and this is what bothers many members of the committee: assuming that we do have a newsman, under Senator Shute's bill, for instance, and he is given a subpoena to appear before a grand jury, legislative body, or any other state body of any type. Under Senator Shute's bill, this reporter could — I mean, the individual — when I say "reporter" I use the term very loosely — the individual receiving the subpoena could disregard that subpoena and say well, I have a shield under this particular law; I don't have to appear. Now, he is the sole determining factor, and this is what bothers me. I don't know how the individual receiving the subpoena can invoke the shield and say I don't have to appear in court because I am protected by law. I feel that there should be another tribunal to make this determination, and this is what the amendment under Committee Report "A" does.

Report "A" says that if an individual, a prosecutor, a person, a party, a body, or officer is seeking information from a so-called newspaperman, the state must summon or serve the individ-

ual with a motion to appear before the Superior Court, and it is entirely up to the state at this point to divest — the individual that appears in court, the newspaperman, that appears in court has got a shield, he is completely covered with a shield, cloaked with a shield — and it is up to the state to remove this shield entirely, divest him of the shield, and the whole burden is on the state to do this, to remove the shield off the newspaperman, so that they then can get him to testify either before a grand jury, legislative body, or court. And it is entirely upon the state, as I mentioned, to show this. And in the court's decision they must find that the information sought does not concern matters or details in any proceeding required to be kept under the laws of this state or the federal government. This is No. 1.

Second, the state must prove that all other available sources of information have been exhausted and disclosure of the information sought is essential to the protection of the public interest involved.

Third, if the court enters an order divesting that particular person of the privilege granted in this chapter, it shall also order the person to disclose the information that it determines necessary.

So these are the items that the state must prove to divest the reporter from this shield. The reason that I say he should not be permitted to make his own decision — I mean, after all, you have got people in high schools that print high school papers, and they are considered the press, I assume, and you have got your weekly rags across the state; they are considered the press, and I assume that if I bought a mimeograph, and I set it up in my office and started printing a one-paragraph report every week, I would be considered a member of the press as well, you see. So I am concerned about who is going to make this determination as to whether this individual should have the privilege of the shield. And this is what, in essence, the amendment does.

It entirely conforms with Senator Shute's request.

I personally feel the press should not be made an arm of the government, and for this reason I support Committee Amendment "A". I shall vote against Senator Shute's motion, and I hope you will join me in accepting the majority opinion of the committee.

I might add also that the shield law as proposed, in my opinion, would only apply to state courts. It would not apply to the federal courts. I think the federal courts would have to pass their own regulations relative to the procedure in the federal courts relative to witnesses and so forth.

I might also add that I am a little concerned as to whether or not any law in this area is legal under our Constitution, whether it is constitutional. Section 4 of Article I of our Constitution states that no laws shall be passed regulating or restraining the freedom of the press. I have serious reservations about whether the bill that came out of committee, or all of them, regulate the press, in a sense.

I do mention these things in the hopes of giving you a clear picture of the entire bill before us. Thank you.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Brennan.

Mr. BRENNAN: Mr. President and Members of the Senate: First I want to commend the distinguished Senator from Franklin, Senator Shute, for his eloquent and comprehensive remarks. I, like the good Senator from Penobscot, Senator Tanous, also support a shield law, but one I think, and that is Report "D", that might be enacted, and one I think that covers the problem.

The issue, as has been pointed out, of protecting the public's right to be informed by the press is a difficult and complex issue. The conflict between revealing the full truth in public proceedings, on the one hand, and protecting the confidentiality of a reporter's sources, on the other, is very direct.

A truly mutually satisfactory solution is difficult. As legislators

though, I think we must try to devise a compromise which to the maximum extent possible accommodates these conflicting interests. Report "D", L. D. 1796, represents an effort to arrive at such a compromise based on the practical realities of the abuses that have occurred, and which are most likely to occur in the future. I propose an unqualified testimonial privilege for news men subpoenaed to appear before grand juries. The principal cases which have arisen in this area in this country in recent years have almost exclusively dealt with grand jury appearances. This is where the need has been demonstrated.

The heart of the problem has been attempts by overzealous prosecutors to annex reporters as an investigative arm of government. As a practical matter, the abuses have arisen when the prosecutor decides to go on a fishing expedition and to exploit a reporter's confidential sources to bring politically motivated indictments or simply to gather information for agency data banks, somewhat similar to the Leslie Bacon Case, I believe.

