

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
ONE HUNDRED AND TWELFTH LEGISLATURE

**SECOND REGULAR SESSION**  
January 8, 1986 to April 16, 1986

**SECOND SPECIAL SESSION**  
May 28, 1986 to May 30, 1986

AND AT THE

**THIRD SPECIAL SESSION**  
October 17, 1986

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN  
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 163-A, SUBSECTION 4.

---

J.S. McCarthy Co., Inc.  
Augusta, Maine

---

---

# **STATE OF THE JUDICIARY ADDRESS**

February 18, 1986

by

CHIEF JUSTICE VINCENT L. McKUSICK

to the

SECOND REGULAR SESSION

One Hundred and Twelfth Legislature

---

---

## “THE STATE OF THE JUDICIARY”

A REPORT TO THE JOINT CONVENTION  
OF THE 112th LEGISLATURE  
BY CHIEF JUSTICE VINCENT L. McKUSICK  
February 18, 1986

It's a high honor to address this Joint Convention for a second time. Last February I spoke to you about the Policy of the Three C's—comity, communication, and cooperation. I suggested to you that “there is a governmental principle parallel to the Separation of Powers Doctrine—and that principle teaches us that each of the three branches must practice a policy of comity, communication, and cooperation with the other branches on matters of common concern.” It is in that Spirit of the Three C's that I welcome this opportunity to report again to you of the Legislative Branch. Joining me today are my colleagues of the Supreme Judicial Court as well as the Chiefs of our trial courts, Chief Justice Clifford and Chief Judge Devine, and our State Court Administrator Dana Baggett. All of us look forward to visiting with you after the adjournment of this Joint Convention.

Last year, at the outset of your first and longer session, I gave you a comprehensive review of the business of the Maine courts. This year I intend more of an update—a survey of what the Three Branches, working together in the spirit of the Three C's, have accomplished in the first 14 months of your current legislative term—and then I will discuss some matters of common concern that we are now facing.

Let me start with a report from each of the courts for the year 1985. First, our trial courts experienced a remarkable upsurge in case filings as compared with 1984. In the District Court new cases jumped 13%, to nearly a quarter of a million, by far the highest ever. For the first time, civil violations and traffic infractions passed the 100,000 mark. The filing in 1985 of 25,000 small claims—“small” only relatively, since damages recovered can go as high as \$1,400—also set a new record for the District Court.

In the Superior Court, although civil filings grew only modestly, criminal case filings fairly exploded—they increased by over 20%. The increases in our biggest counties for criminal caseload were even more dramatic—27% in Cumberland County and 53% in York.

It is, however, more than number of filings that measures the litigation explosion Maine courts are facing. Consistent with a phenomenon observed all across the country, court cases in Maine are qualitatively becoming more complex and more time-consuming to try. In the Superior Court the trial of run-of-the-mill auto negligence cases, once commonplace, has been replaced by much more complex litigation for example, lengthy product liability suits, and zoning and other appeals produced by increased development pressures in many parts of Maine. Any new administrative regulation adds to the workload of the Superior Court, to which appeals are taken from both local and state agency decisions. For example, the hospital cost containment law of two years ago is just now beginning to produce administrative appeals to the Superior Court that promise to have economic complications similar to appeals the Law Court gets from the Public Utilities Commission, along with the difficult procedural and legal issues that come with a new statutory scheme.

The District Court is experiencing the same increase in the length and complexity of its trials. Marital property questions in divorce cases and the difficult issues involved in child protection and parental rights termination cases are just some examples.

I am proud of the steps taken by our trial courts to improve their operations in the face of these greater demands. Under Chief Justice Clifford's leadership, the expedited case flow program for civil cases, started experimentally in 4 counties in November 1984, went statewide the first of this month. In this program, a judge reviews every civil case soon after it is filed. About  $\frac{1}{4}$  of the civil cases are found suitable to put on a fast track and the reviewing judge sets the time schedule for completing discovery and going to trial. Many of the other cases, particularly the megacases with multiple parties and complex issues, are specially assigned to a single judge. Through this active judicial management of litigation from the start, the Superior Court is cutting down on delay and expense to the benefit of the public.

I told you last year of the District Court's plans for using volunteer guardians ad litem for children involved in abuse and neglect proceedings. Under Chief Judge Devine's leadership and with financing by a federal grant, lay volunteers have been selected and trained and the program is fully under way at several court locations. You have before you a proposal to formalize this program as a regular feature of our District Court. This is a splendid program on its own merits, but has the additional attractiveness of not being any drain on our court budget. Any administrative expense for operating the lay volunteer system will be less than the attorneys' fees we otherwise would have to pay for the lawyer guardians. I am confident that without any net additional expense this CASA (court appointed special advocate) program so-called will much improve the way the courts handle these sensitive and most important child protection cases.

