

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Twelfth
Legislature***

OF THE

STATE OF MAINE

Volume I

FIRST REGULAR SESSION

December 5, 1984 - June 20, 1985

HOUSE

Wednesday February 6, 1985

Calling of the House to Order by the Speaker.
Prayer by Reverend Robert E. Stuart, Winter Street Baptist Church, Gardiner.

Quorum called; was held.

The Journal of yesterday was read and approved.

At this point, a message came from the Senate, borne by the Majority Floor Leader, Senator Violette of Aroostook, proposing a Convention of both branches of the Legislature to be held at 11:00 a.m. in the Hall of the House for the purpose of extending to Chief Justice Vincent L. McKusick and the Supreme Judicial Court an invitation to attend the Convention and to make such communication as they may be pleased to make.

Thereupon, the House voted to concur in the proposal for a Joint Convention to be held at 11:00 a.m. and the Speaker appointed Representative Diamond of Bangor to convey this message to the Senate.

Subsequently, Representative Diamond of Bangor reported the he had delivered the message with which he was charged.

Papers from the Senate

Bill "An Act to Appropriate Grant Funds to the Maine State Commission on the Arts and the Humanities to Support Current Established Programs" (S.P. 142) (L.D. 409)

Came from the Senate, referred to the Committee on Appropriations and Financial Affairs and Ordered Printed.

Was referred to the Committee on Appropriations and Financial Affairs in concurrence.

Bill "An Act Concerning Motor Vehicle Insurance and the Household Exclusion" (S.P. 145) (L.D. 412)

Bill "An Act Relating to Collateral and Terms of Consumer Loans under the Maine Consumer Credit Code" (S.P. 146) (L.D. 413)

Came from the Senate, referred to the Committee on Business and Commerce and Ordered Printed.

Were referred to the Committee on Business and Commerce in concurrence.

Bill "An Act to Restrict the Number of Advertising Signs Which May be Displayed by Licensed Retailers" (S.P. 147) (L.D. 414)

Came from the Senate, referred to the Committee on Business and Commerce and Ordered Printed.

On motion of Representative Brannigan of Portland, referred to the Committee on Legal Affairs in non-concurrence and sent up for concurrence.

Bill "An Act to Amend the Maine Consumer Credit Code" (S.P. 148) (L.D. 415)

Bill "An Act to Provide Credit Unions with the Same Right to make 2nd Mortgage Loans as Exist for Financial Institutions" (S.P. 149) (L.D. 416)

Came from the Senate, referred to the Committee on Business and Commerce and Ordered Printed.

Were referred to the Committee on Business and Commerce in concurrence.

Bill "An Act to Provide Greater Discretion to the Department of Human Services in Providing Assistance to Nursing Home Residents" (S.P. 150) (L.D. 417)

Bill "An Act to Clarify Financial Eligibility Standards for Public Assistance With Respect to Hospitals and Nursing Homes and Promote Equitable and Consistent Enforcement of such Standards" (S.P. 151) (L.D. 418)

Came from the Senate, referred to the Committee on Human Resources and Ordered Printed.

Were referred to the Committee on Human

Resources in concurrence.

Bill "An Act to Repeal Sunset Provisions on Certain Amendments to the Law Regarding Mediation in Domestic Relations Cases" (Emergency) (S.P. 144) (L.D. 411)

Bill "An Act to Amend the Habitual Offender Law" (S.P. 152) (L.D. 419)

Came from the Senate, referred to the Committee on Judiciary and Ordered Printed.

Were referred to the Committee on Judiciary in concurrence.

Bill "An Act Relating to the Legal Blood-alcohol Level under Maine's Operating under the Influence Laws" (S.P. 153) (L.D. 420)

Came from the Senate, referred to the Committee on Judiciary and Ordered Printed.

On motion of Representative Kane of South Portland, referred to the Committee on Legal Affairs in non-concurrence and sent up for concurrence.

Bill "An Act to Amend Certain Aspects of Post-conviction Review" (S.P. 154) (L.D. 421)

Came from the Senate, referred to the Committee on Judiciary and Ordered Printed.

Was referred to the Committee on Judiciary in concurrence.

Bill "An Act to Change the Exemption for Farm Family Corporations from 4 to 8 Employees under the Workers' Compensation Law" (S.P. 155) (L.D. 422)

Bill "An Act Amending the Municipal Public Employees Labor Relations Act to Provide for Newly Recognized or Certified Bargaining Agent to Bargain Fiscal Matters within 120 Days of Conclusion of Current Fiscal Operating Budget" (S.P. 164) (L.D. 433)

Bill "An Act Relating to the Admissibility of Certain Statements in Workers' Compensation Cases" (S.P. 165) (L.D. 434)

Came from the Senate, referred to the Committee on Labor and Ordered Printed.

Were referred to the Committee on Labor in concurrence.

Bill "An Act Concerning the Return of Security Deposits Paid by Tenants" (S.P. 156) (L.D. 423)

Came from the Senate, referred to the Committee on Legal Affairs and Ordered Printed.

Was referred to the Committee on Legal Affairs in concurrence.

