

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eighth
Legislature***

OF THE

STATE OF MAINE

Volume I

January 5, 1977 to May 25, 1977

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AUGUSTA, MAINE

The SPEAKER: The Chair recognizes the gentleman from Eastport, Mr. Mills.

Mr. MILLS: Mr. Speaker, Ladies and Gentlemen of the House: For your own knowledge and edification, in Washington county we are a five-man delegation. Four of that delegation have voted against this bill.

The SPEAKER: The pending question is on the motion of the gentleman from Calais, Mr. Gillis, that the House recede and concur. All those in favor of that motion will vote yes; those opposed will vote no.

A vote of the House was taken.

Whereupon, Mr. Nelson of Roque Bluffs requested a roll call vote.

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 pending question is on the motion of the gentleman from Calais, Mr. Gillis, that the House recede and concur. All those in favor of that motion will vote yes; those opposed will vote no.

ROLL CALL

YEA — Aloupis, Austin, Beaulieu, Bennett, Berry, Birt, Boudreau, A.; Brown, K.L.; Brown, K.C.; Bunker, Burns, Byers, Carey, Carrier, Carter, F.; Connors, Connolly, Cote, Cox, Cunningham, Curran, Devoe, Dexter, Dow, Drinkwater, Dudley, Durgin, Elias, Fenlason, Garsoe, Gill, Gillis, Goodwin, H.; Gould, Gray, Hall, Higgins, Huber, Hunter, Hutchings, Immonen, Jackson, Jalbert, Kane, Kelleher, Kerry, Laffin, Lewis, Littlefield, Lizotte, Lougee, Lunt, Lynch, MacEachern, Mahany, Marshall, Masterman, Masterton, Maxwell, McBreairty, McHenry, McKean, McMahon, McPherson, Mills, Nadeau, Nelson, M.; Palmer, Pearson, Peltier, Perkins, Peterson, Prescott, Rideout, Rollins, Shute, Smith, Sprowl, Strout, Stubbs, Talbot, Tarbell, Tarr, Teague, Theriault, Torrey, Tozier, Twitchell, Valentine.

NAY — Bachrach, Benoit, Berube, Biron, Blodgett, Bustin, Carter, D.; Chonko, Clark, Diamond, Dutremble, Flanagan, Fowlie, Gauthier, Goodwin, K.; Green, Greenlaw, Henderson, Hickey, Hobbins, Howe, Hughes, Jensen, Joyce, Kany, Kilcoyne, LeBlanc, Martin, A.; Mitchell, Moody, Najarian, Nelson, N.; Norris, Peakes, Plourde, Post, Quinn, Raymond, Spencer, Stover, Trafton, Truman, Wilfong, Wood, Wyman.

ABSENT — Ault, Bagley, Boudreau, P.; Brenerman, Carroll, Churchill, Davies, Jacques, LaPlante, Locke, Mackel, Morton, Silsby, Tierney, Tyndale, Whittemore.

Yes, 89; No, 45; Absent, 16.

The SPEAKER: Eighty-nine having voted in the affirmative and forty-five in the negative, with sixteen being absent, the motion does prevail.

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

"An Act Concerning the Crime of Prostitution" (H. P. 629) (L. D. 770) — In House, Passed to be Enacted on May 2. — In Senate, Indefinitely Postponed.

Tabled — May 4, 1977 by Mr. Tierney of Lisbon Falls.

Pending — Further Consideration.

On motion of Mr. Quinn of Gorham, retabled pending further consideration and specially assigned for Monday, May 9.

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

"An Act to Increase Flexibility in the

Funding and Operation of the Vocational-Technical Institutes" (H. P. 221) (L. D. 285) (C. "A" H-158)

Tabled — May 4, 1977 by Mr. Lynch of Livermore Falls.

Pending — Passage to be Enacted.

On motion of Mr. Birt of East Millinocket, retabled pending passage to be enacted and tomorrow assigned.

