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SPECIAL COMMISSION TO REVIEW THE ELECTORAL PROCESS

Report to the Secretary of State

March 23, 1993

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SPECIAL COMMISSION TO REVIEW THE ELECTORAL PROCESS

REPORT TO SECRETARY OF STATE G. WILLIAM DIAMOND

March 23, 1993

I. Introduction

The Special Commission to Review the Electoral Process ("the Commission") held its first meeting on January 15, 1993. The thirteen member Commission was appointed by Secretary of State G. William Diamond in the wake of the "ballot tampering scandal" arising out of the 1992 general election. Its members are listed in Attachment B to this Report.

At its opening meeting the Commission was presented with the following Mission Statement:

- I. The mission of the Commission shall be:
 - A. To review the electoral process of the State of Maine, and recommend any necessary and/or desirable changes in that system in order to ensure a secure and honest electoral process.
 - B. To restore and ensure public confidence in the electoral process of the State of Maine.
- II. To accomplish this mission, the Commission shall:
 - A. Review the entire electoral process in Maine, from voter registration through final recount of ballots.
 - B. Solicit expert opinion and testimony concerning security issues associated with the process, including technological issues.
 - C. Review Maine's existing election laws and regulations, including existing criminal sanctions for violating such election laws and regulations.
 - D. Conduct sufficient public hearings to provide interested parties with an opportunity to provide information and suggestions to the Commission.
 - E. Prepare a comprehensive report on its activities and findings.

F. Submit to the Secretary of State recommendations for legislation and regulations, if any, to improve the integrity and security of the electoral process.

G. Use appropriate means to acquaint the public with the work of the Commission.

The Commission was requested by Secretary Diamond to complete its report and submit its recommendations to him by the end of March, 1993.

The Commission members thereafter met in Augusta each Friday between January 15 and March 12, 1993, except for one day lost to inclement weather. On these occasions, members met either as the full Commission or in subcommittee. In addition, Commission members attended four public hearings on January 29 and 30, in Presque Isle, Bangor, Lewiston and Sanford.

Between February 5 and March 4, five operating subcommittees of the Commission reviewed:

- * Inspections & Recounts
- * Election Technology
- * Election Officials & Training
- * Absentee Ballots & Other Ballot Issues
- * Voter Registration

Each of these five subcommittees submitted a series of recommendations for consideration by the full Commission at its meeting on March 12, 1993. In addition, Peter H. Jacobs, Co-Chair of the Commission, submitted a set of recommendations to the Commission concerning proposed changes in the criminal penalties for violating Maine's election laws.

At its March 12 meeting, the Commission acted on these six sets of recommendations and considered additional proposals raised by Commissioners. All of the Commission's final recommendations were adopted by unanimous vote.

II. Recommendations

The following recommendations are broken down by subject matter. Each recommendation appears in boldface and is accompanied by brief explanatory comments in regular type.

1. Inspections & Recounts

Under current Maine law, ballots remain at the local level in the custody of the municipal clerk until such time as a recount is formally requested. This means as a practical matter that ballots may remain locally for almost a month before a recount request is received by the Secretary of State's office. During this time the law provides losing candidates with an opportunity to inspect the ballots. The law does not require any specific security measures while the ballots are maintained at the local level. Testimony at public hearings indicated a wide array of security at the local level depending on the size and/or resources of the municipality.

Under current law, when a formal recount request is filed the Secretary of State's office is charged with picking up and storing the ballots. There is no role for the State Police in either the transportation or storage of ballots. Current law also requires that unused ballots be stored together with voted ballots pending recount. As the recent "ballot tampering" incident demonstrated, security was not sufficient to prevent access to the recount ballots by unauthorized persons and the presence of unused ballots in the same room as voted ballots served as an inducement to tampering.

Under current law, recounts are conducted under the supervision of the Secretary of State's office. If the contending candidates are not able to agree on an outcome appeals go initially to the Commission on Governmental Ethics and Election Practices which conducts fact finding and makes recommendations to whichever entity is charged by law with making the final decision as to the winner. For example, for legislative races the Commission on Governmental Ethics and Election Practices makes its recommendations to either the House of Representatives or the Senate, depending on which body the disputed seat is in. The decision of the Senate is final for Senate seats and the decision of the House is final for House seats.

With this background in mind, the Commission's recommendations concerning Inspections and Recounts are as follows:

Recommendation #1. Presumption of Recount.

If an election, upon initial tally of the ballots, is within a one percent (1%) degree of closeness, measured against the total number of votes cast in that race, then a recount should be presumed.

Once a presumption of recount is triggered, or a recount is requested, the State Police, upon notification by the Secretary of State, should take physical control of all ballots (voted and unused), checklists, and related materials involved in the recount as soon as is physically possible.

The State Police should store and maintain exclusive control over the ballots and other materials pending and during the course of recounts. The State Police should provide security, which might include the use of surveillance cameras.

