February 8, 1980

The Honorable Richard H. Pierce, Chairman
Legislative Council
State House
Augusta, Maine 04333

Dear Chairman Pierce:

We enclose the final report of the Joint Standing Committee on Judiciary on Court Reorganization on its study of H.P. 1567.

Very truly yours,

Samuel W. Collins, Jr.
Senate Chairman

Barry J. Hobbins
House Chairman

JCH/lk

STATE OF MAINE

ONE HUNDRED AND NINTH LEGISLATURE

COMMITTEE ON JUDICIARY

REPORT OF THE JUDICIARY COMMITTEE

COURT REORGANIZATION

INTRODUCTION

During the 108th First Regular Session, the Joint Standing Committee on the Judiciary was ordered to study the reorganization of the Superior and District Courts, under HP 1567.

The Committee began its consideration of the problems of the Superior and District Courts during its hearing and working sessions on L.D. 1602, "AN ACT to Integrate the Activities of the District Court into the Superior Court." Because of the pressure of events and the complexity of the issues raised by that bill, the Committee continued its study after the adjournment of the session. During the fall of 1979 the Committee met with representatives of the Courts, the Attorney General, District Attorneys and defense attorneys and trial lawyers to consider the problems of the Superior and District Courts and possible solutions.

As a result of those discussions the Committee proposes legislation to be introduced into the Second Regular Session. The proposed bill focuses on restricting the ability of a criminal defendant to hinder and delay the administration of justice by demanding two complete trials, one in District Court and a second, "on appeal de novo", in the Superior Court. The Committee believes this bill will resolve the present problems in court organization.

REPORT

After considering the views of people involved in the criminal justice system, it became obvious that the most immediate problem confronting the Superior and District Courts was the problem of "trial de novo" in the Superior Court. This problem is that those who are convicted in District Court, where the

trial is without a jury, have the Constitutional right to "appeal" to the Superior Court for a jury trial. Thus, a defendant can have a full trial in District Court and a second full-trial in the Superior Court. The root cause of this problem is the dual trial level organization of our courts and the right guaranteed by the Maine Constitution to have a jury trial in any criminal case (a case involving a possible sentence of imprisonment.) Thus, in Maine, a person charged with a petty misdemeanor with a possible sentence on conviction of a few weeks or months of imprisonment may be tried at the District Court level, and if convicted, may try again, from the beginning, on the Superior Court level.

To a lesser extent, there is also a problem of "transfers" from District Court to Superior Court. In these cases there is no trial in the District Court but at some point in the preliminary proceedings the case is transferred to the Superior Court for trial. This usually occurs at the request of the defendant for a jury trial.

According to figures of the last few years, these two types of cases, "appeals" and "transfers," represent almost 50% of criminal caseload of the Superior Court. Appeals represent roughly 12-13% of the criminal caseloads of the Superior Court. Though most of these appeals are resolved in the Superior Court without a trial, in almost one hundred cases every year, the state is required to hold two full trials. In the remaining 3,800 or so cases that are transferred or appealed, there may be a significant delay in the administration of justice because of the appeal or transfer.

From the testimony received, it appears that a large proportion of the "transferred" cases and almost all of the "appealed" cases involved prosecutions for driving under the influence of intoxicating liquor. The underlying reason for this seems to be that the penalty for an "OUI" conviction, particularly the loss of a driver's license, is considered to be so severe by defendants. It also appears that the "severity" of the District Court Judge in sentencing has a direct relationship to the likelihood of transfer or appeal; the "stiffer" the judge, the higher the probability of going to Superior Court. Whenever the defendants face what they consider to be severe penalties, they seem to encourage and seek every opportunity to delay or evade the consequences of their acts. The present two-level trial court structure seems to assist them in these tactics, and to allow undue delays in prosecution, waste of court resources, burdening of the justice system and a perception of unfairness in allowing two trials.

The Committee then considered the range of solutions that were available to meet this problem. They considered a range of solutions from a constitutional amendment limiting the right to jury trials in misdemeanor cases, through complete or limited reorganization and limitations on transfers and election of jury trials, to policy statements and directions to the courts to make administrative or rules changes to reduce delay and evasion.

These solutions are not new. In the 105th, 106th and 107th Sessions several bills were introduced that applied one or more

of these solutions. During that period variations on a Constitutional Amendment to limit the right to jury trial were consistently defeated. (See L.D. 215 of the 106th and L.D.'s 89, 351 and 1115 of the 107th). However, in 1973 a statute was enacted to limit the right to elect jury trials (P.L. 1973, c. 520) This Act was repealed in the next Session. (P.L. 1975, c. 139.) In addition there has been considerable consideration and discussion of these solutions and their effects for almost a decade.

In reviewing these solutions, it became obvious that most of them were too radical for the immediate problem.

The Constitutional Amendment concept to limit the right to jury trial seemed a practicable solution that was not possible to achieve.