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

RESOLVE, for Laying of the County Taxes and Authorizing Expenditures of Knox County for the Year 1977. (Emergency) (H. P. 1483) (L. D. 1699) (H. "A" H-207)

Tabled — May 4, 1977 by Mr. Henderson of Bangor.

Pending — Final Passage.

The SPEAKER: The Chair recognizes the gentleman from Owls Head, Mrs. Post.

Mrs. POST: Mr. Speaker, Men and Women of the House: We in the county delegation feel a need to have a meeting on a possible amendment which we may put on this, so I would ask that it be tabled for two legislative days.

Thereupon, on motion of Mr. Henderson of Bangor, tabled pending final passage and specially assigned for Monday, May 9.

The Chair laid before the House the following matter:

House Divided Report — Majority (12) "Ought Not to Pass" — Minority (1) "Ought to Pass" — Committee on Judiciary on Bill "An Act to Reinstate the Death Penalty" (H. P. 943) (L. D. 1156) which was tabled earlier in the day and later today assigned pending the motion of Mr. Spencer of Standish to accept the Majority "Ought Not to Pass" Report.

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

Mr. PEARSON: Mr. Speaker, Ladies and Gentlemen of the House: Pursuant to joint Rule 20 calling for fiscal note, I noticed that this does not have a fiscal note on the bill and Joint Rule 20 says that it shall.

The SPEAKER: The gentleman from Old Town, Mr. Pearson, has posed a question to the Chair in reference to the interpretation of Joint Rule 20 in reference to fiscal note. The Chair would call to the attention of the gentleman from Old Town and the members of the House that at this point the bill, in fact, would be in violation of Joint Rule 20 since a fiscal note will need at some point to be added if it goes any further than today. The fiscal note can be added at second reading. Therefore, at this point, the Chair would rule that the debate on the matter may proceed.

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

Mr. LAFFIN: Mr. Speaker, Ladies and Gentlemen of the House: Most of us who, after long, careful consideration, still advocate capital punishment for the most heinous crimes. We do not do so because we lack compassion and like killing. Most of us have never killed and abhor the very idea of killing. It is because we are compassionate that we advocate the death penalty as a necessary force for the protection of life. We cherish life, liberty, and property and cannot tolerate those who want only to destroy what we revere. We believe killing in self defense and even war is necessary to secure these sacred treasures.

I am convinced that the death penalty serves at least three good purposes: (1) it deters others in capital crimes; (2) it is needed retribution; a catharsis for society's good health, and (3) it incapacitates the criminal and prevents other crimes by him at enormous savings to the taxpayers.

I favor the death penalty because I believe it will save innocent lives. I am convinced from

considered opinions of experts on the subject and studies made that the death penalty can indeed save the lives of innocent people, such as: A seventy-nine year old woman from Falmouth — a woman murdered and her body thrown in the trunk of a car; a twelve year old girl raped from Kennebunk and murdered; an eleven year old boy molested and murdered in Freeport; a police officer murdered, fireman, or a mother, and any other vicious crime that we have had in our state would serve as the greatest deterrent in our society today. Today, there is little to deter criminals from murdering twice, let alone once.

In a mere four years after the U.S. Supreme Court decided 5-4 in mid-1972 that the death penalty was cruel and unusual punishment "in the same way that being struck by lightning is cruel and unusual" because of the arbitrary, discriminatory and capricious way it was being administered. We have now a case Furman vs. Georgia, 408 U.S. 238, June 29, 1972, at least 37 states, 75 percent, and the Congress enacted new statutes in efforts to provide constitutional death penalties for at least some murders.

The people of California even voted 2 to 1 to amend their state constitution to permit capital punishment after its own Supreme Court ruled that their new death penalty law violated it.

In addition, two death penalty acts have passed the Massachusetts legislature only to be vetoed by the governor, despite the fact that, in 1968, Massachusetts voters in a referendum at their general election, voted 2-1 to retain the death penalty. And each house of the Kansas legislature has also passed its own version of a death penalty bill but a conference committee was unable to agree on which version to accept before the legislature adjourned in April, 1976.