Later Today Assigned

Bill "An Act to Eliminate Maine Criminal Justice Academy Attendance as a Prerequisite for Licensing of Former Law Enforcement Officers as Private Investigators" (S.P. 157) (L.D. 424)

Came from the Senate, referred to the Committee on Legal Affairs and Ordered Printed.

On motion of Representative Gwadosky of Fairfield, tabled pending reference and later today assigned.

Bill "An Act to Reduce Primary Election Costs" (S.P. 158) (L.D. 425)

Bill "An Act to Provide a Class A Lounge Liquor License" (S.P. 159) (L.D. 426)

Came from the Senate, referred to the Committee on Legal Affairs and Ordered Printed.

Were referred to the Committee on Legal Affairs in concurrence.

Bill "An Act to More Clearly Provide for Public Access to the County Budget Process" (S.P. 160) (L.D. 427)

Came from the Senate, referred to the Committee on Local and County Government and Ordered Printed.

Was referred to the Committee on Local and County Government in concurrence.

Bill "An Act to Grant Certain Political Rights to State Employees" (S.P. 167) (L.D. 435)

RESOLVE, Regarding a Study of the Personnel Law (S.P. 168) (L.D. 436)

Came from the Senate, referred to the Committee on State Government and Ordered Printed.

Were referred to the Committee on State Government in concurrence.

Bill "An Act to Repeal the Tax Exemption for Income Received as Winnings from the Maine Lottery" (S.P. 161) (L.D. 428)

Bill "An Act to Require Equal Treatment for Taxpayers in the Unorganized Territory" (S.P. 163) (L.D. 430)

Came from the Senate, referred to the Committee on Taxation and Ordered Printed.

Were referred to the Committee on Taxation in concurrence.

Later Today Assigned

Bill "An Act to Except Maine Farm Produced Wine from the 15 cents Per Gallon Premium Tax" (S.P. 162) (L.D. 429)

Came from the Senate, referred to the Committee on Taxation and Ordered Printed.

(The Committee on Reference of Bills had suggested reference to the Joint Select Committee on Alcoholism Services.)

On motion of Representative Diamond of Bangor, tabled pending reference and later today assigned.

Messages and Documents

The following Communication:

STATE OF MAINE
PUBLIC UTILITIES COMMISSION
242 State Street
State House, Station 18
Augusta, Maine 04333

February 1, 1985

The Honorable John L. Martin

Speaker of the House

State House, Station #2

Augusta, Maine 04333

Dear Speaker Martin:

In accordance with Title 35 of the Maine Statutes, I am enclosing the Annual Report of the Maine Public Utilities Commission.

Please do not hesitate to call if you have any questions regarding the materials contained in the report.

Sincerely,

S/PETER A. BRADFORD

Chairman

Was read and with accompanying report ordered placed on file.

Petitions, Bills and Resolves

Requiring Reference

The following Bills and Resolves were received and, upon the recommendation of the Committee on Reference of Bills, were referred to the following Committees, Ordered Printed and sent up for concurrence:

Aging, Retirement and Veterans

Bill "An Act to Clarify Restoration to Service Provisions for Recipients of Disability Allowances and Recipients of Retirement Allowances" (H.P. 325) (Presented by Representative HICKEY of Augusta) (Cosponsors: Representatives PERRY of Mexico, LACROIX of Oakland and DELLERT of Gardiner)

(Ordered Printed)

Sent up for concurrence.

Tabled and Assigned

Bill "An Act Regulating Transportation of Nonreturnable Beverage Containers into the State" (H.P. 326) (Presented by Representative LAW of Dover-Foxcroft) (Cosponsors: Senator BLACK of Cumberland and Representative BOST of Orono)

(The Committee on Agriculture was suggested.)

On motion of Representative Michael of Auburn, tabled pending reference and tomorrow assigned.

Business and Commerce

Bill "An Act to Amend the Severance Pay Law in Regard to Medical Insurance" (H.P. 327) (Presented by Representative BAKER of Portland)

Bill "An Act to Amend Certain Provisions of the Sunday Closing Law" (H.P. 328) (Presented by Representative HIGGINS of Scarborough) (Cosponsor: Representative BEAULIEU of Portland)

(Ordered Printed)

Sent up for concurrence.

Energy and Natural Resources

Bill "An Act to Clarify the Land Use Laws" (H.P. 329) (Presented by Representative CASHMAN of Old Town) (Cosponsor: Representative CARROLL of Gray)

(Ordered Printed)

Sent up for concurrence.

Fisheries and Wildlife

Bill "An Act to Establish a Coyote Snaring Season" (H.P. 330) (Presented by Representative McGOWAN of Canaan) (Cosponsors: Representatives TARDY of Palmyra, MASTERMAN of Milo and Senator TWITCHELL of Oxford)

(Ordered Printed)

Sent up for concurrence.

Labor

Bill "An Act to Reduce Workers' Compensation Rates for Unarmed Security Guards and Watchmen" (H.P. 331) (Presented by Representative JOSEPH of Waterville) (Cosponsors: Speaker MARTIN of Eagle Lake, Representative JACQUES of Waterville and Senator KANY of Kennebec)

(Ordered Printed)

Sent up for concurrence.