Comment: The Commission's recommendation is designed to ensure adequate security for ballots and related materials as soon as it becomes apparent that a recount is likely to be requested. Experience demonstrates that when an election falls within a 1% margin of closeness, a recount request is likely. In the event that a recount is either presumed to be likely or is otherwise requested, the State Police would be charged under the Commission's recommendation with picking up the ballots and related materials from the municipality and maintaining exclusive control of these materials pending and during a recount, allowing the physical handling of ballots by others only during the actual recount procedures conducted by the Secretary of State's office under the security of the State Police.

The Commission proposal does not require that recounts be held in all cases where the recount presumption is triggered -- a request for a recount must still be submitted -- nor does it preclude requests for recounts in races where the margin of victory is greater than one percent.

In formulating this proposal the Commission met with the State Police and were assured of cooperation should this proposal be adopted. The Legislature should be requested to provide such additional resources for security as may be necessary to permit this proposal to be carried out.

Recommendation #2. Unused Ballots

At the close of the polls, all unused, unsealed ballots should be voided by a physical mark (unless all voted ballots have been validated in the course of voting). All sealed, unused ballots should be left sealed, stored together, and wrapped with tamper proof tape. All unused ballots, including both the unsealed and the sealed, should be stored separately

from all voted ballots at all times. The boxes storing the unused and voted ballots should be clearly marked to identify whether they contain voted or unused ballots.

Comment: Under the Commission's proposal voted ballots and unused ballots would be kept separate at all times. In addition, unused ballots that had been unsealed for use on election day would be physically voided at the time the polls are closed to render them invalid and remove any incentive for their later misuse.

Recommendation #3. Inspections

The inspection process provided in 21-A M RSA §736 should be eliminated.

Comment: The Commission concluded that the inspection process, currently an interim step prior to request for a recount, should be eliminated. This would expedite the recount process and eliminate another occasion in which ballots are physically handled by the candidates and/or their assistants.

Recommendation #4. Recount Requests

All recount requests should be required within seven (7) business days after any election.

Comment: The Commission felt that the current recount process was too long. Current law allows up to 30 days for recount requests, depending on when the tabulation of election results is submitted to the Governor. The Commission's recommendation would speed up the recount process.

An exception to the recommended time limit should be allowed for situations in which the official tabulation, when posted, reverses the apparent result on election day. In such cases, provision should be made for the losing candidate to have up to 3 business days after the official tabulation is posted to request a recount.

Recommendation # 5. Tabulation of Ballots

All municipal clerks should be required to send the final tabulation of ballots to the Secretary of State's office within three (3) business days after the election. The Secretary of State's office should reserve the right to send a representative to pick up the tabulation at any time following the election.

Comment: This is another proposal to expedite the post-election process. At present, clerks have 7 days to send the tabulation to the Secretary of State. The Commission's proposal would shorten this period to three days and would grant the Secretary of State's office the authority to pick up the tabulation from the clerk.

Recommendation #6. Recount Fees

Any candidate requesting a recount should be charged a fee according to the following schedule:

If the Recount is:

<u>Percentage Margin</u>	<u>Fee</u>
1% or under	Free
Over 1% and up to and including 2%	\$500.00
Over 2%	\$1000.00

Comment: This proposal is designed to discourage frivolous recounts by raising and standardizing existing deposit requirements. The Commission would not change the provision of current law that the fee would be refunded to a candidate who is determined to be the winner after recount.

Recommendation #7. List of Recount Workers

The Secretary of State's office should maintain a list for two years of the names of all persons who participated in a recount.

Comment: This proposal is simply intended to provide a record of the persons who were physically involved in recount proceedings, should questions later arise as to possible irregularities during the process.

Recommendation #8. Persons Prohibited From Participation In Recounts

Employees within the Department of the Secretary of State should supervise ballot recounts. Except for elected officials and staff of the Attorney General's office, other state employees, including legislative employees, should not participate in ballot recounts in any capacity.

Comment: This proposal responded to concerns expressed in recent months over the role of legislative staff in the recount process. Currently there is no restriction as to who may participate in the recount process.

Recommendation #9. Photocopying Challenged Ballots

A representative of the Secretary of State's office or a person designated thereby should immediately photocopy all ballots identified as disputed during a recount. The photocopy of the disputed ballot would establish an evidentiary record of the ballot.

The photocopy of the disputed ballot should not be a public record and should be maintained by the Secretary of State separate from the ballots themselves. The State of Maine should provide the equipment to be used in the photocopying process.

The prohibition on photocopying ballots should be amended to allow the photocopying of all disputed ballots.

Comment: State law currently prohibits any copying or photographing of ballots. The Commission recommends that as soon as a ballot is identified as a "disputed" ballot during the recount process, a photocopy should immediately be made of each such ballot. This will create a physical record of the appearance of the ballot at the moment of first dispute and will discourage any later efforts to alter the ballot in any way.