It is remarkable that all this happened in only 48 months after Supreme Court's decision of June 29, 1972, and that it all happened voluntarily, without the threat that federal funds would otherwise be withheld.

The American people and their elected representatives were so loud and clear that on July 2, 1976, the Supreme Court commenced our third century by acknowledging "society's endorsement of the death penalty for murder" as an "appropriate and necessary criminal sanction." The court found that such penalties had never been cruel and unusual punishment per se. Some of the new state laws were held constitutional and others not. *Gregg v. Georgia* and other cases decided 7-2-76, 44LW 5230, 5256, 5262, 5267, 5281 all refers to the death penalty by the Supreme Court of the United States. But the Court finally recognized that the Fourteenth Amendment — the wellspring of most modern civil rights cases — adopted 77 years after the Eighth Amendment's proscription against cruel and unusual punishment, "contemplates" the existence of the capital sanction by providing that no state shall "deprive any person of life, liberty, or property, without due process of law." Since 1791, the death penalty has also been clearly approved in the Fifth Amendment's reference to "capital crimes" together with similar deprivation of life language.

Most of us who, after long and careful consideration, still advocate capital punishment for the most heinous crimes, do not do so because we lack compassion or like killing. Most of us have never killed and abhor the very idea of killing. It is the first duty and natural instinct of any living being of society to protect itself from perpetrators; bees are the lovers of honey and make us lovers of flowers. Makers of honey are equipped with vigorous stingers just for that purpose.

Our country spends billions of dollars to arm itself to the teeth against our enemies. This is not intended to say that we all agree on the death penalty. Rather it is an effort to focus on

the hypocrisy of a significant number of citizens who condone abortion but fight the death penalty even for premeditated murder. If they can rationalize the needless killing of an innocent human fetus at any time after conception, an act which until only recently was universally recognized as both criminal and immoral, how can they pretend compassion for a guilty murderer?

At most, no more than 199 people have been executed in this country in a single year (1935). There have been less than 8,000 executions since 1900. But millions of abortions have reportedly been performed since our highest court legalized them in 1973. *Roe v. Wade*, 410 U.S. 179. Incredibly, a mother's right to "privacy," a word not mentioned in the Constitution, is now considered paramount to the right to life of a fetus. A wife may lawfully have an abortion with no due process or representation for the fetus and even without consent of the father to whom she pledged her troth. Thus, I wonder who are the really compassionate in our midst? But the first purpose leaves no room for argument, particularly as to some killers who are no more than vicious animals.

There are many known cases of hesitation to pull the trigger because of fear of the death penalty. Yet most criminologists insist there is no "empirical" proof either supporting or against a deterrent effect. Statistics are inconclusive as to whether there are more or less capital crimes per 100,000 in capital punishment states as compared to non-capital punishment states or in the same state after capital punishment has been abolished or restored. No two states are sufficiently alike in population, climate, geography and other conditions for meaningful statistical comparison. Sociologists maintain that although the murder rate has increased since executions were halted in June, 1972, times have changed, the population has increased and economic, social and political conditions are different.

Obviously, no reliance can be placed on contentions of murders who were not deterred, that just because they weren't others wouldn't be either. And those of us who for other reasons would never murder, but think the death penalty would not deter us, can't know that at least some others would not be deterred. No one can say how many thousands have been tempted to murder but stopped by fear of the death sentence. How many need be so deterred to warrant the penalty? Perhaps if only one, two or a dozen are deterred for every fifty or hundred executed, the deterrent purpose is adequately served. There is little else to inhibit murderers already suffering life sentences.

But I consider society's need for retribution the soundest purpose of the death penalty. If we want to spend the money, a murderer can be so incapacitated by confinement as to prevent his ever committing another murder. And such confinement for life may be almost as strong a deterrent as execution. To some, even stronger. But regardless of the merits of incapacitation and deterrence, society needs the assurance, that those who commit an irrationally aggravated murder will, in absence of mitigating circumstances, be put to death. The Supreme Court agreed on July 2, 1976:

"In part, capital punishment is an expression of society's moral outrage at particularly offensive conduct. This function may be unappealing to many, but it is essential in an ordered society that asks its citizens to rely on legal processes rather than self-help to vindicate their wrongs.