Tabled and Assigned

Bill "An Act to establish the Stanwood Wildlife Sanctuary in the City of Ellsworth" (H.P. 332) (Presented by Representative FOSTER of Ellsworth) (Cosponsor: Senator PERKINS of Hancock)

(The Committee on Local and County Government was suggested.)

On motion of Representative McHenry of Madawaska, tabled pending reference and tomorrow assigned.

State Government

Bill "An Act Relating to the Membership of and the Payment of Per Diem to Boards" (H.P. 333) (Presented by Representative GWADOSKY of Fairfield) (Cosponsor: Representative ERWIN of Rumford)

Bill "An Act to Provide for Appointment of the Commissioner of Inland Fisheries and Wildlife from within the Department" (H.P. 334) (Presented by Representative MacBRIDE of Presque Isle)

(Ordered Printed)

Sent up for concurrence.

Taxation

Bill "An Act to Impose a Sales Tax on Certain Services" (H.P. 335) (Presented by Representative BRANNIGAN of Portland)

(Ordered Printed)

Sent up for concurrence.

Transportation

Bill "An Act Concerning the Use of Seat Belts in Motor Vehicles" (H.P. 336) (Presented by Representative MacBRIDE of Presque Isle) (Cosponsor: Representative PINES of Limestone)

Bill "An Act to Repeal the Requirement that Fuel Use Certificate be Carried in the Vehicle at all Times" (H.P. 337) (Presented by Representative McPHERSON of Eliot)

(Ordered Printed)

Sent up for concurrence.

Special Sentiment Calendar

In accordance with House Rule 56 and Joint Rule 34, the following item:

On motion of Representative Law of Dover-Foxcroft, removed from the Special Sentiment Calendar:

Recognizing:

Elizabeth "Bette" Gregoire, of Dover-Foxcroft, for her long-time service to others and for her outstanding courage and faith; (HLS 71) by Representative LAW of Dover-Foxcroft. (Cosponsor: Senator PRAY of Penobscot)

Was read.

The SPEAKER: The Chair recognizes the Representative from Dover-Foxcroft, Representative Law.

Representative LAW: Mr. Speaker, Members of the House: For those of you who do not know Bette Gregoire, she has been a long time servant of the state and especially Piscataquis County. She was one of the leaders in bringing baton twirling as a competitive sport to the whole east coast.

For the past several years, she has been suffering a deteriorating heart condition. Several weeks ago, she was nominated as a likely candidate to have a heart transplant. She went to John Hopkins and about two weeks ago, while in John Hopkins waiting for a heart donor, she suffered a very serious heart attack and for a few days, they were not sure whether they were going to save her or not but, in the end, a quadruple bypass has saved her life and she is now recovering and it may be that she will not need the heart transplant but she is still having a lot of problems. I just wanted to bring you people up-to-date. Thank you.

Whereupon, the Order was passed and sent up for concurrence.

On motion of Representative Handy of Lewiston, was removed from the Special Sentiment Calendar:

In Memory of:

Maine Supreme Court Active Retired Associate Justice Thomas E. Delahanty, of Lewiston, a member of the 95th Maine Legislature, and beloved citizen who was well known and respected as an attorney and for his public service at both the federal and local levels; And Be It Resolved that we, the members of the Senate and House of Representatives, pause in a moment of understanding and prayer to inscribe this token of sympathy and condolence to all who share this great loss and respectfully request that when the legislature adjourn this date, it do so in honor and lasting tribute to the deceased. (HLS 76) by Representative HANDY of Lewiston. (Cosponsors: Representative COTE of Auburn, Senators GAUVREAU of Androscoggin, and BERUBE of Androscoggin)

Was read.

The SPEAKER: The Chair recognizes the Representative from Lewiston, Representative Handy.

Representative HANDY: Mr. Speaker, Members of the House: The City of Lewiston and Androscoggin County and, indeed, the State of Maine, has lost a true, dedicated public servant, Justice Thomas Delahanty. In my mind, Justice Delahanty, epitomizes the ideals of public service. He served the City of Lewiston well at the local level as corporation counsel and alderman in that city. He served the county well as its assistant attorney. He served the state as a member of the bench and served his nation as an agent for the FBI.

As a member of the Maine House of Representatives in the 95th Legislature, Justice Delahanty proved that a Freshman could do something outstanding and became the Democratic Party Floor Leader.

I would like to leave you with a few words that Justice Delahanty left us in 1951 — he says: "I understand and I fully well realize that one party may win an election but it takes two

parties to run the state. I came here with that in mind. I have endeavored from time to time to do what I believe the people of the state wanted to do. You don't have to defer your opinion when you believe you are right to the opinion of others. You may have your own opinion and you may stick by it and I will admire everyone in this House who will stick by his opinion in regard to the measures that we come here to decide."

To Judge Delahanty's wife, Jean; his sons, Tom, John and Kevin, we have sent our heartfelt sympathy and urge them God Speed.

The SPEAKER: The Chair recognizes the Representative from Lewiston, Representative Aliberti.

