

MAINE STATE LEGISLATURE

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



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

LEGISLATIVE RECORD

OF THE

*One Hundred and Seventh
Legislature*

OF THE

STATE OF MAINE

Volume II

May 21, 1975 to July 2, 1975

Index

KENNEBEC JOURNAL
AUGUSTA, MAINE

Curran, P.; Dam, Davies, DeVane, Farley, Flanagan, Goodwin, K.; Gray, Greenlaw, Henderson, Hobbins, Hughes, Ingegneri, Joyce, Kany, Kelleher, Kennedy, Laffin, LaPointe, MacEachern, Mills, Mitchell, Morin, Mulhern, Najarian, Norris, Pelosi, Post, Powell, Rolde, Snow, Spencer, Stubbs, Talbot, Tierney, Tozier, Usher, Wagner, Wilfong, Winship.

ABSENT — Carey, Carroll, Connolly, Curran, R.; Doak, Dow, Faucher, Goodwin, H.; Hall, Hennessey, Hewes, Jacques, Jalbert, Jensen, Martin, R.; Peakes, Peterson, T.; Pierce, Rideout, Silverman, Smith, Strout, Truman.

Yes, 77; No, 49; Absent, 23.

The SPEAKER: Seventy-seven having voted in the affirmative and forty-nine in the negative, with twenty-three being absent, the motion does prevail.

Sent up for concurrence.

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

House Divided Report — Report "A" (5) "Ought to Pass" as amended by Committee Amendment "A" (H-515) — Report "B" (4) "Ought to Pass" as amended by Committee Amendment "B" (H-516) — Report "C" (3) "Ought Not to Pass" — Committee on Election Laws on Bill "An Act to Require the Closing of Voter Registration 32 days Prior to an Election" (H. P. 20) (L. D. 28)

Tabled — May 28, by Mr. Birt of East Millinocket.

Pending — Acceptance of Any Report.

On motion of Mr. Rolde of York, retabled pending acceptance of any Report and specially assigned for Monday, June 2.

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

House Divided Report — Majority (11) "Ought Not to Pass" — Minority (2) "Ought to Pass" as amended by Committee Amendment "A" (H-521) — Committee on Judiciary on Bill "An Act to Establish the Death Penalty for any Person who Murders a Police Officer while Committing a Felony" (H. P. 1383) (L. D. 1698)

Tabled — May 28, by Mr. Rolde of York.

Pending — Acceptance of either Report.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Talbot.

Mr. TALBOT: Mr. Speaker, I move that this Bill and all its accompanying papers be indefinitely postponed and request a roll call.

The SPEAKER: The gentleman from Portland, Mr. Talbot, moves that Bill and all its accompanying papers be indefinitely postponed.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All those desiring a roll call vote will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the gentleman from Westbrook, Mr. Laffin.

Mr. LAFFIN: Mr. Speaker, Ladies and Gentlemen of the House: First of all, I want to thank Mr. Palmer and I want to thank Mr. Rolde and the members of this House for at least having the people of Maine decide on this issue. There were several in this House who didn't even want

to hear the pros and cons on this issue, and I want to thank you all for the support that we got back then.

However, I am not prepared on this bill today, so I am going to take whatever information I have and try to tell the people of this legislature that the people of Maine want capital punishment for cop killers. WGAN-TV in Portland had a four to one on their public opinion poll, yes for capital punishment. We have received letters from all sections of this state right here, and I will be glad to let anybody look at them — hundreds of letters from people all over this state, towns I never even heard of that want capital punishment.

This country was founded on capital punishment. The West was settled on capital punishment, and the day that we restore capital punishment in Maine, it will be our finest hour. And I want those words to go back to the Guy Gannett Newspapers of this state.

To be sure, the last death penalty that was enacted in this state was 1887 — that is almost a hundred years ago, but today we are living in a devastating period compared to over a hundred years ago. Over 31 states in America today have enacted new death penalty laws and there are over 200 murderers, rapists, and kidnappers on death row today.

Although the Supreme Court, in 1972, did rule in the Constitution that the death penalty was unusual and cruel punishment, ruled it unconstitutional. However, this same high body of our land today, they also ruled that prayers in public schools was also unconstitutional, and I am sure there are many in this House who do not agree with that. Several times in the past week, men and ladies from all over this House Chamber got up and said about different things that the Supreme Court ruled and they didn't agree with them either, so I don't stand alone on that.

The last person that was executed in the United States was executed in the Colorado gas chamber on June 2, 1967. He had murdered his wife and 3 of his children and he deserved to die. There are other rapists and murderers and cop killers who are waiting on death row today for their judgment that will surely come.

The Supreme Court of our land is now taking under advisement that capital punishment be reinstated at the state level and new death penalty laws are springing up across our nation, and although on that judgment day of June 29, 1972 by a 5 to 4 vote, the Supreme Court did rule that the death penalty was unconstitutional. However, on March 4, 1975, the Justice Department contested that the death penalty is well rooted in our nation's legal tradition and therefore told the Supreme Court it could leave it up to the states to decide when capital punishment is appropriate.

The Justice Department brief stated, and I quote: "Capital punishment deters crime, removes social values such as the expression of moral outrage and incapacitates dangerous offenders." The brief went on to say that the legislatures elected by the people as their true representatives reflect the will of the people concerning capital punishment and it should be left up to each individual state, because state legislatures are closer to the people than the Supreme Court, who are not elected but are appointed.

On April 3, 1975, a 22-year-old man murdered two policemen and critically wounded a third in Mt. Holy, New Jersey. The crowd of onlookers were so shocked

and outraged that they demanded his blood on the spot, and I am holding up before you to show you what a cop killer looks like and there he is, and if any of you would like to read that, it is in black and white, it is nothing made up, it is what this man actually did in a matter of seconds. I would be glad to let any of you look at it.

Responsible American citizens were so horrified to see that law and order had been completely wiped out and two days later, a man of Christian faith said that it was unbelievable and unreal to his very own eyes that a 22-year-old man could wipe out the lives of two policemen and critically wound a third in a matter of seconds. He felt that this man did not deserve to live in our society today.