Recommendation #10. Determination of Recount Results

Final determination of unresolved recounts should be made by a single justice of the Superior Court or the Supreme Judicial Court, appointed by the Chief Justice of the Supreme Judicial Court. At the close of a recount, absent written agreement of the contending candidates as to an outcome, the Director of Elections should promptly transmit the file on the disputed recount to the justice so designated. This justice should be empowered as a matter of discretion to utilize the services of a special master. The decision of the justice should be final.

This proposal will require a constitutional amendment.

Comment: The Commission believes that public confidence in the integrity of the recount process will best be served by having final decisions made by the judiciary on direct appeal from the processing of the recount by the Secretary of State's office. This would eliminate the fact finding and recommendation role of the Commission on Governmental Ethics and Election Practices and would remove the final decision on recount results from the entities currently empowered by Maine law. Thus, for example, a final decision as to the winner of a seat in the State Senate would be determined by the judiciary, not by the Senate itself.

In adopting this proposal this Commission wishes to make clear that it is not intending to criticize, directly or implicitly, the performance of either the Commission on Governmental Ethics and Election Practices or of the Maine Legislature or of any other entity charged with a role in the recount process. The Commission's proposal is directed solely at the process by which recounts are to be finally determined and at formulating a process that is expeditious and consistent and that will insure the maximum degree of public confidence in the integrity of the electoral process.

2. Election Technology

Under current law the means and methods of storing ballots varies widely from municipality to municipality, with no specific security measures mandated by law. The Commission heard anecdotal evidence of ballots stored in paper bags, of cardboard boxes bursting at the seams, of ballots spilling out of storage receptacles during transit.

In addition, a variety of voting technologies are currently in use in Maine, each presenting the voter with a different appearance and voting methodology, resulting in apparent confusion for a number of voters confronting different technologies than they may have been accustomed to in the past, either in the same or in a different community.

While most voters in Maine currently vote by paper ballot or by optech ballot, six communities still use other voting technologies, some of which do not even leave behind actual ballots that can be recounted if a question of inaccuracy arises. The Secretary of State currently possesses the authority to decertify election machinery.

The Commission addresses its recommendations in this area to the issues of security and technology.

Recommendation #11. Decertification of Machinery

The Secretary of State should decertify the Shoup machine, the automatic voting machine, the Shouptronic machine and electronic voting devices (punch cards). No municipality should use any of these methods of voting after the 1996 general election.

Comment: This proposal is aimed at standardizing voting technology in Maine by requiring the use of either paper ballots or scanning devices and by eliminating what the Commission feels to be outmoded technologies. Municipalities possessing the machines identified for decertification are given three years under the proposal to sell or trade in their existing machinery and to convert to either paper ballots or scanning devices.

Recommendation #12. Identical Ballots.

The format for all ballots should be identical in appearance whether they are paper ballots or ballots for scanning devices.

Comment: This proposal is intended to minimize voter confusion over disparate voting technologies. Under this approach, a voter accustomed to the use of paper ballots who is later confronted by ballots used in a scanning device would at least be familiar with the appearance of the ballot and the means of completing it.

Recommendation #13. Ballot Storage Boxes.

At the close of the polls, all voted ballots should be stored in tamper-proof ballot boxes which feature special numbered seals. All of the ballot boxes should be sealed before leaving the precinct with a numbered seal which would correlate with a certificate identifying the person sealing the box and the time of the sealing. These ballot boxes should be able to be padlocked.

The State should purchase such ballot boxes in appropriate sizes and provide them to each municipality.

Special provision should be made to allow for the transfer and resealing of the ballots 60 days or more following the election for permanent storage. This should be done by the municipal clerk in the presence of one representative from each of the major political parties.

Comment: The Commission identified and physically inspected tamper-proof ballot storage boxes currently in use in other states. The Commission believes that the routine use of such reusable boxes provided to municipalities by the State will greatly improve ballot storage in Maine.

3. Election Officials and Their Training

The Commission looked at election officials at all levels, from the Secretary of State, at the very top of the election machinery, to the wardens who serve on election day in each municipality.

The Commission's recommendations aim at making the electoral process less partisan and opening up participation in the process to unenrolled voters. The unenrolled are currently barred by Maine law from serving as election workers despite the fact that unenrolled voters outnumber either enrolled Democrats or enrolled Republicans in Maine.

The Commission also sought to respond to concerns about inadequate experience and training on the part of election workers at the precinct level.

Recommendation #14. Popular Election of the Secretary of State

The Secretary of State should be popularly elected for a four year term.

This proposal will require a constitutional amendment.

Comment: In 39 states secretaries of state are popularly elected by the voters in the general election. In Maine the Secretary of State is elected by a majority of legislators in the House and Senate, voting jointly. As a practical matter this means that the majority party in the Legislature elects the Secretary of State who in turn is responsible for the conduct of legislative elections. This process has given rise to charges of partisanship, which, without regard to their merits, invariably serve to weaken voter confidence in the integrity of the electoral process.