Representative ALIBERTI: Mr. Speaker. Members of the House: I am most honored to make my debut here today as a personal tribute to my neighbor and friend and pay him my respects with a great deal of pride by saying: "I am a Roosevelt, Truman, Kennedy, Muskie, Delahanty Democrat." Thank you.

Whereupon, the Joint Resolution was adopted and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

Consent Calendar**First Day**

In accordance with House Rule 49, the following item appeared on the Consent Calendar for the First Day:

(H.P. 51) (L.D. 57) Bill "An Act for the Town of Brownville to Acquire the Assets and Liabilities of the Brownville Junction Water District" (Emergency) Committee on Utilities reporting "Ought to Pass" as amended by Committee Amendment "A" (H-3)

Under suspension of the rules, Second Day Consent Calendar notification was given, the House Papers were passed to be engrossed or passed to be engrossed as amended and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

Consent Calendar**Second Day**

In accordance with House Rule 49, the following item appeared on the Consent Calendar for the Second Day:

(H.P. 17) (L.D. 15) Bill "An Act to Extend the Maximum Length of Agreements in the University of Maine Labor Relations Act from 2 Years to 4 Years" (C. "A" H-2)

No objections having been noted at the end of the Second Legislative Day, the House Paper was Passed to be Engrossed as Amended and sent up for concurrence.

Orders of the Day

The Chair laid before the House the first tabled and today assigned matter:

Bill "An Act to Provide Housing Resources to Maine's Older Citizens" (S.P. 134) (L.D. 373) — In Senate, Indefinitely Postponed.

(The Committee on Reference of Bills had suggested reference to the Committee on Appropriations and Financial Affairs.)

Tabled—February 5, 1985 by Representative CARTER of Winslow.

Pending—Reference.

On motion of Representative Carter of Winslow, the Bill was indefinitely postponed in concurrence.

The Chair laid before the House the second tabled and today assigned matter:

Bill "An Act to Amend the Law Relating to the Installation of Smoke, Heat or Fire Detection Systems in Certain Hotels" (H.P. 276) (L.D. 346)

— In House, Referred to the Committee on Legal Affairs on February 1, 1985.

— In Senate, Referred to the Committee on Business and Commerce in non-concurrence on

February 1, 1985.

Tabled—February 5, 1985 by Representative BRANNIGAN of Portland.

Pending—Further consideration.

On motion of Representative Reeves of Pittston, the House voted to insist. Sent up for concurrence.

The Chair laid before the House the third tabled and today assigned matter:

Bill "An Act to Amend the Law Concerning Smoke Detectors in all Multiapartment Dwellings" (H.P. 279) (L.D. 349)

—In House, Referred to the Committee on Legal Affairs on February 1, 1985.

—In Senate, Referred to the Committee on Business and Commerce in non-concurrence on February 1, 1985.

Tabled—February 5, 1985 by Representative BRANNIGAN of Portland.

Pending—Further consideration.

On motion of Representative Reeves of Pittston, the House voted to insist. Sent up for concurrence.

The Chair laid before the House the fourth tabled and today assigned matter:

Joint Order — Relative to Amending the Joint Rules to Establish a Joint Select Committee on Indian Affairs (H.P. 306)

Read in House February 5, 1985.

Tabled—February 5, 1985 by Representative DIAMOND of Bangor.

Pending—Passage.

The SPEAKER: The Chair recognizes the Representative from Old Town, Representative Cashman.

Representative CASHMAN: Mr. Speaker, Men and Women of the House: To explain this Joint Order, what we are doing is establishing a committee to oversee proposals introduced into the Legislature that affects the Maine Indian Lands Claim Settlement Act passed by the House and Senate in 1980. The committee is made up of members of the two tribes, the Passamaquoddy and the Penobscots, who are represented here in the House, the House members who represent the Districts that include those reservations and the Senate members as well.

The job of the committee will simply be to oversee these matters and co-ordinate efforts by the Legislature and the tribes to ratify acts that affect the Settlement Act. We cannot change the Settlement Act unilaterally and neither can the tribes. Anything that passes the Legislature affecting that Act has to also be approved by the tribes and the establishment of the committee and by putting a member of the Tribal State Commission on it. It is just an attempt to co-ordinate the efforts of those three agencies in fine tuning in passing changes to the Settlement Act.

The SPEAKER: The Chair recognizes the Representative from Old Town, Representative Paradis.

Representative PARADIS: Mr. Speaker, Members of the House: Though I am not a party to this commission that is being proposed, I do abut onto the Penobscot Reservation, have long observations on the Indian Nation in itself. Our Indian nations have long had representation here on the floor of this House and down through the years, it has been an observation that matters affecting their interests have often been awkward to deal with and have, quite often, not taken into consideration some of their interests. I believe that the formation of this commission will place them more on line with the legislative process and provide them with a vehicle and an opportunity for expression of their concerns.

I encourage the passage of this Order and I believe that it will bring us a worthwhile benefit to the process.

Whereupon, the Order was passed and sent up for concurrence.