The onlookers were horrified and now they know the State of New Jersey needs capital punishment, however, they are not one of the states who have it under consideration. Some states have had enacted capital punishment laws for murderers, rapists, for cop killers and hijackers, but they have stated, and I want to quote this so you will all understand it very carefully: "By stating the facts of these 14 states out of 23 which have now enacted capital punishment laws, the Supreme Court in their ruling stated that it must be of a designated nature." Therefore, they themselves have left the door open for capital punishment laws to be enacted by the state legislatures.

The prime concern of one member of the Supreme Court who voted in the majority, stated that the death penalty is not used in sufficient frequency to serve justice but, Justice White ruled it unconstitutional in his brief as cruel and unusual in the rare case where it applied.

If the legislatures made this available only for a small class of offenders, selected with such great care that juries would impose it on a regular basis, even though they need not do so, the constitutional flaw arguable would be removed. This is one of the Supreme Courts who gave his brief in the majority ruling.

Justice Stewart's opinion aims at taking away from the judge and the jury most of the burden on deciding which criminal offender shall be punished by death and which shall not be. Therefore, he says, place it with the legislatures. To meet the standards, he established legislatures must mandate the circumstances in which the death penalty would be inflicted and distinct from those in which it shall not. Yet, in so acting, he goes on to state, legislatures still run the risk of being second guessed by the judiciary, either because their statutory rules are found unacceptable under a yet to be established amendment.

Justice Burnham and Justice Marshall and Justice Douglas all go about the same, and I have mentioned some of those for the simple reason that there is always two sides to every story, whether you agree with them or whether you don't. There were only two of the five majority opinions, Justice Burnham's and Justice Marshall's, and they reached the ultimate issue of whether capital punishment is, per se, cruel and unusual. Both decide that this issue against capital punishment for two reasons beyond those already discussed and I want to mention both of these to you today. First of all, they felt that death would be of an uncivilized punishment degrading a human dignity. Although, only Brennan contended this is a sufficient reason to declare it violatable to the Eighth Amendment and secondly, each

felt capital punishment to be rejected by the society in which we live in, and I would disagree on both of those because I have facts and figures to substantiate that.

I want to give to you ladies and gentlemen a little statistics who feel that there are not a great many number of police officers killed in this country. In 1973, there was a total of 127 local, county and state law enforcement officers killed due to felonists, criminal actions in this country. During the 10-year period between 1964 and 1973, 858 officers were killed, murdered.

In 1973, 19 officers were killed while attempting arrests for crimes other than robbery or burglary; 27 officers were slain by persons they encountered during the commission of a robbery or during the pursuit of a robbery suspect and 56 officers were slain in ambush fashion. Thirty-one of these officers were entrapped and slain through premeditated actions; 25 officers were killed in unprovoked attacks which did not involve apparently any entrapment and 25 officers were slain while making a simple traffic stop for a ticket. Three of them were killed by mentally deranged persons and during a ten-year period between 1964 and 1973, 47 of the slain officers used their firearms when confronted with an assailant; 34 of these officers fired their service firearms while attempting to protect themselves and 96 of the 127 officers killed were killed within 10 feet of their assailant.

To be sure, we have not had a policeman killed in the State of Maine for several years; however, the 1973 statistics, which I will read to you from the FBI report, show high and aggravated crimes on assaults on police officers in the line of duty.

In 1973, just one year, there were 62,300 assaults on police officers which were committed in this country and that is the rate of 15 per 100 officers, double to what it was the year before, and I feel that if one police officer's life can be saved, this legislation would certainly be worth its merits.

We had a situation in Maine a short while ago where two people came up here from Massachusetts and killed their buddy and dumped his body on the highway and it is costing the State of Maine \$230,000 to \$235,000 for justice to take its course. If they are lucky, they will be free in 8 to 10 years.

I would now like to read something that is very sad. I was going to omit it, but I thought that I would read it. This is a true story that was told before the White House Congressional Committee on Capital Punishment and it starts by a Mrs. Gibson and I quote: "On the night of November 14, 1974, Mrs. Gibson was working, as usual, as a clerk in a store, a neighborhood store. About ten-thirty, a young buck came in, presented a \$5 bill and asked her for cigarettes. When she started to make change, the man knocked her down, leaped on her, attacked her and brutally beat this woman. A policeman happened to come by and he fired a shot and only wounded the policeman. He got \$111 in this holdup. Mrs. Gibson was injured so badly that more than half of her stomach had to be removed by surgeons, a frail woman of 56, stands only five feet tall, weighing about 76 pounds, this woman took all her money for her hospital bills, all that she had possessed, and 22 months later she died.

"However, this man, Mr. Taylor, is now in a penitentiary in the McAllister Penitentiary, where he will be fed, clothed by the taxpayers at a cost of \$3,600 a year

until he will be paroled in about 8 to 10 years." Justice and equality certainly didn't take its course in that case.

Sometimes, once in a while, people in this House quote famous people and I would like to quote something that Benjamin Franklin said after looking all this stuff over and he said: "Those who would give up essential liberties to purchase a little temporary safety deserve neither liberty nor safety." It really comes down to an obvious reversal of the once accurate phrase "crime does not pay." Unfortunately, it does pay. If our system of criminal justice is to be effective, it must return to the fundamental principles on which it was based; namely, the deterrent effect on crime; hence, in its punishment. Crime will only decrease when it becomes more dangerous to be a criminal than to be the victim.

I received many letters from people over this state and I took a few of them out. I thought that some might be interesting, some, of course, would not be interesting to you. This is from a school teacher, a school principal, in Waldoboro, Maine, where ever that is, Waterboro, Maine, and it says, "Congratulations on giving citizens a chance to have a voice concerning this vital issue. It is rather obvious that society must have the machinery to protect itself from those who would endanger others. If we had no deterrents, as some would suggest, we would have neither orderliness nor safety. Capital punishment and stiff prison sentences fairly and quickly administered without long delays of legal delays would help to restore some confidence in our penal system.