In recommending that the Secretary of State be popularly elected rather than selected by the Legislature the Commission notes that this recommendation does not result from any concerns on the Commission's part about the integrity, honesty or dedication of the present Secretary of State or his staff or any of their predecessors. Rather, the recommendation is intended solely to remove any public perception of conflict of interest and any future possibility of conflict of interest in the election by the Legislature of the official who is responsible for the supervision of the process by which legislators are themselves elected.

Recommendation #15. Appointment of Election Officials

The municipal clerk, as the head of elections in each municipality, should appoint a sufficient number of election workers for each polling place during every even numbered

year. The term "election worker" includes the warden, ward clerk, election clerks and counters. To be appointed an election worker, a person should be a registered voter within the municipality in which he or she is appointed to work.

The clerk should consider persons nominated by the local committee of each major political party as well as any other interested persons, but no major political party, nor the unenrolled, should have a plurality of more than one election worker over any other major political party at any polling place.

Comment: This recommendation is designed to permit the unenrolled to serve as election workers, while ensuring that no political party, or the unenrolled, should have a dominant number of workers at any polling place.

Recommendation #16. Eliminating Boards of Registration.

Local Boards of Registration should be abolished. Deputy registrars should be appointed in such a manner as to ensure that no major political party be given a plurality of more than one over any other major political party. The unenrolled should be eligible to be appointed as deputies.

Comment: This recommendation is a companion to Recommendation #15 above. It would eliminate the partisan local election boards provided for under current law, and would provide that any person, enrolled or unenrolled, could be appointed as a deputy registrar so long as no political party is given an undue numerical advantage.

Recommendation #17. Training of Election Workers

Training for all election workers should be mandatory. The Secretary of State should provide training materials (which might include video instructional materials) to each municipality. The Secretary of State should prepare different materials for those municipalities using paper ballots and those using voting machines or scanning devices.

The municipal clerk should conduct training sessions for "election workers" prior to each election. The clerks should use the training materials supplied by the Secretary of State's office but should have the authority to use additional materials in their discretion.

Absent exigent circumstances, all "election workers" should be required to attend at least one training session before they are allowed to work at the polls.

Municipalities should in their discretion compensate "election workers" for attending any training sessions.

Comment: Currently, while the Maine Municipal Association and the Secretary of State's office provide training for municipal clerks, other election workers in some communities do not receive formal training. This proposal is designed to provide at least a minimum standardized course of instruction for all persons serving as election workers. Resources permitting, the Commission strongly urges the preparation and use of video instructional materials that can be further studied at home by election workers.

Recommendation #18. Candidates at the Polls.

Within 250 feet of the entrance to the voting place, as well as within the voting place itself, no person should be permitted to influence or attempt to influence another person's decision regarding a candidate or ballot issue. Candidates should be prohibited from being in the voting place except for the purpose of voting.

Comment: During public hearings, the Commission repeatedly heard concerns expressed about the intimidating effect on voters of candidates at the polls. This proposal would restrict candidates' time at the polls only to that required for voting. It would not prohibit the presence of poll watchers but only of candidates themselves.

Recommendation #19. Advertising & Devices at the Polls

No person should be permitted to display any advertising material, operate any advertising medium, including a sound amplification device, or distribute campaign literature, posters, palm cards, buttons or stickers intended to influence the opinion of any voter within 250 feet of the entrance to either the voting place or the registrar's office. The term "sound amplification device" should include, but not be limited to, sound trucks, loudspeakers and blowhorns.

No poll watcher or poll checker should be permitted to use, within the polling place, any cellular phones, beepers, voice or signal pagers, or similar devices which make noise or allow direct audible voice communication within the polling place.

Comment: The Commission heard persuasive testimony concerning the intimidating effect on voters of the use and misuse of various advertising mediums and electronic devices within the polling place. The above proposal is intended to remedy these abuses.

4. Absentee Ballots & Other Ballot Issues

In recent years, Maine law has undergone certain desirable reforms pertaining to the availability and use of absentee ballots. The Commission sought further to limit opportunities for fraud and abuse by tightening up several additional aspects of absentee balloting; and requiring, and facilitating, voting in person rather than absentee, to the extent that voters are physically able to do so. The Commission also addressed the issue of security at the time that ballots are printed.

Recommendation #20. Security During Printing.

Provision should be made in all future contracts for the printing of ballots that the printer provide adequate ballot security.

Comment: Although the Commission learned nothing that would indicate that there have been any improprieties arising out of inadequate security by businesses under contract to print Maine's ballots, the Commission did learn that there is currently no requirement that such printing concerns provide security to prevent misappropriation of such ballots. The Commission recommends that the Secretary of State's office address this issue in future printing contracts.

Recommendation #21. Obtaining Absentee Ballots.