The Chair laid before the House the fifth

tabled and today assigned matter:

House Divided Report — Majority (12) "Ought to Pass" in New Draft under New Title Bill "An Act to Eliminate Volume Determined Delivery Prices of Milk" (Emergency) (H.P. 320) (L.D. 431) — Minority (1) "Ought to Pass" in New Draft under New Title RESOLVE, Modifying Maine Milk Commission Order 85-2 to Remove Volume Discount Pricing (Emergency) (H.P. 321) (L.D. 432) — Committee on Agriculture on RESOLVE, Directing the Maine Milk Commission to Delay Implementation of Pricing Order 85-2 which Establishes Different Delivery Price Schedules for Milk at Wholesale (Emergency) (H.P. 73) (L.D. 94)

Tabled—February 5, 1985 by Representative MICHAEL of Auburn.

Pending—Motion of same Representative to Accept the Majority Report.

On motion of Representative Michael of Auburn, retabled pending his motion to accept the Majority "Ought to Pass" Report and tomorrow assigned.

The Chair laid before the House the following item which was tabled earlier in today's session:

Bill "An Act to Eliminate Maine Criminal Justice Academy Attendance as a Prerequisite for Licensing of Former Law Enforcement Officers as Private Investigators" (S.P. 157) (L.D. 424).

Came from the Senate, referred to the Committee on Legal Affairs and Ordered Printed.

On motion of Representative Gwadosky of Fairfield, referred to the Committee on Legal Affairs in concurrence.

The Chair laid before the House the following item which was tabled earlier in today's session:

Bill "An Act to Except Maine Farm Produced Wine from the 15 cents Per Gallon Premium Tax" (S.P. 162) (L.D. 429).

Came from the Senate, referred to the Committee on Taxation and Ordered Printed.

(The Committee on Reference of Bills had suggested reference to the Joint Select Committee on Alcoholism Services.)

Whereupon, was referred to the Committee on Taxation in concurrence.

(Off Record Remarks)

At this point, the Senate entered the Hall of the House and a Joint Convention was formed.

In Convention

The President of the Senate, Charles Pray, in the Chair.

On motion of Senator Violette of Aroostook, it was

ORDERED, that a Committee be appointed to wait upon the Honorable Vincent L. McKusick, Chief Justice of the Supreme Judicial Court and members of the Judiciary to inform them that the two branches of the Legislature are in Convention assembled ready to receive such communication as pleases them.

The Chair appointed:

Senators:

Carpenter of Aroostook
Chalmers of Knox
Sewall of Lincoln

Representatives

Kane of South Portland
Carrier of Westbrook
Paradis of Augusta
Allen of Washington
Cooper of Windham
Priest of Brunswick
Drinkwater of Belfast
MacBride of Presque Isle
Lebowitz of Bangor
Stetson of Damariscotta

Senator Carpenter, for the Committee, subsequently reported that the Committee had

delivered the message with which it was charged and that the Honorable Chief Justice and members of the Judiciary were pleased to say that they would forthwith attend the Convention.

At this point, the Honorable Chief Justice and members of the Judiciary entered the Convention Hall amid the applause of the Convention, the audience rising.

The Honorable Chief Justice of the Supreme Judicial Court, Vincent L. McKusick, then addressed the Convention as follows:

CHIEF JUSTICE VINCENT L. MCKUSICK: President Pray, Speaker Martin and distinguished members of the 112th Legislature, my colleagues from the bench and ladies and gentlemen: I do thank you very much for that warm welcome. I count it a high honor to be invited to address this Joint Convention.

At the outset, I want to expand on a thought about the Separation of Powers that I expressed to you at your Legislative Banquet in early December. By article III of our Maine Constitution, the powers of government, as Caesar said of all Gaul, are divided into three parts, Legislative, Executive, and Judicial. Article III expressly mandates that each of the three branches stay within its own domain and not intrude upon the responsibilities of the others. Judges must and will be particularly conscious of that constitutional command. The independence of the judiciary depends upon it. But Separation of Powers does not mean judges have to be isolated; nor does it mean judges have to be confrontational. On the contrary—now in my eighth year as head of the Judicial Branch, I have come to believe more and more 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.

To carry out that Policy of the Three C's—comity, communication, and cooperation—the Chief Justice, by a tradition started in 1977 by my predecessor, Chief Justice Dufresne, has addressed every Legislature early in its first regular session. I regularly report to you so that you legislators may be better able to carry out your heavy responsibilities with regard to the Judicial Branch. Your responsibilities include enactment of the substantive law for both civil and criminal cases; and resolution of questions of court structure and jurisdiction, court facilities, court operating budgets, and the number of judges and their compensation.

Yes, in our relationship with this great body, I believe strongly in the value of communication—two-way communication, incidentally. Also, communication not just by talking to you in a formal setting such as today, but also by having our judges and our State Court Administrator provide information at the committee hearings that are the basic fabric of the legislative process. To promote communications with the Legislature, the Judicial Branch has formed a Legislation Committee headed this year by Superior Court Chief Justice Robert W. Clifford. One of its members, State Court Administrator Dana Baggett, will be available to you on a priority basis to respond to your inquiries about the courts.