"Those people who are law abiding and who pay the taxes to support this system should know that the guilty will be dealt with fairly, firmly, and effectively. Rehabilitation is a great concept and a worthy object, but we cannot expect 100 percent cure in the penal system anymore than we can expect perfection in medicine, education or any other endeavor."

I read part of that letter because I thought that it had a lot of meaning to it. I picked a few of them and I am not going to tie you up too long, but some of them have a real effect if you read them over. This is from a school teacher, she retired in 1967 after 41 years of teaching. She goes on to tell me about education, that I know nothing about, so I will overlook that, but then she goes on to say that it is time to teach pupils responsibility. Too long freedom has meant nothing to those who did nothing to live free. I am pleased to see that capital punishment may go on our books again. With crime increasing in Maine cities and outlying areas, we need capital punishment on the books, and this is from Gray, Maine and if anyone would like to read that letter from that school teacher, I also have that available.

I have several other letters here from people of all walks of life. I have one from a 73-year-old woman and she says, "I am very disappointed with your bill, Mr. Laffin, because it does not include hijacking of airplanes." She said, "These murderers should be included too," and this is from a 75-year-old woman and I have that here. I just don't know where that is from, I laid that aside, she is from Maine, anyway.

This one is from Augusta and she has talked to many people about capital punishment and she could give me 100 signatures if I needed them. Well, I don't think this legislature would listen to 100 signatures. In ways we try to do things we

think, well, at least we are going to try to do this thing right. We are going to try to tell the people of Maine that we as individuals, this legislature, means business when we want protection for our law enforcement officers.

This is a letter that I got in favor, I am sure, of some of you, "long live cop killers and rapists, women don't deserve to live." That was a real intelligent one.

I have this one here and she tells me all about the Bible and I am sure she is a very sincere person in telling me about "Thou shall not kill." At the bottom of it, someone apparently, because it is different handwriting, wrote, "We should have a state holiday for another day off for cop killers." Real intelligent.

I received this letter and I would like to read this to you before I go on any further. I wrote this letter to Mr. Clarence Kelley of the FBI and he writes: "Dear Mr. Laffin: The crime statistics you requested in your letter of April 16, 1975 are being prepared by the Uniform Crime Reporting Section of the FBI. As soon as they are available, they will be forwarded to you," and they did come. In this little letter, he just wrote to say that enclosed was this: Crime statistics of 1973; murder, 19,500; armed robbery, 252,200; forcible rape, 51,000; aggravated assault, 416,270; assault on police officers, out of 108,000,532 in this country, the number of assaults on police officers were only 32,535, which means it is 15 to every 100; number of officers assaulted sustaining injuries as the result of an assault, only 12,880. Now, they give for the violent crimes which they list as murder, forcible rape, robbery and aggravated assault. The Uniform Crime Reporting Statistics for 1974 has not yet been finalized; however, it is estimated that 1974, compared to 1973, the total crimes index increased 18 percent and violent crimes increased 17 percent. Those aren't my figures, those are from Washington.

I have written to several states that have capital punishment laws. As I say, I am not prepared on this because I did not receive several of the letters that I had expected to receive, but I do want to read you one from the Attorney General of Oklahoma. It says: "Dear Representative Laffin: We are in receipt of your letter wherein you required the opinion of this office concerning the deterrent effect of capital punishment. We have consistently maintained that the imposition of the death penalty is a deterrent to violent crime in the State of Oklahoma. We have based that opinion to some extent on statements made by persons convicted of capital offenses wherein those persons expressed certain of their ideas containing the death penalty.

"During the period of time after Furman, that is Georgia vs. Furman in the Supreme Court, which gave their ruling on this, and before the reenactment of the death penalty in Oklahoma, an incident occurred in New York that reflects what we think is an excellent example of the deterrent effect of the death penalty. A bank robber, while holding a number of hostages, shouted to police officers who were seeking his surrender that he could kill all of them hostages and not suffer any greater penalty than he would for the crime of armed robbery." Couldn't get any more, couldn't get any less. Quite fortunately, he did not take the lives of the hostages but his statement is indicative of the fact of many of the penalties and consequences of their acts. Consider this in

the commission of an armed robbery, everything being equal, why would not the robber kill his victims so to thrust his later identification and conviction.

I also invite your attention to the recent study of Professor Isaac Erlich of the University of Chicago, concerning the deterrent effect of capital punishment and that is one of the letters that I was waiting for and I have not received it yet. Dr. Erlich's study concludes that each instance of the imposition of capital punishment could have prevented eight homicides. I am sure I have stated Dr. Erlich's thesis quite implicitly but I have discovered that the study will soon be published in the American Economics Review of Brown University in the June issue of that magazine. It is signed by the Attorney General of the State of Oklahoma, Michael Catherton. I am not saying it deters crime; this man right here who deals with it day in and day out is saying it.

Being unprepared for some of the things that I wanted to bring up to you people today, I find myself at a disadvantage on many of the issues that I wanted to talk to you about. However, first of all, and I didn't realize I needed glasses, but I sure do, I can't even read this. No, I don't need glasses.

I stand before you today, in all sincerity, that if we could save one police officer's life in this state, this law would be great.

I would hate to wake up some morning and read that stupid Portland paper and see in the headlines that an officer of the law was killed in the line of duty because I would always wonder, would this bill have saved his life? It is something that we will have to live with. Would it have saved his life?

I take this bill like being a lighthouse, we will never know how many ships go by the lighthouse at night because nothing ever happens, but take the lighthouse away and the ship could go down. If we put capital punishment on our books, we don't want anyone killed and it could save someone's life, we will never know, but it would be certainly worth its merits.

There are those in this House who are very religious people and for that I certainly respect you, but you were not elected by your church to come here, you were elected by the people of the state to fulfill the laws for the betterment of the people of this state. We have a separation of church and state.