Applications for absentee ballots should be able to be picked up and/or delivered by any person, but the absentee ballots themselves should be mailed both from and back to the municipal clerk, with one exception: that a third party (other than the voter) should be able to pick up an absentee ballot for a voter during the five business days before the election if satisfactory proof can be provided to the municipal clerk that the voter is hospitalized or physically unable to vote in person. The number of ballots in the possession of a third party should be limited to two at any one time.

Comment: The Commission concluded that requiring voters to vote in person, whenever possible, was one means to discourage fraud. The Commission further concluded that security would better be served by restricting the ability of third parties to deliver and return absentee ballots. The Commission recommends reducing the number of absentee ballots that such third parties may possess at any one time from ten (under current law) to two.

Recommendation #22. Expanded Voting At Certain Locations.

The municipal clerk should be authorized to conduct absentee balloting at housing facilities for the elderly or the infirm.

Comment: Maine law currently requires municipal clerks to conduct, in the clerk's presence, absentee voting in licensed nursing homes, licensed boarding homes, and certified congregate housing units for the purpose of absentee balloting by the residents of these facilities. The intent of this practice is to provide secure opportunities, where undue influence can be minimized, for elderly and other confined persons to exercise their right to vote. The Commission was persuaded that this practice is working well and fulfilling its purpose. The Commission's recommendation would expand the clerk's authority to conduct such balloting at any other housing facilities for the elderly or the infirm in the municipality.

Recommendation #23. Saturday Voting.

In addition to the regular election day, municipalities should be authorized to designate the Saturday before the election as a day for early voting. The same procedures should be followed as on election day itself. No election results should be provided or obtained prior to the close of the polls on the regular election day itself. The time for the Saturday voting should be set by the municipality. The same ballot security should be used as is required on election day itself.

Comment: The Commission heard convincing testimony concerning the increasing demands placed on election officials on election day caused by such factors as increased voter turnout and election day voter registration. This recommendation is designed to alleviate some of the pressures of election day by providing voters, at municipal option, with two days to vote at the polls: the regular election day and the preceeding Saturday. The Commission also believes that Maine's voters would welcome the opportunity to vote on a weekend and the reduced lines and waiting times that would result on election day itself. All security procedures would be in place for Saturday voting as are required on election day itself.

Recommendation #24. Restrictions on Absentee Voting By The Able Bodied.

Absentee ballots should not be available to a voter who is physically able to vote in person in the presence of the municipal clerk prior to, or on, election day.

Comments: Under 21-A MRSA §751, among other things, an individual can currently obtain an absentee ballot for the reason of:

"1. Absence. Absence from the municipality during the time the polls are open on election day."

The Commission recommends that individuals who are physically able to vote in person either on election day, or prior to election day in the presence of the clerk under §753(7) of current law, not be allowed to absentee vote by mail. The purpose of this recommendation is to diminish the possibility of voter fraud, which is deemed far less likely if individuals are required, to the extent possible, to vote in person.

5. Voter Registration

At its public hearings, the Commission heard security concerns expressed about election day voter registration, currently required under 21-A MRSA §122(4). A number of municipal clerks who testified at these hearings indicated that in the crush of events on election day, they felt ill at ease making definite determinations as to the eligibility of unfamiliar individuals presenting themselves for registration. In addition, a number of clerks complained about the provision of Maine law (21-A MRSA §112(1)) which defines the "residence" of an individual as "that place in which his habitation is fixed and, to which, whenever he is absent, he has the intention to return." It was noted that the "intention to return" clause was vague and confusing and impeded the ability of municipalities to purge their voting lists. The Commission would also note for the record that Commissioners learned nothing that would indicate any important security concerns connected with Maine's current practice of "motor voter" registration.

Recommendation #25. Registration Requirements

1. All persons registering to vote should show identification and proof of residency at the time of registration. If proof of residency is unavailable at the time of registration, then residency should be verified by mail.

2. All registrations taken by outside agencies or through the mail should be received in the registrar's office at the close of business fifteen days prior to election day in order for such persons to appear on the voter list as registered for the election.

3. All persons who register during the fifteen days prior to election day, or on election day itself, should do so in person and show proof of identity and residency. If satisfactory proof cannot be provided to the municipal clerk or his/her designee, the voter should vote a challenged ballot.

These proposals are largely intended to reduce the security problems associated with election day registration, in part by having voters who are unable to prove residency and identity vote a challenged ballot. The Commission notes that §696(1) of Maine law already provides for the existence of challenged ballots in other circumstances, so the concept is not a new one. The use of challenged ballots would allow time for candidates to verify the eligibility of such voters in the aftermath of the election itself in the event that there are a sufficient number of challenged ballots to affect the outcome of the election.