The complete reorganization of the court system into a "unified trial court" seemed an unwarranted response at this time to the problem of trial "de novo." From the information supplied by the Court, it seemed that there would be no cost saving from reorganization. It also would cause a loss of the valuable "screening" process now served by the District Court. Even though several thousand cases presently go from District to Superior Courts; nonetheless, many more thousands are resolved finally in the District Court at a significant savings in time and money.

Establishing a "unified" trial court with several divisions concerned with particular legal areas, and providing jury trials in District Court is essentially the same as unifying the trial courts and presented no other advantages. In all these alternate "unified" trial court solutions, the cost in additional physical facilities and personnel will apparently more

than offset the savings from eliminating one trial in some cases. In addition, the present attribute of screening cases and rapidly and efficiently eliminating minor cases from the docket, may be lost in this "unified" system; where each court would be required to continually maintain on hand the capacity for a full jury trial. Thus, these solutions seemed inappropriate at this time.

Less drastic changes seem more promising. Though the limitation of the right to elect jury trials was tried and failed in 1973 to 1975, it seems that it is worth another consideration. There are two major changes in the judicial system since 1975 that will have a major influence on this solution. First, a major portion of 1975 criminal offenses have been "decriminalized" into civil violations or traffic infractions. This change reduces by over one-half the number of cases that are even eligible for a trial "de novo." A major reason for the failure of the 1973 "transfer" statute was that it seemed to force an election of jury trial and thus flooded the Superior Courts. The major reduction in offenses eligible for jury trials should reduce this consequence to manageable proportions.

In addition, since 1973 there have been major changes in the administration of the courts. The centralized administration, with its capacity to monitor caseloads and act to relieve backlogs, and the assignment of District Court Judges to sit in Superior Court, should provide the means to prevent the problems that occurred in 1973-75. These changes will provide the flexibility and responsiveness necessary to meet any temporary distortion of caseloads. It will allow the Superior Court to

respond to the first appearance of either evasion or impairment of a new "transfer statute" by overloading a Superior Court docket.

In addition, the 1973 transfer statute also appeared to limit the ability to take full advantage of the District Court in preliminary proceedings to reduce the demands on the Superior Court. This defect can be easily remedied in a new statute. The strength of the District Court is to rapidly and efficiently dispose of minor criminal matters. It has many more judges and locations than the Superior Court and can effectively resolve many more criminal prosecutions. These advantages should not be removed or limited by a "transfer" law. The District Court's great "disadvantage" is the need to transfer cases to the Superior Court for a jury trial. Thus, a transfer statute should seek to use the District Court to the greatest possible extent, while requiring waiver of a jury trial or transfer to Superior Court prior to District Court trial.

In addition to a new statute, however, it will be critical to have both new court rules and an aggressive policy of response to any attempt to impair or evade the statute. Because of the intricacies of court procedure and the inevitable opportunities for delay or evasion in a new statute and court procedure, it will be critical for the success of a new transfer statute that the Court and prosecutors carefully monitor the progress and effects of the statute. The Court and prosecutors will have to take every possible step to eliminate any attempt to unnecessarily delay proceedings or to obstruct the new procedures. The inherent powers of the Court and "prosecutorial

discretion" should be more than sufficient to meet these potential problems.

CONCLUSION

After reviewing many possible solutions to the problem of dual trials under the present appeal "de novo" system, the Committee recommends that legislation be enacted to more efficiently channel the procedures for jury trials. The defendant in any misdemeanor criminal case should be required to either elect or waive a jury trial no later than the beginning of his District Court trial. This election should not remove the possibility of completing preliminary proceedings in the District Court, but should significantly reduce, if not eliminate, the duplication of trials that may presently occur.

In addition, the Committee recommends that the present statute allowing District Court judges to sit in Superior Court should be amended to reduce the administrative complications and procedures. The Chief Justice should have the authority to make an initial designation of a District Court Judge qualified to sit in Superior Court, and his actual assignment thereafter should be a matter of administrative routine. This amendment will significantly increase the Court's ability to properly administer a new transfer statute. It will provide the necessary flexibility to meet any increase in caseloads, and will also allow an appropriate and rapid response to attempts to abuse the new statute.

Finally, the Committee recommends that the Court, the Attorney General and District Attorneys use their inherent powers and discretion to reduce or eliminate any attempts to

evade the new transfer procedures. It will be critical to the implementation of a transfer limitation, that it not become another method for delaying or obstructing the administration of justice. The responsibility for this will be with the Courts and the prosecutors.

Judiciary Committee Study Bill

"AN ACT to Expedite Criminal Trials and Provide for the Election of Jury Trials."