Over the years the Policy of the Three C's, as I call it, has given Maine a court system we can jointly be proud of. I am reinforced in that pride every time I compare notes with my counterparts at the National Conference of Chief Justices. The features of Maine's court system admired by other states include the total statewide unification of four courts; state funding that isolates the courts from direct dependence on local revenues; the creation of career civil service (independent of political affiliation) for the men and women serving our courts; and the use of professional court administrators to manage the business-type func-

tions of the courts, freeing judges for judging. Cooperation among the three branches has produced fine results for the administration of justice during the past year. To cite a few examples:

First, the Legislature and the Supreme Judicial Court last year cooperated in implementing the recommendations of your legislative Commission on Local Land Use Violations, headed by Senator Richard Trafton. You, by statute, conferred additional jurisdiction upon the District Court to enforce compliance with zoning and other land use laws by equitable orders of abatement; and our Court, by rule, prescribed streamlined procedures for such cases in the District Court similar to the procedures for such cases in the District Court similar to the procedures used there for civil traffic infractions. By this joint effort the previous crazy-quilt of cumbersome and incomplete enforcement procedures in the Superior and District Courts has been replaced with a uniform, simplified process in the District Court.

Second, collective bargaining for Judicial Department employees has come about by the coordinated action taken by the Legislature and the Supreme Judicial Court, jointly advised by a citizen committee with balanced membership representing both sides of public labor relations. 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 judicial employees to bargain collectively.

Third, following the recommendations of your State Compensation Commission, chaired by Donald E. Nicoll, the Legislature last year, addressed on a long-range basis the problem of judicial compensation and pensions. By your action, you established the principle that Maine judges are worthy of being paid comparably with federal judges and should have a modern, funded pension program in which a younger judge can build up a vested interest. That was landmark legislation. With it on the books, there should be less of a financial barrier to Maine's getting the best qualified women and men to accept judicial appointment.

Fourth, last year you took the first steps to meet our documented need for adding three judges to each of our principal trial courts, the Superior Court and the District Court. You authorized one additional judge for each court. We hope you will this year take the second step in a three-year program. Our need to complete our three-year program is plain, if our trial courts are to cope with their heavy caseloads.

Fifth, you of the Legislature, under the leadership of Representative Ruth Foster and others on the Judiciary Committee last year, identified a need for the legal system to do more to protect children caught up in the financial and emotional stress of their parents' divorce proceedings. In 1984, Maine had about 8,000 divorce cases filed, and I estimate that over half involved one or more minor children. The Maine courts have had in operation since 1977 a voluntary mediation program for divorces, as well as small claims and other civil cases. The statute that went into effect last July 25th requires court-sponsored mediation of all contested issues in any divorce case where the divorcing spouses have minor children. In the six months since July 25th, our mediation service, under its director Lincoln Clark, has fully implemented the new law; and divorce mediations are now running at close to 400 per month. It is too early to assess the results fully. We can report, however, that the rate of success in mandatory mediation appears to be as high as in mediation pursued voluntarily. Also, the mandatory mediation is apparently producing fringe benefits. Furthermore, the advertised availability of mediators at regular times all over the state has led to greater voluntary use

of mediation in non-divorce cases. We now have 51 mediators compared to only 16 prior to July 25th. They are an impressive group, representing a broad range of vocational experience. They all share one common quality: the ability to get contesting parties to communicate and negotiate calmly with one another. The program has drawn acclaim from far beyond Maine's border.

The Legislative and the Judicial Branches can be proud of these tangible results of our mutual Policy of the Three C's. To these accomplishments, Governor Brennan has also contributed much. It is hard to imagine a Chief Executive, who by personal nature and professional experience, could be more understanding of court needs. It was under his leadership as a State Senator and as Chairman of the Commission bearing his name that our present unified court system was conceived and ultimately adopted in 1975. We are currently discussing with the Governor ways to realize more fully the Brennan Commission's objectives with regard to the inter-relationships between the Executive and the Judicial Branches. For example, in the important area of budget development, we hope to enhance direct communication between the Judicial Branch and your Joint Appropriations Committee.

Let me now report on each of our courts. This year I want to focus, first and foremost, on our trial courts. I take this opportunity to pay tribute to the trial judges and the other men and women who work diligently, day in and day out, in serving the State of Maine in our very busy trial courts.

The **Superior Court**, our court of general jurisdiction and only court with a jury, sits at every county seat, and at Caribou as well as Houlton in "the" County. The Superior Court handles over 16,000 cases a year—all the most serious civil and criminal cases.

The **District Court**, sitting at 33 locations from Fort Kent to Kittery, is our "people's court" because it typically handles about 230,000 cases a year. It also comes closest to being our "family court," handling all juvenile cases, nearly all divorces and family abuse and neglect matters, and the certification of foster homes for children, and the certification of the mentally ill and the mentally retarded for treatment. Legislative additions to the District Court's responsibilities have brought it close to being a general jurisdiction court on the civil side—hearing cases up to \$30,000, making available its simplified small claims procedures in cases up to \$1,400, foreclosing real estate mortgages and mechanics liens—just to name a few of its expanded tasks on the civil side. Under the Single Trial Law, now successfully in effect for three years, all criminal cases tried in the District Court are appealable only on questions of law, the same as criminal cases tried in the Superior Court.