Initially, three of the thirteen members of the Commission voted against Recommendation #25 in order to register their

opposition to election day registration. After adoption of Recommendation #25 by the Commission, however, the three Commission members who dissented on the initial vote asked for reconsideration of the original motion so that they too could vote for the recommendation, expressing their belief that the recommended changes represented a significant improvement over current practice. In adopting Recommendation #25, the Commission also formally voted to addend the following explanatory note:

"In recommending the continuation of election day voter registration with greatly increased safeguards against voter fraud and multiple voting, the Commission has endeavored to strike the appropriate balance between two valid and legitimate policy interests: first, the interest in encouraging and facilitating voter participation in the electoral process; and second, the interest in ensuring the security of the electoral process. The Commission calls to the attention of the Secretary of State and the Legislature the fact that permitting election day registration invariably entails, to some extent, some degree of diminished security in the electoral process, and the Commission recognizes that reasonable people may differ in balancing the interests noted above. In any event, however, the Commission believes that if election day registration is to be continued, the safeguards recommended by the Commission will greatly diminish security risks attendant to election day registration."

Recommendation #26. Changing The Residency Requirement.

The concept of "intention to return" in §112(1) and other sections of Title 21-A should be eliminated, and a person's "residence" should be defined solely as "that place in which his habitation is fixed."

Comment: This recommendation is intended to narrow and clarify the definition of "residency" for voter registration purposes, in response to the testimony of numerous clerks appearing before the Commission at its public hearings. The "intention to return" language poses difficulties for registrars seeking effectively to purge municipal voting lists.

Recommendation #27. Purging Voting Lists

The registrar should be empowered to remove the name of an individual from the voter list if the registrar has a reasonable basis to believe that the individual no longer has a fixed habitation within the registrar's jurisdiction.

Comment: This recommendation is intended to facilitate the removal from the voter list of individuals known to the registrar to have relinquished a fixed habitation in the municipality.

Recommendation #28. Cross-Purging Voting Lists.

Effective means should be developed for the purging of voter registration lists between and among municipalities within the same House or Senate legislative district.

Comment: The Commission recognizes that current and foreseeable resources do not allow for the creation and maintenance of a single cross-referenced statewide voter list which could be used to prevent multiple registration and/or multiple voting by a single individual. The Commission also learned nothing that would lead it to conclude that multiple voting has occurred in Maine. As a practical matter, however, the Commission recognized that the impact of (and therefore the inducement for) multiple voting increases as the size of the voting district decreases. The Commission also believes that it is logistically feasible, using current technology, for municipalities lying within the same House or Senate district to periodically purge their voter lists against each others', in order to weed out multiple registrations. The Commission has not attempted at this time to pre-ordain any specific means by which such cross-checking of lists should occur but urges the Secretary of State to assist in developing procedures by which this can be effectively accomplished.

6. Criminal Penalties

Recommendation #29. Increased Penalties.

Under current Maine law, there is no violation of the State's election laws that is classified as more than a Class D crime -- in essence, a "misdemeanor" -- punishable by less than a year in the county jail and a fine of not more than \$1,000. The recent "ballot tampering" plea bargain demonstrated the inadequacy of the current sanctions, in that it was necessary for the prosecution to allege the crime of burglary for the actions of the perpetrators to be elevated to felony levels. This opportunity to press a burglary charge was entirely fortuitous. The Commission endorses significant increases in the classification and penalties for a number of violations of Title 21-A (Elections). These recommendations are spelled out in full in "Attachment A" to this Report. Among other things, they would make Class B "felonies" of the following situations:

§674(2)(B) "A person who tampers with ballots or voting lists or who breaks a seal or opens any sealed box or package of ballots or voting lists, except as permitted by this Title..."

§829. "Any person who alters, adjusts, operates, moves, unlocks or unseals a voting machine or any part of a voting machine, or who attempts such an act, with the intent of changing the outcome of any election..."

Class B crimes may be punished under Maine law by not more than 10 years in the state prison and a fine not to exceed \$20,000. A number of other offenses would be elevated by the Commission to Class C felonies or Class D misdemeanors.

Recommendation #30. Notice to the Public.

Conspicuous notice should be posted at entrances to all polling places and other places of voter registration informing persons therein that knowing violation of Maine's election laws is a crime which may be punishable by up to 10 years in the state prison and a fine not to exceed \$20,000.

Comment: For increased criminal penalties to function as a deterrent to misconduct, they must be publicized. This is accomplished in part by public awareness of vigorous prosecution of election law violations when they occur. The Commission also endorses the idea that the public should be continually reminded at voting places and places of voter registration of the consequences of violating the state's election laws.

Recommendation #31. Role of the Attorney General.

The Attorney General should designate an Assistant Attorney General for the prosecution of violations occurring under Title 21-A of M.R.S.A. ("Elections").

Comment: The Commission heard anecdotal evidence that municipal clerks have had difficulty over the years in persuading local law enforcement authorities to investigate or prosecute crimes occurring under Title 21-A. To some extent, this may be a reflection of the fact that no violations under Title 21-A have ever been classified as "felonies" in the past. The Commission's recommendation is intended to ensure that violations of Maine's election laws will be aggressively prosecuted by the office of the Attorney General. This would not, of course, preclude local prosecutors from seeking to enforce such laws as well, but would ensure that the Attorney General's office is prepared to prosecute in the absence of such local action.