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 4 MRSA §157-C, is amended to read:

§157-C. Judge or Active Retired Judge of the District Court to Sit in Superior Court

~~A Judge or an Active Retired Judge of the District Court may be assigned by the Chief Justice of the Supreme Judicial Court to sit in the Superior Court in any county, and when so directed he shall have authority and jurisdiction therein as if he were a regular Justice of the Superior Court, and whenever the Chief Justice of the Supreme Judicial Court so directs, he may hear all matters and issue all orders, notices, decrees and judgments that any Justice of the Superior Court is authorized to hear and issue.~~

The Chief Justice of the Supreme Judicial Court may designate a Judge or Active Retired Judge of the District Court as authorized to sit in the Superior Court. The Chief Justice may assign a Judge so designated to sit in a Superior Court in any county for a specific period or otherwise. A Judge so designated and assigned to a Superior Court shall have the authority and jurisdiction of a regular Justice of the Superior Court.

No Judge or Active Retired Judge of the Distrct Court ~~so sitting in the~~ assigned to a Superior Court shall act in any ~~case in which he has sat~~ cause tried before him in the District Court. ~~nor in which he otherwise has an interest.~~

The order of the Chief Justice of the Supreme Judicial Court ~~directing~~ designating a Judge or an Active Retired Judge of the District Court as authorized to sit in the Superior Court shall be filed with the Executive Clerk of the Supreme Judicial Court, but need not be docketed or otherwise recorded in any case heard by him.

Sec. 2. 15 MRSA §2114, is repealed and replaced to read:

§2114. Defendant shall make election of jury trial

In a criminal proceeding before the District Court, the defendant may waive his right to a jury trial in the Superior Court and elect to be tried in the District Court. The waiver shall be made in writing and signed before a Judge. If the Judge is satisfied that the defendant's waiver is made freely and understandingly, he may then proceed to dispose of the case.

If the Judge refuses to accept the waiver or the defendant refuses to waive, the Judge shall transfer the case to the Superior Court for hearing and disposition. The waiver or transfer may occur after completion of arraignment or other preliminary proceedings.

An appeal to the Superior Court following an accepted waiver and judgment of conviction in the District Court shall be only on questions of law or sentence.

Nothing in this section shall prevent a defendant, after the transfer of the case to the Superior Court, from waiving his right to jury trial in the Superior Court.

If a defendant waives his right after transfer, then the case shall be docketed for trial as soon as possible.

STATEMENT OF FACT

This bill is a result of a study by the Joint Standing Committee on the Judiciary as ordered by H.P. 1567. The purpose of this bill is to increase the courts flexibility and responsiveness to criminal proceedings in the District Court.

The bill amends the present authority to shift judges between various courts. It also gives the Chief Justice greater flexibility in assigning District Court Judges to the Superior Court by allowing him to designate certain Judges to serve in Superior Court, and then assign them either temporarily or intermittently to hear Superior Court cases. The designation and assignment are separate actions, which allows rapid response to case-loads and judicial assignments.

The bill also expedites the criminal proceedings in District Court by requiring a defendant in a criminal action to choose between a District Court trial before a Judge or a jury trial in Superior Court. The choice must occur before the District Court trial has started. This procedure will eliminate many of the duplications in hearings that presently occur in some misdemeanor cases. If the defendant subsequently charges his choice, then the trial will be held as soon as possible to avoid any delays from redocketing.

STATE OF MAINE

In House

[redacted]

Whereas, significant legislation has been introduced this session relating to the reorganization of the courts and to the establishment of a judicial retirement system; and

Whereas, there was insufficient time to fully consider the complete ramifications of these issues and the complex questions raised in the bills; and

Whereas, these bills deserve further study and consideration because of the importance of the issues; now, therefore, be it

Ordered, the Senate concurring, subject to the Legislative Council's review and determinations hereinafter provided, that the Joint Standing Committee on Judiciary shall study the reorganization of the District and Superior Courts and the judicial retirement system, and shall study in particular the subject of the bills, L.D. 1450, "AN ACT to Establish the Maine Judicial Retirement System", and L.D. 1602, "AN ACT to Integrate the Activities of the District Court into the Superior Court", as introduced into the First Regular Session of the 109th Legislative; and be it further

Ordered, that the committee report its findings and recommendations, together with all necessary implementing legislation in accordance with the Joint Rules, to the Legislative Council for submission in final form at the First Regular Session of the 110th Legislature; and be it further

Ordered, that the Legislative Council, before implementing this study and determining an appropriate level of funding, shall first ensure that this directive can be accomplished with-

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in the limits of available resources, that it is combined with other initiatives similar in scope to avoid duplication and that its purpose is within the best interests of the State; and be it further

Ordered, upon passage in concurrence, that a suitable copy of this Order shall be forwarded to members of the committee and to the Chief Justice of the Supreme Judicial Court.

NAME: (Hobbins) Barry J. Hobbins

Town: Saco

H 1567

Read

Mitchell of Vassalboro

Taken from Table by Mrs. Mitchell

and Mrs. Mitchell

Passage Unanimous