Turning to the Law Court, in 1985, 518 new appeals were filed—somewhat higher than any prior year. As in the trial courts, moreover, our civil appeals are becoming observably more complex and demanding. Along with discharging their rule-making and administrative responsibilities, my hard-working colleagues keep us well abreast of our heavy appellate caseload.

In the spirit of the Three C's, you of this 112th Legislature in your first regular session took several steps to help us in improving court operations. I pick out some examples. First, you last year authorized a commission appointed by the Governor, the President, the Speaker, and myself to study the possible relocation and consolidation of the Supreme Judicial Court into its own building here at the seat of State Government in Augusta. We look forward to receiving before the end of this year that commission's balanced appraisal of the pros and cons of such a move. Second, you last year started the process of improving court facilities in Cumberland, Sagadahoc, and Waldo Counties by enacting the enabling legislation by which the people of those counties last November 5th authorized court-building bond issues. Third, thanks to your financial support and with the help of a federal grant, we are well on the way towards computerizing our trial courts. The "laboratory" has been the Rockland District Court where Deputy Chief Judge Pease presides. Soon, other courts will be automated and vital computer links established with the Division of Motor Vehicles and the State Police. We look to computers to help our hard-pressed clerks' offices cope with burgeoning caseloads and to give our judges prompt and complete information before sentencing. Fourth, you last year corrected an oversight in the new judicial retirement law affecting older judges. Fifth, you by statute established the Court Mediation Service as a permanent structural feature of

the Judicial Department. Mandated for any contested issues in a divorce case where the couple have minor children, the mediation service has been used more, and has proven more efficacious, than any of us dared hope. In 1985 our mediation service conducted 4,400 divorce mediations, and 1,200 in small claims cases—and Lincoln Clark, the director, tells me that mediation when mandated is turning out to be as successful as when pursued at the parties' choice.

At this second regular session of the 112th Legislature, our mutual policy of the Three C's is faced with its principal challenge in regard to the financial needs of the courts in these difficult budgetary times. First, let me comment generally on the financing of our unified state court system. State funding and unified statewide management of our courts went into effect on January 1st just 10 years ago. In 1975 Legislature adopted that forward-looking change on the recommendation of the Study Commission and bore the name of its chairman, Senator, later Attorney General, Joseph E. Brennan. For more than 8 of the past 10 years, I have been privileged, as head of the Judicial Department, to work with you and your predecessor legislatures and with the Governor for the improvement of the courts of Maine. You have done much to that end. You of the Legislature eliminated trial *de novo* in the Superior Court on appeals by criminal defendants already convicted in the District Court. You restructured the appeals in workers' compensation cases. You created the position of Chief Justice of the Superior Court. You created the State Court Library Committee, initially headed by the late justice Thomas E. Delahanty, to provide professional supervision for the 18 county law libraries. We are appreciative of the financial support you have given the courts over the years. With that support, improved court facilities have come into being at many smaller locations around the state. Effective within the past 15 months, you of the Legislature increased judicial salaries from their prior position of being the lowest in the nation.

In spite of the court improvements that have often involved increased appropriations, the cost of operating the courts remains in the range of only some 1% of total state expenditures. At the same time the net burden on the public fisc is further reduced by the revenues turned in to the General Fund from the fines and fees imposed by the courts.

The general operating expenses of the courts—the “All Other” account exclusive of personnel costs and capital expenditures—include some substantial items over which we have little control if the courts are to be open and operating. For example, the Constitution requires the State to provide counsel for indigent criminal defendants, as well as counsel and other professional assistance for children and parents involved in child neglect and abuse cases brought by the Department of Human Services. Those mandated costs are, in Maine, made a financial responsibility of the Judicial Department. Our “All Other” account also pays for juror and witness fees, rent on leased court facilities, and all the other expenses of running the courts outside personnel costs. The litigation explosion—increased numbers and complexity of cases—translates directly into greater costs for the general operations of the courts.