That was taken from *Gregg v. Georgia*, 44 LW 5230 and if any of you would like to check on that ruling, I am sure you will find it very interesting.

The Court said further that "the decision that capital punishment may be the appropriate sanction in extreme cases is an expression of

the community's belief that certain crimes are themselves so grievous an affront to humanity that the only adequate response may be the penalty of death."

The overwhelming majority of Americans figured by the Gallup Poll figured about 70 or 80 percent when pressed, favor the death penalty. But they would rather not be bothered thinking about it. To most of them capital punishment is a futile and endless argument: a good subject for high school debate. They believe there are many more immediate and important issues. They are content to leave this grave and distasteful problem to professors, newspaper editors, legislators and judges.

Few Americans are sanguinary and probably most don't even consider themselves vengeful. Nevertheless, when a heinous crime occurs in their neighborhood, they normally and quite properly favor execution of the criminal. Few are alone. The closer the relationship to the victim, the stronger the reaction.

Justice requires that we be concerned for the victim as well as the accused. Usually the victim is remembered in his own community. People weep for him there. Time and distance remove the pain and let people forget the victim. That is why the guilty want their trials postponed and transferred to a county as far from the crime as possible. Their idea of a "fair" trial is one in which the victim is forgotten.

I shall always be in favor of the death penalty when vicious crimes happen to the people of our state.

The Constitutionality of capital punishment is no longer in question. In 1976, the United States Supreme Court in *Gregg vs. Georgia* held the death penalty constitutional. The court said: "We hold that the death penalty is not a form of punishment that may never be imposed. . . ." The court went on to say that it favored the constitutional statutes of Georgia, Texas and Florida: states which had adopted a procedure whereby a separate hearing is held after a murder conviction to consider mitigating facts and determine whether capital punishment is applicable in view of the unique set of circumstances of the particular case.

The *Gregg* case reversed the 1972 case of *Furman vs. Georgia* in which the Supreme Court, in a 5-4 split decision, held the death penalty statute in Georgia to be unconstitutional. Even in that case, however, Justice Douglas and others refrained from attacking the constitutionality of the death penalty directly; but rather continuously reiterated the arguments of "cruel and unusual punishment", lack of proven deterrence, and improper and infrequent application. One of the four dissenting justices who favored the constitutionality of the death penalty found it curious, as I did myself, that none of the majority opinions referred to the misery occasioned by the petitioners' crimes. Seemingly, they too had lost sight of the victims and potential victims of such personal violence. In any case, the threshold argument has been resolved. I rather agree with Mr. Justice Powell that the manner of the death penalty's imposition is clearly open to challenge, but it is clear that the penalty is constitutional.

Any compassionate person would prefer the role of an abolitionist in this regard, but this role regretfully must be reserved for a more tranquil, peaceful and law-abiding society. As a citizen, as a person concerned with personal liberty and the sanctity of human life, I suggest that capital punishment should be reinstated and applied in certain well defined instances of premeditated murder.

I find that I cannot in good conscience, to say the least, be opposed to the death penalty because I prize the right of life for all. That we would deny the right of life upon which we place our sacred values to persons found guilty of tak-

ing another life under certain circumstances would seem to me the strongest demonstration we could give to our total society that the inconceivable acts for which they have committed.

We will not be truly free as a people until we can free ourselves from the threats of our own lives. Murder is so common place today that we all have become somewhat brutalized by it. Heinous crimes are no longer considered sensational but rather another story in another day in our lives except for the loved ones that were lost nor is murder any longer the nearly exclusive domain of a combat zone of this world. Today, we can all clearly recognize that anyone's home, on anyone's street, in anyone's neighborhood, whether it is in the city or the suburbs, is a potential target for violence and murder. In a very real sense, we have all become prisoners in a world which seems to tolerate any and in many instances even rewards the violent behavior of criminals.