Let's take the case about this man who murdered Senator Kennedy. Seventeen years from the day he killed him, he is going to be free, walking the streets. I say to you ladies and gentlemen of this House, we need this bill and we need it bad to let the people of this state know that we do support, that we are willing to even take a little criticism like a couple of them stupid letters I got. They don't mean anything if we could save someone's life, and we can. If this bill is defeated today, somewhere along the line it will come back. I won't be here but someone else will. In the times that we are living in, if none of you people have had a gun put to your head and feel the cold butt of that gun I am glad because I wouldn't want that to happen to anybody. If you have never been shot, I am glad because I wouldn't want that to happen to anybody. When a policeman risks his life every day right here in this county a few weeks ago a man, a deputy guard, a sheriff could have lost his life, and we are thankful that he didn't but he could have.

I have so many friends in this House -- I

get all kinds of letters from everybody, some are signed and some are not. Some of the people that I asked to support this, which I feel very strongly about said, gee, I would vote for anything you wanted but this bill. That was awful nice of them because I will never ask for anything else but I did ask for this.

There are several things that I have left out, as I said, I am not prepared on this because I have several things that I wanted to bring to your attention. I wish you would stop sending me notes up back.

We ran a little ad in the Portland paper, in the State of Maine papers around the state and we received roughly 1,800 to 1,900 -- we haven't counted them all, no I am not going to read them all, and they are signed by people who have a very strong conviction about capital punishment. Some day this state is going to have capital punishment again. Some day something is going to happen to a person who has a lot more influence than I would ever have. It is going to be the law of this land and the states that have reenacted it; I certainly hope and I want to thank all the friends for my notes.

Being unprepared I can't tell you at this time how I was going to close it, but I would like to have just a couple of things brought to your attention. One is that crime is on the up, murder is up, cop killers are up, and rape is sky-high. I urge you people to consider this very seriously. We need this as a basis to start our goal.

I urge you not to indefinitely postpone this bill. I want to thank you ladies and gentlemen for your kind attention.

Mr. Davies of Orono moved the previous question.

The SPEAKER: For the Chair to entertain a motion for the previous question, it must have the expressed desire of one third of the members present and voting. All those in favor of the Chair entertaining the motion for the previous question will vote yes; those opposed will vote no.

A vote of the House was taken, and obviously more than one third of the members present having expressed a desire for the previous question, the motion for the previous question was entertained. The question now before the House is, shall the main question be put now? This question is debatable with a time limit of five minutes by any one member.

The Chair recognizes the gentleman from Bangor, Mr. Henderson.

Mr. HENDERSON: Mr. Speaker, Ladies and Gentlemen of the House: As a member of the Judiciary Committee I told the sponsor of this bill, I would, if no one else would sign a minority report on this bill, that it have some discussion. As much as I disagree with him on the merits it seems to me that there ought to be at least some discussion to reaffirm to the people of this state, who I think in many respects, agree with the principle in this bill, to have some assertion as to why this is not an appropriate thing. This legislature to allow a person to speak on it, to cut off debate, and then to vote summarily I think, is not to give a fair hearing to this very important issue.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Kelleher.

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: Although I haven't been in my seat, I have been up back and I know there are two cosponsors of this bill and I think Mr. Henderson has raised a valid point, there may be others

that would like to speak. I have never voted for the previous question, and although I don't enjoy sitting here for an hour or two hours, nevertheless, I think others may want to participate in debate and I would respectfully ask the gentleman if he would remove it. I don't think I can do that. I simply think that the House should not move the question at this time.

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Call.

Mr. CALL: Mr. Speaker and Members of the House: Despite the fact that I feel most authoritatively that my good friend from Westbrook, Mr. Laffin, hasn't left much for anybody to say, he said it all, I feel that the question should not be taken at this time and that the rest of us should be able to speak. I plan to speak briefly. It has got to be briefly because Mr. Laffin said some of the thing that I planned to say. I am not going to leave them out because then my talk would be too brief. Again, I ask you to go against bringing the question now. We should all have a chance to say something.

The SPEAKER: The Chair recognizes the gentleman from Skowhegan, Mr. Dam.

Mr. DAM: Mr. Speaker, Ladies and Gentlemen of the House: I, too, would hope that we didn't move the previous question now because as a cosponsor I have a few remarks that I would like to make also. As I look at the Speaker up there with his Cheshire cat grin, I get to laughing also but I think, seriously, this is a serious matter and it should be debated and there are others, that I am sure, that want to speak against the bill and they should be heard also. I think also that the people in the State of Maine when they send us down here, they don't send us down here to look at the clock and decide that you have got something else better to do, and you jump up and you move the previous question. I don't think that is representing the people of the State of Maine when you take this action. I think that to move the previous question shows a lot of irresponsibility on the part of anyone and I would hope that everyone would have a chance to speak on the bill that is before us. As far as it goes I am sure that the Speaker could, under the suspension of the rules or whatever he wants to use as a technique, he could have the barricade taken down so if anyone doesn't want to sit here they can go wander out in the hall, but I would hope that we did not move the previous question. I think this does not show courtesy to any member of the House when this motion is made.

The SPEAKER: The gentleman will refrain from imposing his desires on the motives of any other member of this body.

The question now before the House is, shall the main question be put now? This question is debatable with a time limit of five minutes by any one member. Is it the pleasure of the House that the main question be put now? All those in favor of the main question being put now will vote yes; those opposed will vote no.

A vote of the House was taken.

12 having voted in the affirmative, 86 having voted in the negative, the main question was not ordered.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Henderson.

Mr. HENDERSON: Mr. Speaker, Ladies and Gentlemen of the House: Unlike Mr. Laffin, I am prepared, but I won't take as long. I do want to make some comments on this. I think that the problem of rising crime is a serious one. The problem of aggravated assaults, the killing of

policemen, the killing of anybody is a problem. The question is, what is the solution and is this the proper way of going about dealing with this question? It seems to me that the question boils down to two general areas. The question of the morality of it and the question of the practicality. Sometimes those things are very closely linked.