Finally, the third trial court, the **Administrative Court**, with its two judges, is charged with hearing and deciding petitions for the revocation of most state professional and business licenses.

Those three trial courts are functionally and administratively unified. Under my statutory authority to assign our two Administrative Court judges to the other trial courts, they sat in the District and Superior Courts three judge-weeks out of every month during 1984. Last year I also assigned District Court judges to sit in the Superior Court when needed at various times around the State. Active retired judges, including those of the Supreme Judicial Court, sat by my assignment in the trial courts during 1984 to do the work of the equivalent of more than 3 full-time judges.

A unified trial court administration is provided by the close working together of Chief Justice Clifford of the Superior Court and Chief Judge Bernard M. Devine and his Deputy, Judge Alan Pease, of the District Court. Along

with the administrators of both courts and State Court Administrator Baggett, they form a smoothly working team constantly striving to improve trial court operations.

For example, under Chief Justice Clifford's leadership, the Superior Court is experimenting in four counties with expedited court management of civil cases in order to cut down unwarranted delay and excessive cost to the litigants. The goal is to move a large portion of the civil caseload, the less complex matters, through to final resolution within 6 to 12 months of filing.

Under Chief Judge Devine's leadership, the District Court is starting a program in two counties of using volunteer lay guardians ad litem for children involved in abuse and neglect proceedings. At present when the Department of Human Services files a complaint, alleging child abuse or neglect, the court appoints a guardian ad litem for the child, usually a lawyer. The child does have legal rights to be protected, but even more, at such a time the child needs the sustained support, in and out of court, of a concerned adult. By this program, which has been tested and proven in other states, dedicated volunteers are recruited and trained to help the child through the court proceedings. A properly selected volunteer will have the time and the interest to investigate the child's circumstances, to monitor the progress of his case, and to help the court reach a decision that serves the best interests of the child. This program taps the same wells of voluntarism that our in-court mediation program has tapped over the past seven and a half years. It holds great promise for improving the way the courts handle these sensitive cases.

On the same general subject, three trial judges served with the Governor's Working Group on Child Abuse and Neglect Legal Proceedings. Some weeks ago you received that Group's report with 51 recommendations. Commissioner Petit and others of his Working Group recently met with the Supreme Judicial Court and several trial judges, and we have identified a dozen of the recommendations that do not require legislation for implementation by the courts. Here is another fruitful application of the Policy of the Three C's, applied this time between the Executive and the Judicial Branches.

I now move to present to you on behalf of the trial courts some recommendations for legislative action. I have already mentioned the need for taking the second step in adding 3 judges to each of the Superior and District Courts. At the same time I am going to recommend two bills that will save you some money. First, I recommend that an experimental investigating unit be set up within the Division of Probation and Parole to screen and audit the financial circumstances of criminal defendants who ask for counsel at state expense. The Maine Constitution mandates that the state provide counsel to an indigent criminal defendant on any charge on which he might be imprisoned. This mandated cost bulks large in our Judicial Department budget. A statistical study headed by Justice Wathen has determined that the rates of compensation paid lawyers are relatively low and uniformly applied. However, the study pointed out that the indigency determination has to be made by the judge only upon the statements of the defendant, with no adverse party on the other side with no time or no help of staff to check those statements for accuracy. I would be very surprised if the two investigators that are proposed would not save far more than they will cost by slowing the rate of increase in this mandated expense.

Second, the District Court proposes to merge three of its low-volume courts into other locations that are nearby. I am conscious of the extreme reluctance any community automatically feels for losing its District Court, but financial responsibility dictates that we in the courts bring this recommendation to you. One of the

three courts handled only 270 cases during all of 1984, only one case per working day, and it is located only 22 miles from another District Court that could easily absorb that small caseload. At least two of these District Courts will require expenditures to make them accessible to the handicapped, if they are not phased out. The decision on this matter is of course, yours to make.

Third, I recommend that the operations of the trial courts be computerized so that they may join the rest of the world of the mid-1980s. The great advantages of computers to give the judge the information he needs at the bench and to help judges and clerks manage their heavy caseloads are so obvious to all of us that I think the only question is how much money you can allocate to this undertaking.

Fourth, the serious facilities problems of our trial courts continue to get worse. I suggest that you simultaneously address those problems in a variety of ways. In the first place, the Cumberland County Commissioners are joining the Judicial Department in filing a bill that will permit a Cumberland County referendum on a county bond issue to build the additional courtrooms and other facilities urgently needed there. I remind you that in Portland the workload of the Superior Court and the District Court represents about 20% of all trial court business in the whole state. Although we were disappointed that voters statewide turned down a state court bond issue in 1983 and again in 1984, we note that Cumberland County voters supported both bond issues. County ownership of court facilities with lease to the Judicial Department is not a new idea. Out of our 33 District Court locations, 15 lease space from counties and 11 from municipalities. Also, at all 17 locations where our state Superior Court sits, it occupies county-owned buildings.

Another way to finance state court improvements is of course by direct appropriation. We have filed a bill that would do just that, in the happy event that you find current funds for capital investment.