Are we really, seriously considering a parole for Richard Speck, Charles Manson and others equal of notorious murders and brutal crimes that they have committed? Last year, Speck was eligible for parole after being sentenced for 1400 years. It was not granted but it will undoubtedly come back again. Next year, Charles Manson will be eligible for his parole to be reviewed also. To be sure, there are those who say, let's save \$15,000 a year and release them back on to the streets. They will never do it again. The annual cost is far more important than holding them in prison.

There is, of course, no way we can revive the innocent victims of their unconscionable abuses against the dignity and right to human life, nor is there any way in which we, as a society, can compensate their victims' families. In many instances, these families are not even entitled to the same "enlightened" social programs and educational opportunities as the criminal whose vicious act left them bereft. We can, however, reaffirm our belief in the fundamental right to life and declare to all who wish to share our society that the penalty for the arbitrary taking of another's life will be the most stringent we can impose.

In denying their right to life by the imposition of the death penalty, we also declare as a people that whatever talents they may possess or might have developed during the imprisonment of life, whatever special contributions they might otherwise have made to their fellow man, we choose not to be their beneficiary, for they have paid too high a price.

Retribution alone may seem unworthy but it is in a system of criminal justice that has been long recognized. I strongly urge and support the views of Professor Ernest Van Den Haag of the New York University Law School when he asked this question. "Is human life the protection and the best credible threat to death?" After extensive study, Professor Isaac Ehrlich of the University of Chicago recently concluded, "may have resulted in the average of seven to eight fewer murders in this country for every execution. Despite such compelling arguments as this, however, the deterrent effect of the death penalty cannot be conclusively proven or disproven from a purely scientific standpoint.

To a large segment of the criminal population, the potential threat of the death penalty, when in force, is indeed a deterrent. In a democratic society, we should not discount or ignore the first indice of public sentiment — Legislation enacted by the people's elected representatives — recent legislation in many states have included statutes designed to reinstate the death penalty or to revise such laws in accordance with the supreme court's decision.

I will be the first to admit it has been a tragic fact that the "have-nots" in most of our society

have always been subject to greater pressure to commit crimes, but the fact of life is best corrected not by changing penalties assigned to crime, but by elevating existing social injustice and rectifying the discrimination within the criminal system of justice.

It is my own opinion, it is my own personal belief that we need the death penalty statutes as a deterrent to those considered committing such heinous crimes for the people of Maine to vote on.

Between 1935 and 1965, when the death penalty was enforced nationwide, the number of murders remained fairly constant, between 7,000 and 9,000 a year. The death penalty has been in limbo now since 1966 and the murder rate has almost tripled. There has been an average of 22,500 homicides each year. Also, if the death penalty is only imposed on those who have committed a homicide, it would deter those who commit such crimes as rape and kidnapping from murdering their victims to avoid identification for prosecution.

The U.S. Supreme Court, in upholding this law, said that the capital punishment has been accepted by society as a means of deterring crime and does not violate the eighth amendment ban on cruel and unusual punishment. Therefore, I feel that there is presently a need for the death penalty in our existing society today.

I have a great respect for some of the members of this House I am going to quote what one person had to say and then I am going to quote what another one had to say. This is from the Legislative Record. We are now talking about L. D. 1156, which is the bill before us today. This is a quote from Mrs. Najarian, a Representative from Portland. In her speech she said, "If you think the people prefer our present size, what is there to be afraid of? Send it out and see your opinion upheld. Let's not be cowards. Let's at least put the question before them to decide and come what may. If they vote yes, the reorganization could be of tremendous and far-reaching value to the state. If they say no, we could lay this issue to rest for several decades." That means a lot — we could lay this issue to rest for several decades. The people are speaking here.

I also want to quote the gentleman from Gorham, Mr. Quinn, when he talks on referendum. He said, and I quote, "We are not asking to make the change ourselves. What we are talking about here is a matter of theory of government which the people themselves most certainly should be allowed to make in the referendum next fall. "I thought that those were two very very important statements that have been made on the floor of this House.