The other serious abuse is when a prosecutor tries the tactic of compelling a reporter's testimony to legitimize other evidence gathered by illegal means, namely: wiretapping. The real problem has been prosecutors using grand jury powers to make investigative reporters a substitute for police or to compensate for illegal police work. In either case, it is an abuse that could cost the public dearly in lost confidential sources of important information and reporters being deterred from revealing information in the press.

Grand juries are particularly vulnerable to this kind of exploitation because of their legal character. Witnesses testify without counsel or any of the usual due process rights that are available in other legal proceedings. As a practical fact, the grand jury is dominated by the prosecutor, and he can serve whatever interest he wants, protected by secrecy and lack of adversaries. It is a very definite one-sided show. I personally had the experience of

presenting approximately a thousand cases, and in the grand jury room there were twenty citizens and one prosecutor, no transcript being taken, and I never saw an attorney there. So, it is not surprising that grand juries have been the arena where newsmen's privilege cases have been fought. And it is likely that insofar as abuses occur in the future, this is where they are likely to be.

I favor an unqualified privilege for bona fide reporters, whether newspaper, TV, college, or others in grand juries. That is the best way to protect the confidential relationships that reveal wrongdoing and corruption. And this is a reference to the question raised by the good Senator from Kennebec, Senator Joly, in regard to lack of definition. I would refer him to Report "D", where a newsman is defined as one regularly employed in gathering news. And I say it would cover the usual reporter, whether a college reporter, TV reporter, or a newspaperman. Once a case has been established, once real due process standards apply — this is after the grand jury indictment — once a real defendant is on trial with his fate at stake, then I think the public's interest in getting all possible evidence before the fact-finders is the predominant consideration, for the public also has a legitimate interest in seeing justice done. And fact-finders deciding the fate of individuals are entitled to know all the relevant facts.

In summary, we have a potential direct conflict here between free press and fair trial. I believe we have identified some of the major abuses likely to lead to erosion of a free press. One, the grand jury subpoena and, two, the overzealous prosecutor. I believe that full evidence at a trial must be a major right, both for prosecution and defense, so that a fair verdict can be best assured.

L. D. 1796, again, which is Report "D", is a compromise that grapples with the practical problems, and protects the key interests of both the press and the courts. For these reasons, and again not because I oppose the

concept of a shield, I must at this time oppose the motion of the good Senator from Franklin, Senator Shute, and if his motion is defeated, I will then offer a motion for acceptance of Report "D", which is a modified shield.

The PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Shute.

Mr. SHUTE: Mr. President and Members of the Senate: I would like to thank publicly on the Senate floor Senator Tanous and Senator Brennan for their effort to assist me in this legislation. Their committee was very receptive at a better than two-hour hearing, and by the report they have given this legislature you can see that they have spent a lot of time on it. I do appreciate their efforts. I appreciate, again, their efforts in an attempt to find some solution to the problem. However, I maintain that when you start qualifying basic freedom you are chipping away at that freedom, and Reports "A", "D" and "E" are all qualifications.

Now, to be very frank with you, I was afraid of 17A, and this is why I made available to Senator Tanous some of the qualifications that were possible. I no longer am afraid of it because this is going to be its ultimate fate if Report C" does not pass. So, we have a basic right of a free press facing us, and because of this basic right you know that I made no attempt to do any lobbying among members of this body because I feel this issue really is above lobbying. I did make available copies of an editorial in the April 10th issue of the Press Herald, which I think is very basic to the basic issue making it easier for the people to know what is going on in government, crime, and every other thing.

When you start qualifying and send your newsmen to Superior Court, any other court, or any other body to seek disclosure from a newsman on his sources of information, he runs a risk of contempt and he will go to jail, and this is why newsmen have gone to jail. Again, I reiterate my thanks to the two members of the Judiciary Committee, who were

very capable and able people, for their assistance in this matter. I urge you to vote for report "C", which will give newsmen an absolute privilege. Thank you.

The PRESIDENT: The pending motion before the Senate is the motion of the Senator from Franklin, Senator Shute, that the Senate accept Report "C", Ought to Pass, on Bill, "An Act Creating the Free Flow of Information Act". A roll call has been requested. Under the Constitution, in order for the Chair to order a roll call, it requires the affirmative vote of at least one-fifth of those Senators present and voting. Will all those Senators in favor of ordering a roll call please rise and remain standing until counted.