As far as the morality is concerned, it seems there has also been some sort of a crossing of what the intention is. The argument has been made about deterrent, but on the other hand, we have talked about people who deserve to be killed if they are a cop killer, if they assault on a person or something like that. That is basic vengeance, there is not question about that, it is revenge. If that is the kind of situation that we want to put ourselves in, then I think we really have to reassess where we have come in the last several hundred years.

In addition, as far as the moral question, I want to get off it but I just want to mention it briefly, it seems to me that by institutionalizing the killing of other human beings in this society, we unnecessarily and I repeat the word unnecessarily brutalize our own value system putting ourselves in a position that we don't have to be put in, number one, and number two does us really no good and I think it raises some questions about what we are really all about. I am really more concerned about the practicality of it, the question of whether this really does provide a deterrent. Because if it were true, that a few executions here and there would, in fact, save lives than I think I might have to reassess my own consideration here. I think the record does not show that. For instance, the last police officer to be killed in Maine was 15 years ago. It was a long time ago and we haven't had a death penalty in that period and there hasn't been any rash of increases in our particular state.

I would like to call your attention to a couple of graphs that I had made up looking through the uniform crime reports, and try to get a picture of just what has been happening and if you look at, if you would, one at which at the top is labeled murder and non-negligent manslaughter of 100,000 population. That is how many people got murdered, basically, in this country for the last 15 years. You will see the U.S. National average is, no question about it, it is on the way up. It has been on the way up since 1963 and it has been pretty steady in that direction. When we make a comparison between the states, which have recently inflicted capital punishment, the ones that have done it the most per capita of their own population is Georgia, Mississippi and Florida, found that their murder rate is much higher and is increasingly higher. That capital punishment didn't seem to make any difference. If we look at the nine states referred to in this decision as states which have historically not had the death penalty, we find that on the average and I think only one state, Alaska, was really above the national norm in this. On the average they are below the average as far as murder rate is concerned and the State of Maine is even below that. The State of Maine and the State of Iowa, both of which do not have the death penalty, are among the lowest in the nation as far as murders are concerned.

If you look at the other chart, which has three separate graphs on it, if you find it of interest to do that, comparing Georgia,

Mississippi and Florida, this little like B indicates the number of executions and their decline over the last 15 years or so, dozen years and line A in each one looks at the murder rate. In each of those states which has had the highest number of executions per capita but, basically, tapered off and finally were outlawed by the Supreme Court, in each of those cases, the murder rate has not changed substantially, there hasn't been any difference. It has been basically the same. It seems to me, that on the basis of the evidence, we can't say that the death penalty, in fact, reduces murders.

On some other points of practicality, one of the questions was raised protecting our police. I think I could argue that the requirement for the death penalty in this range of cases actually increases the risk to police. You have this person, that the gentleman referred to earlier, that is holed up somewhere, say he has murdered somebody, that changes the scenario a little bit and has some hostages, in that case, the only incentive he has is to get out of there with his life in some way because he knows if he gets caught he is going to be killed. The only incentive he has is to kill everything in his way to get out. If he is not going to be killed, he is going to have life imprisonment, some long stretch, it is going to be easier to capture that guy. If he is going to be killed, he is going to fight like mad and that means, it seems to me, that the police officer is going to be put in more danger. In addition, in prisons, if people are put in there waiting execution they have only one alternative but to try to get out and they are going to have much more of an incentive to try to kill prison guards in order to escape than with the person who is doing life, so called, which means a long number of years but not forever. It is, basically irrational and there are people who are that and this death penalty, therefore, wouldn't deter them because they are irrational anyway, it would make sense for them to kill to get out because it would only compound the sentence that they are already under. So, it seems to me, in contrast, this thing number one does not deter murder, number two, it increases the risk to the police department.

One final comment and that is on an editorial that I distributed the other day, something that when brought to its logical conclusion is not something we like to think about very much but Russell Baker in his commentary said if we take the concept of capital punishment to its conclusion as a deterrent that it ought to be out in public where everybody can see it, like in the good old days of hangings out west. That, I think, for one thing violates our sensibility right away. In addition if we talk about cruelty, we could suggest some other kinds of maiming of a person instead of their total death for some other kinds of crimes. If you injure somebody severely, maybe you ought to have your hand cut off or your eye put out, but that is obviously disgusting. I don't think we even want to hear that, I don't even think you want me to talk about it. That is so terrible, yet, we are willing to put someone, maybe — some people may be willing — to put some people away in a closed closet somewhere and kill them, execute them. Whether this is less cruel and more deterrent is something that hasn't convinced me.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Talbot.

Mr. TALBOT: Mr. Speaker, Ladies and Gentlemen of the House: I have a few

remarks I would like to make but, first of all, I would like to get a ruling from the Chair.

I would like to find out whether this amendment is germane to the bill.

The SPEAKER: The Chair would advise the gentleman if an amendment comes out of committee, then it is assumed to be germane since the committee has dealt with it.

Mr. TALBOT: Well, what I'm trying to say, Mr. Speaker, unless we have an extra elective Chair hanging around unless this bill is passed, we are going to have to purchase one which means this bill should have a fiscal note on it. Am I correct?

The SPEAKER: The Chair would advise the gentleman if that should be the case, the fiscal not only would be required but would have to be added at second reading.

Mr. TALBOT: I will wait until second reading. May I continue?

The SPEAKER: The gentleman may proceed.

Mr. TALBOT: I would like to address this particular amendment, first of all, that deals with killing a police officer while committing a felony. It doesn't deal, I don't think, with killing a policeman while committing a misdemeanor. It also doesn't deal with a bank guard, it doesn't deal with guards, policemen that say we have out in our yards, it doesn't deal with that kind of thing, it only deals as this is, with prison guards, sheriffs, deputy sheriffs, constables, city marshals and deputies. Now, it doesn't deal with where this is going to take place, it doesn't deal with who is going to hold or pull the switch unless its going to be the gentleman from Westbrook, Mr. Laffin. I don't know whether the Governor has the power to commute a man's death sentence to a life sentence. I don't know that. I don't know if the Governor does have that power. There are all kinds of things that are wrong with this particular bill. It comes up almost as many times as the gun bill does.