We are not asking the members of this house to vote for the death penalty, we are not asking the members of this House to open the gates and start executions. We have a Supreme Court with intelligent men and L. D. 1156 is a guideline by the Supreme Court's own ruling. You're not talking about a first-year, law school student. You are talking about professional men who know the law, who understand the law. I can assure you, ladies and gentlemen, that the Supreme Court of the State of Maine, our highest court in this state, would not allow any executions in this state unless the due process of law took effect. The guidelines of the Supreme Court made that very clear.

There are those who say, well, if the death penalty is not a deterrent, why bother with it? I say to you in return, many millionaires cheat on their income tax, they go to prison but they still cheat on it. Should we do away with it? Should we not have any more income tax laws because they still do it? Should it be abolished because only the rich are convicted and the poor are never convicted?

L. D. 1156 is a stepping stone in the right direction. L. D. 1156 is a piece of legislation that you can be proud to send out to the people. If you oppose L. D. 1156, you are the people. You could have the same chance to vote against a bill in the booth and no one will ever know how you voted.

I have cut out seven pages of my speech this morning to agree with the leadership and the Speaker of this House to not prolong this, but don't think for one minute because I cut down on it that I don't believe in it, because I do believe in it. The people of Maine believe in it. The people of Maine want the death penalty, they want a chance to vote on it. I am asking you members to give them that chance.

The SPEAKER: The Chair would ask the Sergeant-at-Arms to escort the gentleman from Stonington, Mr. Greenlaw, to the rostrum for the purpose of acting as Speaker pro tem.

Thereupon, Speaker Martin retired from the Hall and Mr. Greenlaw of Stonington assumed the Chair as Speaker pro tem.

The SPEAKER pro tem: The Chair recognizes the gentleman from Old Town, Mr. Pearson.

Mr. PEARSON: Mr. Speaker, Ladies and Gentlemen of the House: I have a question I would like to pose through the Chair to the sponsor of this bill. That question is taking in mind the fact of the absolute finality of death, and I am not saying this facetiously either, I would like to know which section of the bill deals with the possibility that an innocent man may be executed. And if it is not dealt with in the bill, how does the sponsor of the bill propose to deal with that possibility that very well might occur?

The SPEAKER pro tem: The gentleman from Old Town, Mr. Pearson, has posed a question through the Chair to the gentleman from Westbrook, Mr. Laffin, who may respond if he so desires.

The Chair recognizes that gentleman.

Mr. LAFFIN: Mr. Speaker, Ladies and Gentlemen of the House: This question has probably been one of the strongest arguments against the death penalty, but we are living in a society today where the laws protect the guilty, they go an extra mile to protect the guilty. They don't say a thing about the innocent. They don't say anything about the people they have murdered, but the courts will protect the guilty.

I say to you that in 1935, when we had 199 executions in this country, not one innocent person has ever been sent to death, and those were the years when they wanted to get rid of all the mobsters and all the gangsters and they were executing them faster than they could take them to court. I say to you, does he really and truly believe, Mr. Pearson, that the people of Maine, the judicial system that we live under, would allow an innocent person to be put to death in 1977? You certainly are smarter than that?

The SPEAKER pro tem: The Chair recognizes the gentleman from Portland, Mr. Joyce.

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: Society has a right to expect that we place the scales of justice in balance. This body in years passed has failed to meet that challenge. The records will show that in the year of 1969, where a very liberal house sat, that an L. D. was introduced to make a life sentence 25 years. The bill, the record shows, came before this House, and that was a dark day. There was an amendment put on that bill to reduce the life sentence, the sentence for murder, to the term of 15 years — 15 years for murder! With time off for good behavior, a person who committed a murder, after that was put in the books, would serve 10 years and 8 months.

We failed the people of Maine on that. I felt I

was personally hurt. I had arrested a man, sent him to prison for murder and met him at midnight out on the street one night. He told me he did about 11 years and was out again. He was one of the fortunate ones. He managed to stay out for a month.