Obviously more than one-fifth having arisen, a roll call is ordered.

The Chair recognizes the Senator from Cumberland, Senator Berry.

Mr. BERRY: Mr. President and Members of the Senate: I am supporting Senator Shute's position. I think that the very number of the reports that have come out of the committee indicate the complexity of the problem, but they also indicate that the farther we get away from Senator Shute's report the farther we are getting away from the basic problem.

The problem, of course, is muddled and made confused to us in the public by the demonstrated lack of professional ability on the part of many of the members of the news media. We could count on the fingers of two hands what we consider good, fully qualified, impartial, hardworking, newspeople in the State of Maine. I say this with no criticism to those that are not counted in this group because, like so many other classes of people here in the State of Maine, I think that the press is grossly underpaid, and these points that we are concerned with directly reflect this.

I think that the lamentable lack of professional standards, which of course are very hard to define, but this lack of professional standards makes the problem extremely complex for us in the legislature. We classify as newspeople everyone connected with the

papers and the radio. This is probably wrong. To my mind come individual actions by some of these people who cannot by any stretch of the imagination be considered newsmen. I think one of the grossest examples was the performance of Jack Anderson when he literally crucified Senator Eagleton, and then when it was all over said he did it merely to beat out a fellow competing newsmen. Now, this is a good example of the problem we have.

How the profession can regulate itself, none of us know; I don't think it can. For us the issue is confused, as I indicate, by everybody calling himself a newsmen, and very, very few people having the professional right to do it. But I do feel that this points directly to Senator Shute's report. And I think, while I am in agreement with the problems that have been attempted to be solved by Senator Tanous, Senator Brennan, and the other speakers, which justify their positions, and I am in sympathy with them, I do feel that we are talking about a principle here, and if we get away from the principle we are going to get away from the heart of the subject. I hope you would support Senator Shute in his report.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Richardson.

Mr. RICHARDSON: Mr. President, if I may, I would like to inquire of the good Senator from Franklin, Senator Shute, on two questions. One, would his legislation protect a newsmen involved in a civil action for defamation of character or libel? Two, in the present status of L. D. 99, is there any attempt made to define a newsmen?

The PRESIDENT: The Senator from Cumberland, Senator Richardson, has posed a question through the Chair which the Senator from Franklin, Senator Shute, may answer if he desires.

The Chair recognizes the Senator from Franklin, Senator Shute.

Mr. SHUTE: Mr. President and Members of the Senate: There is purposely no attempt in L. D. 99 to define what a newsmen is because, in my view, this is further

qualification, and reduces the effectiveness of the legislation. Senator Brennan has defined what a newsmen is in his L. D.

When you are seeking a means to obtain an absolute privilege to conform to the First Amendment to the Constitution, when you start defining a newsmen or a periodical, a publication, you are going to run into trouble. The press is the press is the press, whether it is electronic or whether it is by print. So there is no attempt to define a newsmen. With relation to the question raised by the Senator from Cumberland, Senator Richardson, I must ask the clerk to read the question.

The PRESIDENT: Perhaps the Senator from Cumberland, Senator Richardson, would care to repeat his question.

The Chair recognizes the Senator from Cumberland, Senator Richardson.

Mr. RICHARDSON: Mr. President, my second question directed to the Senator from Franklin, Senator Shute, the question which perplexes me perhaps most of all, is whether or not L. D. 99 would also protect a newspaperman, or woman — until we pass ERA, we can't say newsmen — from being forced to disclose sources of information in a civil action involving a claim of defamation of character or libel.

The PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Shute.

Mr. SHUTE: Mr. President, I must apologize for having forgotten his first question. In a matter of civil action, a matter of libel, the courts have ample recourse. There are libel laws on the Maine Statutes now that in any case involving defamation of character, any publication or broadcast in this regard can be handled in our courts at the present time. This in no way detracts from that basic right, that is, the right to sue, under libel laws.

What we are talking about is an extension of the First Amendment to the Constitution. When you start dragging in civil actions, libel laws, irresponsibility of reporters, and all of the things that we know can

happen in any free government and free press, we are just starting to qualify what is a basic right, that the freedom of the press shall not be abridged. It is amplified in our own Section 4, article I, of the Maine Constitution. This is what it is all about, the people's right to know; nothing else and nothing less.