I think Mr. Laffin pointed to the fact of all these violent crimes taking place in other states. I think we can thank our lucky stars that that doesn't take place in the State of Maine. We haven't had a policeman killed here in the last 15 years and I don't think we are going to have. I would hope not. If the Supreme Court does, in fact, rule that capital punishment should be continued, there could be within the sight of a year or two years, 50 to 100 executions in this country. I ask you just give that a little bit of thought. How would that look for this country to execute inside of one or two years, 50 or 60 young people.

I checked the graph that the gentleman from Bangor, Mr. Henderson passed out. It doesn't include the state of North Carolina and the state of North Carolina is the place where Jesse Fowler is housed in Cell Block F, his is the case that is going to be heard by the Supreme Court. That opinion should be coming down sometime the first part of June. North Carolina had, for years, one of the harshest capital punishment laws in the country, yet it was no deterrent at all. They have something like 67 people on death row now. It is not a deterrent and it is not a rehabilitation because those, as you know, who sit in that electric chair are dead. They die. I wonder how many of you know how that works. Let me give you an example. Somebody is led from their cell block into a small building or wherever the electric chair is at, they are led there sat and strapped into an electric chair, and then the sheriff or somebody who has that authority goes over to a switch on the wall and pulls that switch but the person who is

sitting in that electric chair does not die immediately. They first have convulsions, then they lose all control of their bladder, then they lose consciousness, and then they die. It's not a pleasant thing and it's not just like that, and I don't know how many of you have ever been before a jury, but if you pass this bill, what you're actually saying is, that the verdict coming down from that jury is absolute, beyond the shadow of a doubt. I don't know how many of you have ever been in front of a jury. I have, and there is always a question of a doubt.

I can remember going in front of a jury probably about five years ago, not related to crime, now don't get me wrong and the people that were on the stand, who were testifying against me in a housing matter were lying through their teeth and I went to the lawyer who was representing me, who, at that time, was representing the state. I said, they are lying through their teeth. Now, this is the first jury trial that I had ever been in front of. I said they are lying through their teeth and they have taken the oath to tell the truth and that lawyer who was a state attorney told me at that time, said "I know that" "the thing is, you've got to prove they are lying."

So what we are saying is if we pass this bill, like I said before, that we are saying that that jury is absolutely beyond a doubt, that man or that woman is guilty and I don't think we can do that, I don't think we can afford to do that. There are about approximately, give or take, one or two people, 207 people on death row in this country and there are only two women on death row in this country at the present time and one is black and one is Indian. I don't think we have the right to take anybody's life. I have made my views plain on this floor insofar as abortion is concerned, that same thing holds true on the other end of the spectrum when it comes to taking somebody's life. I don't think we can afford to do it and don't think I haven't gone over this in my mind, I have. I have read some of the very, very shocking stories that have sometimes been speculated by the gentleman from Westbrook, Mr. Laffin.

I read a couple of days ago, where a young man raped two women and burned them alive, one died and the other lived to tell about it. They amputated both legs, they amputated both arms, they amputated both ears and one eye. Now to me that is a horrible, horrible crime and I've said to myself and I've gone over it in my mind "what if that happened to one of my kids, how would I feel about the death penalty" and I've come to the realization that me, with my faculties cannot, cannot at any point take somebody's life, but under that kind of a condition, happening to one of my children or to one of your children, I don't know what I would do. I don't know how I would feel, I would go right out of my skull, but me with my faculties, I cannot see how we have the right to take somebody's life. That is, as the gentleman from Bangor, Mr. Henderson said, is pure vengeance and criminal law today or in our society today, there is no place for vengeance.

Two weeks ago, we dealt with a bill concerning the, you might say, the execution of stray dogs and cats and the Committee on Agriculture reduced that from 10 days to five days and don't think I'm wrong but the state was upset because the Committee amended that to seven days and then the chairman of the committee with all due respect to him, got

up and said he would kill that bill and then leave it at ten days. We're doing that for animals, you know, cats and dogs, what about human beings? Why can't we think about that? We don't need this law here, it will be back next session, it was here the last session, it will be back next session almost as bad as the gun bill? But I can truly say we do not need this piece of legislation. I stayed over specifically so I could say a few words on this bill, I don't know if I'm going to sway anybody one way or the other. I've got to be back to work, I've got to go to work tonight but this piece of legislation to me is very important and it should be very important to this body. We are talking about life and we're talking about death once we put somebody in that chair, we can't say to ourselves well, we'll give them time to make up, or we'll give them time to go over it again or to correct their mistakes. I would sincerely hope that we spend no more time on this particular piece of legislation and that you do support the indefinite postponement.

The SPEAKER: The Chair recognizes the gentleman from Skowhegan, Mr. Dam.

Mr. DAM: Mr. Speaker, Ladies and Gentlemen of the House: I know the hour is late so this time I am going to be very brief. I think the good gentleman from Westbrook, Mr. Laffin, did an excellent job of presenting his testimony to you even though several times he said he wasn't prepared and several times, there was a little laughter and a little giggling because the notes I know how the notes had come to him as they have come to me in the past when I had my newspaper bill as well as I have some today on this bill, but I, too, have received many letters. I don't intend to read them, when I say many, I say over 160 letters. Only one letter was against this bill and that letter said, and I use my last name to start off with "you, you should be shot". That was the whole text of the letter, that's the only letter I got against the whole bill. Personally I think this is a good bill. If I had not thought so, I would not have co-sponsored the bill. I think that if we did reinstitute the death penalty in Maine, it would be a deterrent to crime, I also strongly believe that if the people of the State of Maine had their way and had any chance to vote on a referendum on this bill, we would just see how the people of the State of Maine feel because I think this would receive one of the greatest votes in the favor of the passage of any bill that has ever gone to the people.