Finally, for the longer term we need a more permanent solution to the continuing question of how to finance the construction of state court facilities throughout Maine. Court space needs are most urgent, and are by no means restricted to Cumberland County. Just behind Cumberland County in priority are the Kennebec County and the Androscoggin County courthouses. We are a large state geographically, and our state trial courts have at each location maintained a lot of their local character. That is good. But we need a way for meeting local facilities needs for state courts. We therefore propose, with the Governor's support, the creation of a state court building authority. That authority would be empowered to construct court facilities around the state when and where the need is identified and to lease them to the state Judicial Department. The State of Rhode Island has used this method for financing court facilities, and a similar method of revenue bond financing is familiar to us in Maine in the areas of turnpike construction and industrial development. I commend to you this new approach for meeting our long-term needs for more adequate court facilities.

I have been speaking of the facilities needs of the trial courts. Last year the Supreme Judicial Court concluded that ultimately it ought to be headquartered in Augusta along with the Administrative Office of the Courts and the Chiefs of our principal trial courts. Moving the Judicial Department headquarters here to the seat of state government would advance the Policy of the Three C's among the three branches. Also, the consolidation could well improve the management of the court system, and the move would, at 6 courthouses around the state, free up some space for use by the trial courts. I encourage you to study plans for an appropriate building for the

Supreme Judicial Court in Augusta. I personally support that move, provided that the facilities needs of our trial courts are also taken care of. In my judgment, the trial courts must have first priority.

As my last recommendation relative to our trial courts, I bring to you a proposal of the Maine Judicial Council that the present 16 county-funded probate courts with part-time elected judges be phased out, in the same way as the old part-time municipal courts and trial justices were phased out by the Legislature in the early Sixties. The Judicial Council makes its proposal after receiving the report of a broadly representative committee, chaired by President Cotter of Colby College, on which Senator Richard Trafton and Representative Susan Bell served. The Judicial Council proposes that jurisdiction over estate and trust matters be transferred to the Superior Court; family law matters, to the District Court; and guardianship, conservatorship and other protective proceedings, to both courts concurrently. The registries of probate will stay where they are, to serve as repositories of real estate and like records. Only four additional judges in the Superior and District Courts will be needed when all the present work of 16 probate courts is transferred; and the Cotter Committee estimates that no additional expense to the public will result. In normal course the phase-out would start on January 1, 1987, when the current terms of 7 probate judges elected in 1982 will have expired. This structural change of Maine's court system is similar to that proposed by the Probate Law Revision Commission that drafted our new Probate Code. The Code has now been in effect for 4 years. The time has now come to take the final step in probate reform for the State of Maine.

I have purposely reported to you first on the trial courts. All too often their critical importance in the administration of justice is forgotten, while we on the Supreme Judicial Court get the media attention. The truth is that our trial courts handle about a quarter of a million cases every year. Over 99 and 44/100% of all cases end in the trial courts. Out of that number only about 500 ever get to the Law Court. Thus, the quality of justice in Maine depends heavily upon their performance. The quality of that performance is high. In those cases that do reach the Law Court, most of its work can be compared to that of the quality control department in a large manufacturing concern. The Law Court corrects error wherever it finds it has occurred in the trial courts, and also lays down precedent for their future guidance. But when you read the news that the Law Court has reversed a trial court decision, keep that news in perspective: Remember that the Law Court is performing its quality control function in correcting error found in a relative handful of the quarter of a million cases disposed of by trial judges.

In addition to its appellate functions as the Law Court, the Supreme Judicial Court carries other heavy loads. The Court has many functions. It is the policymaking board of directors of the Judicial Department. The Court is given by statute "general supervisory and administrative authority" over the Department — authority that it exercises by making rules for all the courts and by issuing administrative orders and by giving advice to me as the head of the Department.

The Supreme Judicial Court also has responsibility for admissions to the bar and for lawyer discipline, and, as you are aware from recent events, responsibility for judicial discipline short of the ultimate sanction of impeachment or address by the legislature.

All of us will do well to remind ourselves constantly that you and we alike are charged with high responsibilities for the administration of justice. In 1820 the founders of our State declared as their first goals "to establish justice" and to "insure tranquility," and so on.

The Preamble to our State Constitution commences: "We the people of Maine, in order to establish justice, ensure tranquility" and so on. By that fundamental document, you of the Legislature have your assigned role of the Executive and the Judiciary. Ours is a common task of strengthening the processes of justice. It is a task requiring our constant attention. We can say of justice exactly what Robert H. Jackson of the United States Supreme Court said of liberty:

There is no such thing as ... achieved (justice); like electricity, there can be no substantial storage and it must be generated as it is enjoyed, or the lights go out."

I am confident that between us, both pursuing the Policy of the Three C's, we will be sure that the lights of justice do not go out, or even dim, in the State of Maine. I thank you very much. (Prolonged applause)

The Chief Justice and Judiciary withdrew amid the applause of the Convention, the audience rising.

The purpose for which the Convention was assembled having been accomplished, the Chairman declared the same dissolved.

The Senate then retired to its Chamber, amid applause of the House, the members rising.

In the House

The House was called to order by the Speaker.

On motion of Representative Aliberti of Lewiston adjourned until nine o'clock tomorrow morning in memory of Justice Thomas E. Delahanty.