

MAINE STATE LEGISLATURE

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(After Deadline)
SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 2250

S.P. 862 In Senate, February 11, 1988
Approved for Introduction by a Majority of the Legislative
Council pursuant to Joint Rule 27.
Reference to the Committee on Legal Affairs suggested and
ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator GAUVREAU of Androscoggin.

Cosponsored by Senator BRAUN of Knox, Representative ALLEN
of Washington.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-EIGHT

1 RESOLVE, Authorizing Kenneth and Janice
2 Demuth to Bring Civil Action Against
3 the State.
4

5 Action against the State of Maine authorized.
6 Resolved: That, notwithstanding any law to the
7 contrary, Kenneth and Janice Demuth are authorized to
8 bring suit against the State and its employees for
9 personal injuries in an amount to exceed any statutory
10 limits of recovery, and any immunity defenses of the

1 Maine Tort Claims Act shall not bar such suit or
2 recovery.

3 Kenneth Demuth was shot in the face on the morning
4 of May 13, 1986, at approximately 10 A.M. Mr. Demuth
5 was assisting the Maine State Police in trying to talk
6 to Ken Mitchell, a neighbor who had been shooting at
7 passersby the day before. Apparently, Mitchell, a war
8 veteran being treated by the Veterans Administration,
9 failed to take his medication. Mr. Demuth was afraid
10 that Mr. Mitchell might shoot at the school bus, and
11 therefore agreed to help the police when he was
12 asked. Mr. Demuth drew them a map of the roads in the
13 area and helped to put snipers in position. Mr.
14 Demuth was given a bullhorn to talk to Mr. Mitchell,
15 and attempted to "talk him out" as he was afraid the
16 police might be forced to injure Mr. Mitchell.

17 As Mr. Demuth attempted to talk to Mr. Mitchell,
18 Mr. Demuth was shot by Mitchell. The bullet struck
19 his right eye. Mr. Demuth lost his right eye and
20 suffered scarring and emotional trauma from such a
21 tragic and gruesome injury. Janice Demuth has
22 suffered and will continue to suffer a loss of
23 consortium.

24 Kenneth and Janice Demuth allege that the
25 negligence of the State and its employees in failing
26 to take steps to protect him was the proximate cause
27 of Kenneth Demuth's injury.

28 This action, if authorized, is to be brought in
29 the Superior Court of Knox County, within one year
30 from the passage of this resolve, against the State
31 and its employees for damages, if any. The action and
32 the conduct of it shall be according to the practice
33 of actions or proceedings between parties in the
34 Superior Court. The liabilities of the parties and
35 elements of damage, if any, shall be the same as
36 liabilities and elements of damage between
37 individuals. The complaint issuing out of the
38 Superior Court under the authority of this resolve
39 shall be served on the Secretary of State by attested
40 copy by the sheriff or his deputies in any county of
41 the State. The Attorney General is authorized and

1 designated to appear, answer and defend this action
2 and none of the statutory limits of recovery or
3 immunities existing pursuant to the provisions in the
4 Maine Tort Claims Act shall apply. The Attorney
5 General or his designee is further authorized to enter
6 into a compromised settlement, if agreed to by the
7 parties, which shall be binding on the State.

8 Any judgment that may be recovered in this civil
9 action shall be payable from the State Treasury on
10 final process issued by the Superior Court and costs
11 may be taxed for Kenneth and Janice Demuth if they
12 recover in this action. Their recovery shall not
13 exceed \$300,000, including costs. A hearing shall be
14 before a Justice of the Superior Court, with or
15 without a jury. The Justice shall be the regularly
16 scheduled Justice presiding in the Knox County
17 Superior Court when this matter is scheduled for trial.

18 STATEMENT OF FACT

19 Mr. Demuth worked for the State of Maine,
20 Department of Corrections, at the Maine State Prison
21 for 12 years. While at the prison, he was nicknamed
22 "The Bear" because of his courageous confrontations of
23 hostile inmates and his ability to defuse explosive
24 situations. He was a trusted and valuable employee of
25 the State and law enforcement offices until his
26 retirement in 1984 because of 2 heart attacks suffered
27 while working at the prison.

28 Kenneth Demuth was shot in the face on the morning
29 of May 13, 1986, at approximately 10 A.M.. Kenneth
30 and Janice Demuth allege that the negligence of the
31 State and its employees in failing to take steps to
32 protect him was the proximate cause of Kenneth
33 Demuth's injury.

34 This resolve is being introduced because the
35 statutory limits for recovery imposed by the Maine
36 Tort Claims Act, \$10,000 for each incident, are
37 inadequate to compensate Kenneth and Janice Demuth for
38 the personal injury to Kenneth Demuth.

39