Now, as far as not having the right to put someone to death as the good Representative from Portland says, he questions the right, well I think right in the good book if I remember back to my old Sunday school days, it says "an eye for an eye and a tooth for a tooth" and so I strongly believe in that, and I strongly believe that when a person goes out and kills a person or a cop or anybody for that matter, if we could go that far with the bill, that that person deserves to die. Now, the good Representative from Portland says it's not a pleasant thing for a murderer to die, well, I ask you people today, "is it a pleasant thing for some rotten cop killer or rotten murderer, or rotten rapist to come up and kill a human being at all, is it pleasant for that human being to die?" I say that when that human being is dead, so too, should the person committing the crime die but whether this bill receives any passage or not, I think I've gained something out of this bill today. I hope that a lot of you people have gained the something so that when the gun control

laws come back, we will know that we don't have any bad crime in Maine, we don't have any violent crimes in Maine so then I ask you to ask yourself what is the motive behind the gun law if we don't have the crime?

The SPEAKER: The Chair recognizes the gentleman from Sabattus, Mr. Cooney.

Mr. COONEY: Mr. Speaker, Ladies and Gentlemen of the House: I have a few short remarks and I would agree with Mr. Dam that the gentleman from Westbrook, Mr. Laffin was indeed very well prepared and I respect him for how very deeply he feels about this and I know that there are very many people who agree with him and I am sure that we all respect those views and I know that I and I think that all of us share much of the emotion with which they are held. No one cannot feel the deep hatred or whatever that would apply to those who would murder, but there are arguments against the death penalty and many of them have been given to you this evening which are truly compelling to me, and I have listed them very briefly.

I think you all know, just as a practical matter, that we cannot exclude a citizen from a jury in a capital case because they are opposed to the death penalty. The simple fact that results is that a person accused of a capital crime, instead of being convicted, is going to be set free because that one person does not believe in capital punishment and the law is so written that there is no alternative but to impose the death penalty or not to impose the death penalty.

Then we have the problem, and I can assure you it is well supported, that many of the worst and most dangerous criminals are rarely the ones that are executed. The death penalty is applied randomly at best and discriminatorily at worst. It violates the constitutional guarantee of the Equal Protection Laws because it is imposed almost exclusively against racial minorities, against the poor, against the uneducated. Persons who are victims of overt discrimination in a sentencing process or who are unable to afford expert and dedicated legal counsel, very real and provable points. The death penalty is arbitrarily applied and we all know that this is one of the key points in the Ferman decision and it will be one of the key arguments in the case that is now pending before the Supreme Court on the death penalty. Now, even if we can write laws that are not arbitrary with regard to the death penalty and that is a debatable subject in itself, but let's say that we could write laws that are not arbitrary, I think we all know that the process of criminal justice and the people in that process are always arbitrary from the moment of arrest to the entire prosecuting process. It is an arbitrary process and there is no way to get around the human element in that process. Now, Mr. Laffin pointed out how the death penalty has been a part of our history and no one can deny the violence, the death penalties used in our history but I would take a little different view of that history and where we are today. It seems to me that the death penalty is a relic of a different past, of a less civilized past, I would say. I would say it's simply not in the spirit of high, human principles and goals and, if you will, dreams of our country. It is a criminal penalty beyond our needs and, in my view, beyond the province of fallible men, simply the death penalty is an idea whose time has gone.

The SPEAKER: The Chair recognizes

the gentleman from Kittery. Mr. Kauffman.

Mr. KAUFFMAN: Mr. Speaker, Ladies and Gentlemen of the House: I support this bill wholeheartedly. In 1964, I served on a murder jury for State Trooper Black, who was killed in performance of duty, in a bank robbery at South Berwick. The gentleman or criminal who willfully shot him, Trooper Black had three small children, and I think, at that time, the take-home pay for a state police officer was somewhere around \$110 a week.

The last man that was executed in the State of Maine in regards to Rep. Henderson, was the gentleman by the name of Wagner, and he was hung for a murder committed, or two murders committed, a hatchet axe murders, chopped up two women at the Isles of Shoals in Kittery, Maine. I say that any criminal willfully, and I could go on about this fellow who killed the Trooper but I am not going to, it's too gory for his background, he is an escapee from New Jersey prisons, but I think any person who willfully, knowingly, when they go out to commit a crime, they have a weapon with them, and they kill a police officer, the state would be better off, the country would be better off to have them die in an electric chair.

The SPEAKER: The Chair recognizes the gentleman from Winthrop, Mr. Bagley.

Mr. BAGLEY: Mr. Speaker, Ladies and Gentlemen of the House: It seems to me that the fundamental point hasn't been mentioned at all here. All criminologists or at least practically all I've ever read about say that deterrence is due to certainty and immediacy of punishment and not due to severity of punishment.

The SPEAKER: The Chair recognizes the gentleman from Old Town, Mr. Gould.

Mr. GOULD: Mr. Speaker, Ladies and Gentlemen of the House: I am co-sponsor of this bill, one of the co-sponsors, and I would like to give you a little side of the policeman's point of view. It has been said that a policeman should marry a prostitute because they have practically the same temperament and they keep the same hours. There are six of us here in this House who are no longer in law enforcement and there is one who is active but he isn't in the House here and I want to tell you, if you have ever gone to answer a complaint when a guy in a home has a wife and five kids huddled in a corner and him with a double-barreled shotgun fully loaded, you'd wish you were back at the Senior Prom with your best girlfriend. It isn't any fun to answer all those complaints and you're on duty 24 hours a day and you have to go. You don't have a Committee of Conference to ask what you should do, you have to make split decisions right at that moment and when you do, if you're wrong, you can be hanged. There's no question about that and I want to say that the only thing wrong about this bill, is that I don't think it's going to pass in this House, and I will say another thing in closing, sometime and once in a while, won't you give a little thought to a policeman?

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Call.

Mr. CALL: Mr. Speaker and Members of the House: There is no question whatsoever that something has to be done to attempt to discourage the taking of human lives. Other states have faced the same problem and they have been enacting capital punishment legislation. Until recent years, at least one year would

pass before there would be the killing of a human being, sometimes, many years. Now we have several killings in the course of one year. We are having many shootings, not always fatal and physical assaults.