The PRESIDENT: Is the Senate ready for the question? The pending question before the Senate is the motion of the Senator from Franklin, Senator Shute, that the Senate Accept Report "C", Ought to Pass, on Bill, "An Act Creating the Free Flow of Information Act". A "Yes" vote will be in favor of accepting Report "C"; a "No" vote will be opposed.

The Secretary will call the roll.

ROLL CALL

YEAS: Senators Aldrich, Berry, Conley, Cummings, Cyr, Fortier, Greeley, Huber, Katz, Kelley, Minkowsky, Morrell, Peabody, Richardson, Shute.

NAYS: Senators Brennan, Cianchette, Clifford, Danton, Graffam, Hichens, Joly, Marcotte, Olfene, Roberts, Schulten, Sewall, Speers, Tanous, Wyman, MacLeod.

ABSENT: Senators Anderson, Cox.

A roll call was had. 15 Senators having voted in the affirmative, and 16 Senators having voted in the negative, with two Senators being absent, the motion did not prevail.

Mr. Tanous of Penobscot then moved that the Senate Accept the Ought to Pass in New Draft Report "A" of the Committee.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Brennan.

Mr. BRENNAN: Mr. President and Members of the Senate: I am not going to debate that extensively, but I really think where the need has been demonstrated is with grand juries, and that is what Report "D" does. Again, I am for the shield law and I will support whatever ultimately gets the votes, but I would ask this Senate to oppose that motion now so that they would have an opportunity to vote on the report that covers the

need where the need has been demonstrated.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS: Mr. President, I would like to request a roll call vote.

The PRESIDENT: A roll call has been requested. The pending motion before the Senate is the motion of the Senator from Penobscot, Senator Tanous, that the Senate accept Report "A", Ought to Pass in New Draft Under Same Title.

A roll call has been requested. Under the Constitution, in order for the Chair to order a roll call, it requires the affirmative vote of at least one-fifth of those Senators present and voting. Will all those Senators in favor of ordering a roll call please rise and remain standing until counted.

Obviously more than one-fifth having arisen, a roll call is ordered.

The Chair recognizes the Senator from Franklin, Senator Shute.

Mr. SHUTE: Mr. President and Members of the Senate: I might say that I am going to vote in favor of Report B", hopefully, to keep the bill alive. It almost survived the first time around. I would like to see it go to the other branch and see what disposition they make of it and have it returned here, in what form I wouldn't hazard a guess at this point, but I intend to vote for this motion.

The PRESIDENT: The pending motion before the Senate is the motion of the Senator from Penobscot, Senator Tanous, that the Senate accept Report A", Ought to Pass in New Draft, on Bill, An Act Creating the Free Flow of Information Act." A Yes" vote will be in favor of accepting Report A"; A No" vote will be opposed.

The Secretary will call the roll.

ROLL CALL

YEAS: Senators Aldrich, Berry, Clifford, Cummings, Fortier, Greeley, Huber, Katz, Minkowsky, Morrell, Olfene, Peabody, Roberts, Shute, Speers, Tanous.

NAYS: Senators Brennan, Cianchette, Conley, Cyr, Danton, Graffam, Hichens, Joly, Kelley, Marcotte, Richardson, Schulten, Sewall, Wyman, MacLeod.

ABSENT: Senators Anderson, Cox.

A roll call was had. 16 Senators having voted in the affirmative, and 15 Senators having voted in the negative, with two Senators being absent, the Ought to Pass in New Draft Report A" of the Committee was Accepted, the Bill in New Draft Read Once and Tomorrow Assigned for Second Reading.

The President laid before the Senate the third tabled and today assigned matter:

Bill, An Act Establishing a County Records Board." (S. P. 569) (L. D. 1709)

Tabled — April 12, 1973 by Senator Roberts of York.

Pending — Passage to be Engrossed.

On motion by Mr. Speers of Kennebec, retabled and Tomorrow Assigned, pending Passage to be Engrossed.

The President laid before the Senate the fourth tabled and today assigned matter:

Communication — Minority Report of the Health and Institutional Services Committee Study of State Institutions. (H. P. 1437)

Tabled — April 17, 1973 by Senator Berry of Cumberland.

Pending — Placing on File.

Thereupon, the Communication was Placed on File in concurrence.

The President laid before the Senate the fifth tabled and specially assigned matter:

Bill, An Act Relating to Penalty for Burglary." (H. P. 206) (L. D. 279)

Tabled — April 17, 1973 by Senator Tanous of Penobscot.