III. Conclusion

The recent "ballot tampering scandal" has undermined the public's confidence in the electoral processes of the State of Maine and, necessarily, public confidence in the very processes of government itself. It is folly to believe that this erosion of public confidence will quickly abate with the conclusion of criminal proceedings against those involved in the ballot tampering incident. As a columnist in the Portland Press Herald eloquently put it:

"However vaguely, they {Maine's voters} will remember for years to come that in Maine the ballot process can be as corroded as any other place ... with a reputation for stolen elections.

"This is what is changed about Maine -- the easy acceptance of simple honor now stained by poisonous corruption. A tarnished reputation retains its dinginess long after the original cause of its soiling has faded from memory."

The Commission believes that it is critical that security surrounding recount ballots be improved, but that these changes alone, while necessary in the wake of the recent ballot tampering episode, are not sufficient to restore voter confidence in the integrity and honesty of Maine's election processes. More is needed. Vital changes are required, as well, in matters as diverse as increased criminal penalties for election law violations and tightening up on the accessibility of absentee ballots.

This report focuses on 31 specific recommendations -- some greater, some smaller, some controversial, some benign -- by which Maine can and should strengthen the security and integrity of its electoral processes.

The Commission has functioned throughout its brief existence in an entirely nonpartisan manner. The unanimous vote of its members on all 31 of its recommendations testifies to the nonpartisan spirit of its deliberations.

Now it is time for Maine's political leaders to demonstrate the same spirit of nonpartisanship and the same concern for secure elections and honest government. What is at stake in these issues and recommendations transcends any temporary political advantage that might be obtained by any party or persons from prolonging public disquiet with the integrity of the electoral process. What is at stake is beginning the process of resurrection and rebuilding of the public's faith and confidence in the electoral processes of Maine and of Maine government itself.

ATTACHMENT "A"

Voting & Challenges

§674. Violations and penalties

1. Class E crimes. The commission of any act described as follows in this subsection is a Class E crime:

A. A person who knowingly removes a ballot from a voting place on election day except as authorized by this Title;

B. A person who assists another in voting knowing that that other person is not eligible to vote;

C. A person who solicits votes from another knowing that that other person is under guardianship because of mental illness;

D. A person who interferes with a voter attempting to cast his vote or who interferes with or attempts to influence a voter in marking his ballot;

E. A person who assists or offers to assist another at the voting place in marking his ballot unless he has been requested to do so by the warden or ward clerk; or

F. A person who shows his marked ballot to another with the intent to reveal how he voted.

Commission Recommendation: raise (B) and (C) to Class D crimes.

2. Class D Crimes. The commission of any act described as follows in this subsection is a Class D crime:

A. A person who knowingly causes a delay in the registration or enrollment of another, or who knowingly causes a delay in the delivery of an absentee ballot or absentee ballot application, with the intent to prevent a person from voting or to render his vote ineffective;

B. A person who tampers with ballots or voting lists or who breaks a seal or opens any sealed box or package of ballots or voting lists, except as permitted by this Title;

C. A person who votes or attempts to vote knowing that he is not eligible to do so, or who having once voted either within or outside this State, again votes or attempts to vote at the same election; or

D. A person who votes or attempts to vote by using the name of another.

Commission Recommendation: Raise (A) (C) (D) to Class C crimes; raise (B) to Class B crime.

Absentee Ballots

§791. Violations and penalties

1. Class E crime. The commission of any act described as follows in this subsection is a Class E crime:

 A. Repealed.

 B. A municipal clerk who, when a person has voted by absentee ballot in the clerk's presence under section 753, subsection 7, signs his name to an affidavit on the absentee ballot return envelope when the affidavit is not properly completed; or

 C. A 3rd person, designated in an application or request for an absentee ballot, who receives an absentee ballot from the clerk in accordance with that application or request, and who, without good cause, fails to return that absentee ballot to the clerk's office within the time limit provided in section 755.

Commission Recommendation: no changes.

2. Class D crime. The commission of any act described as follows in this subsection is a Class D crime:

A. A person who forges the name of another on an absentee ballot, return envelope or the application for an absentee ballot;

B. Notwithstanding this subchapter, a candidate who delivers, receives, accepts, notarizes or witnesses an absentee ballot, other than his own absentee ballot, furnished by the clerk of a municipality in this State. This paragraph does not apply to an elected municipal clerk who is a candidate for the office of municipal clerk in an election where no other name for the office of clerk appears on the ballot. In a contested election for the office of clerk, a clerk shall not be exempted from the provisions of this paragraph, but shall instead appoint a deputy or an assistant to whom the municipality shall pay all associated costs for the duration of the deputy's or assistant's temporary employment in that capacity; or

C. A person who delivers, receives, accepts, notarizes or witnesses an absentee ballot, other than his own absentee ballot, for compensation other than reasonable reimbursement for actual meals and mileage. This paragraph does not apply to a governmental employee handling ballots in the course of his official duties or any person who handles absentee ballots before the unvoted ballots are delivered to the municipality or after the voted ballots are returned to the clerk.