Recently, a deputy sheriff was shot and wounded in Androscoggin County by a jail escapee. Not long afterward, as Mr. Laffin told you, a deputy sheriff here in Kennebec County in Augusta was badly beaten by an escaping prisoner. If we do not do something in the field of deterrent action now, we will regret it because, as things are now, the killings, rapes and other physical assaults will not diminish. To the contrary, they shall increase with leaps and bounds.

I ask this House to defeat the motion for indefinite postponement and to pass this bill and Mr. Speaker when the vote is taken, I request the ayes and nays.

The SPEAKER: The Chair recognizes the gentleman from Anson, Mr. Burns.

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: As a former law enforcement officer, I'm very glad that a felon did not have death on his mind when I went to arrest to him. I submit to you that the attacks mentioned by Mr. Call were not made until after this legislation was introduced. I cannot see this state and particularly the State of Maine reducing itself to the level of a murderer.

I therefore wholeheartedly concur with the indefinite postponement of Mr. Talbot.

The SPEAKER: The Chair recognizes the gentleman from Auburn, Mr. Hughes.

Mr. HUGHES: Mr. Speaker and Members of the House: I would just add one thing. For those of you who are wondering what the alternative is to capital punishment as a deterrent, under present law in Maine, of course, murder one is punishable by life and that usually means that a prisoner is deemed to be eligible for parole after 12 years. Under the new criminal code, however, which comes out next week, the parole board and parole is abolished for prisoners. Judges will sentence people to definite terms. That is, if a crime is so bad in the eyes of the judge, the prisoner can be sentenced to a 30-year prison sentence and they can be expected to serve that 30-year sentence. A minimum sentence for murder one, under the new criminal code, will be 20 years. So I think you have a good alternative.

The SPEAKER: The pending question is on the motion of the gentleman from Portland, Mr. Talbot, that this Bill and all accompanying papers be indefinitely postponed. A roll call has been ordered. All in favor of indefinite postponement will vote yes; those opposed will vote no.

Mr. Leonard of Woolwich wishes to pair with the gentleman from Portland, Mr. Jensen. If the gentleman from Portland were present, he would be voting yes, and if the gentleman from Woolwich, Mr. Leonard were voting, he would be voting nay.

ROLL CALL

YEA — Bagley, Bennett, Berry, G. W.; Berry, P. P.; Berube, Blodgett, Bowie, Burns, Bustin, Byers, Carpenter, Chonko, Churchill, Clark, Cooney, Cote, Cox, Curran, P.; Davies, DeVane, Drigotas, Durgin, Farley, Farnham, Fenlason, Finemore, Flanagan, Fraser, Gauthier, Goodwin, K.; Greenlaw, Henderson, Hobbins, Hughes, Hunter, Hutchings, Ingegneri, Jackson, Jalbert, Joyce, Kany, Kelleher, Kennedy, LaPointe, Laverty, LeBlanc, Lewin, Lewis, Lunt, Lynch, Mackel, MacLeod, Mahany, Martin, A.; Martin, R.; Maxwell, McBreairty,

Miskavage, Mitchell, Morton, Mulkern, Nadeau, Najarian, Norris, Palmer, Pelosi, Perkins, S.; Peterson, T.; Post, Powell, Quinn, Raymond, Rolde, Saunders, Shute, Silverman, Snow, Snowe, Spencer, Sprowl, Susi, Talbot, Tarr, Theriault, Tierney, Twitchell, Tyndale, Usher, Wagner, Wilfong, Winship, The Speaker.

NAY — Albert, Ault, Birt, Call, Carter, Conners, Curtis, Dam, Dudley, Dyer, Garsoe, Gould, Gray, Higgins, Hinds, Immonen, Kauffman, Kelley, Laffin, Littlefield, Lizotte, Lovell, MacEachern, McMahon, Mills, Morin, Perkins, T.; Peterson, P.; Rideout, Rollins, Strout, Stubbs, Teague, Torrey, Tozier, Walker, Webber.

ABSENT — Bachrach, Boudreau, Carey, Carroll, Connolly, Curran, R.; Doak, Dow, Faucher, Goodwin, H.; Hall, Hennessey, Hewes, Jacques, Jensen, Leonard, McKernan, Peakes, Pierce, Smith, Truman.

PAIRED — Jensen, Leonard.

Yes, 92; No, 37; Absent 19; Paired, 2.

The SPEAKER: Ninety-two having voted in the affirmative and thirty-seven in the negative, with nineteen being absent and two paired, the motion does prevail.

The Chair recognizes the gentleman from Portland, Mr. Talbot.

Mr. TALBOT: Mr. Speaker, having voted on the prevailing side, I now move that this body reconsider its action whereby this Bill was indefinitely postponed and hope you vote against me.

The SPEAKER: The gentleman from Portland, Mr. Talbot, moves that the House reconsider its action whereby this Bill and all accompanying papers were indefinitely postponed. All in favor of reconsideration will say yes; those opposed will say no.

A viva voce vote being taken, the motion did not prevail.

Sent up for concurrence.

(Off Record Remarks)

The following papers appearing on Supplement No. 2 were taken up out of order by unanimous consent:

From the Senate:

The following Communication:
THE SENATE OF MAINE
AUGUSTA

May 29, 1975

Honorable Edwin H. Pert
Clerk of the House
107th Legislature
Augusta, Maine
Dear Mr. Pert:

The Senate today voted to Adhere to its action whereby it accepted the Minority Ought Not to Pass report on Bill, "An Act Concerning the Required Height of Motorcycle Handlebars" (H. P. 900) (L. D. 1087).

The Senate also voted to Adhere to its action whereby it Indefinitely Postponed Bill, "An Act Relating to Services Provided by Private Clubs under the Liquor Laws" (H. P. 793) (L. D. 966).

Respectfully,

Signed:

HARRY N. STARBRANCH
Secretary of the Senate.

The Communication was read and ordered placed on file.

From the Senate: The following Communication:

THE SENATE OF MAINE
AUGUSTA

May 28, 1975

Honorable Edwin H. Pert