Pending — Passage to be Engrossed.

(Committee Amendment A" (H-170).

Which was Passed to be Engrossed, as Amended, in non-concurrence.

Sent down for concurrence.

The President laid before the Senate the sixth tabled and specially assigned matter:

Bill, "An Act Requiring the Ramping of Curbs at Crosswalks for Physically Handicapped and Elderly Persons." (S. P. 585) (L. D. 1797)

Tabled — April 17, 1973 by Senator Joly of Kennebec.

Pending — Passage to be Engrossed.

On motion by Mr. Joly of Kennebec, tabled and Specially Assigned for April 24, 1973, pending Passage to be Engrossed.

The President laid before the Senate the seventh tabled and specially assigned matter:

House Reports — from the Committee on Education — Bill, "An Act Relating to Conveyance of Secondary Pupils." (H. P. 633) (L. D. 847) Majority Report — Ought to Pass; Minority Report — Ought Not to Pass.

Tabled — April 17, 1973 by Senator Minkowsky of Androscoggin.

Pending — Acceptance of Either Report.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Minkowsky.

MR. MINKOWSKY: Mr. President and Members of the Senate: I think every one of us should be concerned with this particular piece of legislation as this does impose quite an additional cost to the large communities in the State of Maine.

I would like to project my remarks predicated on what it will cost the City of Lewiston. Presently in the City of Lewiston, elementary costs of transportation of students is about \$183,750. This changes the present statutory law to encompass secondary students and, both with a parochial and a public school in the City of Lewiston at the secondary level, basically Lewiston High School and St. Dominics, this will impose an additional burden to the City of Lewiston of about \$32,000, or about a 17 per cent increase. This includes about 510 additional secondary students that will be transported.

I will call the Senate's attention to the fact that presently in the Education Committee there are four education reform bills. I would hope that one of those particular bills will be implemented in the 106th Legislature, which would really make this particular bill here of no particular value. On that particular basis, Mr. President, I would move that this particular bill be indefinitely postponed.

The PRESIDENT: The Senator from Androscoggin, Senator Minkowsky, now moves that Bill, "An Act Relating to Conveyance of Secondary Pupils", be indefinitely postponed. Is this the pleasure of the Senate?

Thereupon, the Bill and accompanying reports were Indefinitely Postponed in non-concurrence.

Sent down for concurrence.

The President laid before the Senate the eighth tabled and specially assigned matter:

Bill, "An Act Broadening the Sales and Uses Tax Exemption on Water and Air Pollution Control Facilities." (H. P. 60) (L. D. 72)

Tabled — April 17, 1973 by Senator Wyman of Washington.

Pending — Enactment.

Mr. Wyman of Washington then moved the pending question.

Thereupon, on motion by Mr. Sewall of Penobscot, placed on the Special Legislative Research Table.

The President laid before the Senate the ninth tabled and specially assigned matter:

Bill, "An Act Relating to Competitive Bids and Fair Minimum Wages for Construction of Public Improvements." (S. P. 388) (L. D. 1134)

Tabled — April 17, 1973 by Senator Berry of Cumberland.

Pending — Passage to be Engrossed.

(Committee Amendment "A" (S-69)).

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Berry.

Mr. BERRY: Mr. President and Members of the Senate: I have a Senate Amendment which I will propose at the right time. This has been cleared with BPI and, instead of trying to amend the bill, it was thought better to rewrite it. All this bill does and all it was intended to do was raise the amount of competitive bidding handled by BPI from \$10,000 to \$25,000. With the increase in prices, this will be more or less of a housekeeping arrangement. Mr. President, I move the rules be suspended and the Senate reconsider its action whereby it adopted Committee Amendment "A".

The PRESIDENT: The Senator from Cumberland, Senator Berry, now moves that, under suspension of the rules, the Senate reconsider its action whereby it adopted Committee Amendment "A". Is this the pleasure of the Senate?

The motion prevailed.

On further motion by the same Senator, Committee Amendment "A" was Indefinitely Postponed.

The same Senator then presented Senate Amendment "A" and moved its Adoption.

Senate Amendment "A", Filing No. S-83, was Read and Adopted, and the Bill, as Amended, Passed to be Engrossed.

Sent down for concurrence.

(Off Record Remarks)

On motion by Mr. Sewall of Penobscot,

Adjourned until 9:30 tomorrow morning.