On February 1, the Supreme Judicial Court took steps to assure that we do not exhaust the “All Other” appropriation before the end of the current fiscal year. The Court instituted a number of emergency cost-saving or cost-deferring measures, such as the suspension of any expenditures for judicial education, the elimination of computerized legal research, and a freeze on equipment purchases. We have also had to suspend our court mediation program, except for the most critical cases. We had already expended more than the entire amount appropriated for the mediation program for this whole fiscal year. The demand

for mediation far outran our budgeting expectations—that overrun resulted from mediation being required in divorce cases involving children and from its becoming routinely available for other cases everywhere across the state. Mediation has proved its value in spades. In appropriate cases, mediation produces a better brand of justice. I hope that working together we can resume of that valuable public service at a very early date.

The other financial issues before you involve, first, the tentative collective bargaining agreements negotiated with court employees. Two years ago, collective bargaining for Judicial Department employees came about by coordinated action taken by the Legislature and the Supreme Judicial Court, jointly advised by a citizens committee chaired by Dean James Carignan of Bates College. To avoid any problem of separation of powers, the Legislature enacted a statute, and at the same time the Supreme Judicial Court issued an administrative order, establishing in identical parallel fashion the right of court employees to bargain collectively. Pursuant to both the statute and the order, the Supreme Judicial Court designated the State Court Administrator as the bargaining representative of the Judicial Department. The process thus set in motion by the Legislature and the Court has now run its course and has produced proposed two-year contracts for court employees starting last July 1. The cost items in the contracts do not become effective until the Legislature appropriates the moneys to cover them. I recommend the funding of those contracts that have been duly negotiated through the collective bargaining process set up jointly by the Legislature and the Supreme Judicial Court.

Second, as of December 1 a year ago, the Legislature replaced a pay-as-you-go retirement system for judges with a funded, contributory retirement system, similar to the Maine State Retirement System available to other state employees. The aggregate amount of funding for that judicial retirement system in this current biennium is also at issue.

Third, the State has an obligation under the outstanding federal court order to complete the job of making all court facilities accessible to the handicapped. In the face of these budget problems, we in the Judicial Branch have been alert not only to the need for cost control but also to opportunities for appropriate revenue enhancement. Of course, court revenues are not dedicated; they go into the General Fund. Nonetheless, they can't be ignored in addressing the courts' financial needs. The litigation explosion that causes greater costs also tends to increase fees and fine revenue. Last June 1, the Supreme Judicial Court by rule more than doubled civil filing fees in all courts, the second increase in three years. At the same time, the Court is sensitive to the danger that higher filing fees will reduce court access, and so by rule the Court has provided for the waiver of filing fees in those few cases where appropriate. We expect court fines and fees to produce nearly \$14 million for the State in this fiscal year, an increase of 16% over last year.

In a second place, the Judicial Council, which I by statute head, directed a year ago a study of the collection of criminal and civil fines. A broadly representative committee, chaired by Assistant Attorney General William Stokes, has recommended for your consideration at this session a comprehensive bill designated to give the district attorneys and others representing the State better tools for collecting the fines imposed by the courts. In light of the \$50 million collected in court fines in the past 5 years, a collection record of 97% might not be considered too bad by *private* business standards; however, any appreciable amount of uncollected *public* fines cannot be tolerated. The integrity of our

court processes is damaged by the willful disregard of a fine imposed for a civil or criminal wrong, or by the willful failure to appear in response to a court summons.

In the spirit of the Three C's, your Joint Committee on Appropriations and Financial Affairs has designated a subcommittee to work with us on the financial concerns of the courts. You have my firm commitment to give you all the help at our command as you address the question of the financial needs of the courts.

Next year the whole nation will commemorate the 200th anniversary of the signing of the United States Constitution on September 17, 1787. The British statesman Gladstone a century ago called "the American Constitution ... the most wonderful work (of government) ever struck off at a given time by the brain and purpose of man." We were part of one of the 13 original States—the District of Maine within the Commonwealth of Massachusetts. Our four representatives participated in what Catherine Drinker Bowen in her story of the Constitutional Convention called the "Miracle at Philadelphia." The next year Maine towns sent 46 delegates on the arduous trip to Boston to take part in the state ratification convention.

Your President and your Speaker and I are joining Governor Brennan in proposing the creation of a Maine Commission on the Bicentennial of the United States Constitution. That Commission representing the three Branches can encourage and coordinate the plans already started by many civic and educational organizations in Maine and can cooperate with the like effort in the Mother Commonwealth. This is a time when all of us should count, and count again, the blessings of ordered liberty that we enjoy under the oldest constitution in today's world.

I wish you all well as you address your weighty responsibilities in the next couple of months. What is accomplished in these halls in the Spirit of the Three C's will decide the quality of justice in Maine for some time to come. Thank you very much for your time and attention.