Commission Recommendation: Raise (A) and (B) to Class C crimes.

Registration

§159. Violations and penalties.

1. False statement or false oath. A person who makes a false statement or who takes a false oath before an official concerning the qualifications of any person for registration or enrollment and who does not believe the statement to be true is guilty of a Class E crime.

2. Dual registration. A person who, having registered in one voting district or municipality within this State, or in another state, knowingly registers in another voting district or municipality within this State without revealing his prior registration to the registrar is guilty of a Class D crime.

Commission Recommendation: Raise (1) to Class D crime.

Voting Lists

§167. Violation and penalty

A person who places or removes the name of another on or from a voting list or general register, knowing he has no legal right to do so is guilty of a Class E crime.

Commission Recommendation: Raise to Class C crime.

Voting Machines

§829. Violation and penalty

Any person who alters, adjusts, operates, moves, unlocks or unseals a voting machine or any part of a voting machine, or who attempts such an act, with the intent of changing the outcome of any election is guilty of a Class D crime.

Commission Recommendation: Raise to Class B crime.

§860. Any person who, before, during or after an election, tampers with or willfully injures any voting device, ballot cards or other records or equipment used in the election, or interferes or attempts to interfere with the correct operation of such device or equipment or the secrecy of voting, is guilty of a Class D crime.

Commission Recommendation: Raise to Class C crime.

General Penalties

§31 Class E crimes

A Class E crime is committed by:

1. Public officials. An official who knowingly fails or refuses to perform a duty required of him by this Title;

2. General penalty. A person who knowingly violates any provision of this Title for which no penalty has been provided;

Commission Recommendation: Raise (1) to Class D crime.

ATTACHMENT "B"

SPECIAL COMMISSION TO REVIEW THE ELECTORAL PROCESS

Jane Durgin, Co-Chair; Former Portland City Clerk

Peter Jacobs, Esq., Co-Chair; Attorney, Pierce, Atwood,
Scribner, Allen, Smith & Lancaster

Gerry Berube, City Clerk, Lewiston

Senator Richard Carey, Chair, Legal Affairs Committee, Maine
Senate

Robert Cleaves, Former Counsel for the State Republican Party;
Attorney, Verrill & Dana

Lorraine Fleury, Director of Elections, Office of Secretary of
State

Marion Holshouser, President, League of Women Voters of Maine

Catharine Lebowitz, Former State Representative

Russell McKenna, City Clerk, Bangor

David Perkins, Esq., Former Counsel for State Democratic Party;
Attorney, Perkins & Perkins

Representative Albert Stevens, Legal Affairs Committee, Maine
House of Representatives

Janet Waldron, Assistant Secretary of State

Ed Pert, Former Clerk of the Maine House of Representatives

Staff:

Doug Dunbar, Office of the Secretary of State

Jared des Rosiers, Esq.; Attorney, Pierce, Atwood, Scribner,
Allen, Smith & Lancaster

SPECIAL COMMISSION TO REVIEW THE ELECTORAL PROCESS

REPORT TO SECRETARY OF STATE G. WILLIAM DIAMOND

SELECTED RECOMMENDATIONS

* That there be a presumption that there will be a recount in close elections (within 1%) and that the State Police take exclusive custody of all recount ballots as soon as possible. (Recommendation #1)

* That unsealed, unused ballots should be voided at the close of the polls and that voted and unused ballots should not be stored together. (#2)

* That ballot inspections should be eliminated. (#3)

* That most state employees, including legislative staff, should be barred from participating in recounts. (#8)

* That the courts should make the final decision on recount results. (#10)

* That the state should provide municipalities with tamper-proof ballot storage boxes. (#13)

* That the Secretary of State should be popularly elected. (#14)

* That unenrolled ("independent") voters should be allowed to serve as election officials, and that partisan boards of registration be abolished. (#15 & #16)

* That there should be mandatory, standardized training for election workers. (#17)

* That candidates should be allowed at the polls only to vote. (#18)

* That restrictions on the use of absentee ballots should be increased. (#21 and #24)

* That municipalities should be allowed to open the polls on the Saturday before election day as well as on election day itself. (#23)

* That security should be tightened for those registering to vote on election day and during the 15 days before election day -- including the use of "challenged ballots" for individuals unable to prove identity and residency. (#25)

* That the concept of "intention to return" should be eliminated from the voter registration laws. (#26)

* That criminal penalties for violating election laws be significantly increased -- many to "felony" levels permitting incarceration in the state prison and substantial fines. (#29)