You know, I am concerned about those scales that we have to all look to when we talk about justice. You know, the goddess of justice and she is the one up there that holds those scales up, and if you ever take a good look at her, you will know that beautiful lady is blindfolded, yet she's got the judge to balance. She is a wonderful lady. Greek mythology will tell you that she actually walked on the surf 950 B.C., but crime got so bad during the iron age when they started digging up the earth — she was truly the first environmentalist — she fled, and mythology tells you that she fled up to Mount Olympus but others disagree with that. She couldn't stand the way the world was being run. I wonder what she would have done if she was on this earth in 1969 when in this House here they decided murder was only 10 years and 18 months. What a tragedy! This bothered me.

I can understand when I went out and inquired about this bill that is before us now how there was so much support for it. Even after the criminal code was put in, they are still having problems with murders. I studied it and I studied it depth and I think you have got to agree that I studied it in depth when I went back and studied Greek mythology. You don't go back very much further than that.

Now, what I did, I had two other L.D.'s printed. They are L.D.'s that will change the present law from 30 years in prison to 35 mandatory sentence for a first degree murder. I also prepared an L.D. — both L.D.'s will be here shortly in the next week or so. Second degree murder — 20 to 25 years, but they must serve the 25 years. When my bills come here, I invite people. If they do not think 30 or 35 years is enough, amend my bill, amend it up to 40 or 50 if you want, but let's keep our heads on this one.

I am disturbed by this bill and that is why I rise today, to make a motion of indefinitely postponing this bill and all its accompanying papers.

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

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: I feel that if I voted for this bill, I would be entering into a conspiracy to cold blooded murder.

I submit to you that death may be a complete escape from punishment. Why else would approximately 154 people in this state commit suicide in 1956.

As a former law enforcement officer, I cannot be a party to the great State of Maine reducing itself to that cold blooded murder. When the vote is taken, I ask for the yeas and nays.

The SPEAKER pro tem: The Chair recognizes the gentleman from Waterville, Mr. Boudreau.

Mr. BOUDREAU: Mr. Speaker, Ladies and Gentlemen of the House: The Catholic Church has always taught people, or at least many priests have always preached in their sermons that we should fight evil with good. Well, I would like to ask the members of this body, how do you fight people who club their victims to death with baseball bats? How do you fight people that stick knives into people 30 or 40 times? How do you fight those kinds of people?

When I was in Florida last year, two houses down from me, two elderly ladies lived there. Their home was broken into and they were clubbed to death. Now, how do you deal with people like that?

When people talk about reverence to life, let's talk about reverence to life, let's talk about the kind of phrases our young people are using to-

day on the streets like blown away, that person is going to waste you, where do people get that kind of attitude about life? The people against this kind of bill are talking about reverence to life?

I would say that it is time we should initiate some kind of legislation where we will have some reverence to life. We will be able to say to someone, if you commit these kinds of acts, you are going to have to take the consequences instead of saying, you must have a mental problem and we are going to have a psychologist look at you and he is going to decide if you have a problem and you are going to go to a hospital for a few years and then we will let you out.

I think the pendulum has swung in the other direction. We have these people who commit these kinds of crimes and they are getting out in five or ten years — the pendulum has gone too far to the other side. I don't know what the answer is, I don't expect you to like the idea of killing people but I am tired of turning the pages of the newspapers of this country every day and seeing headlines "old lady butchered to death", "man stabbed 30 times." I am tired of that and I think something is going to have to be done about these kind of things real soon.

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

Mr. TALBOT: Mr. Speaker, Ladies and Gentlemen of the House: I don't really appreciate talking to an empty House and I didn't really plan on talking on this bill. I guess for the last week I have been telling the gentleman from Westbrook, Mr. Laffin, that I am going to support his bill. He knows better than that and so do I.

I certainly don't believe in capital punishment or the death penalty in this state for several reasons, one being that I don't entirely believe in our judicial system, because over the last couple of years, and especially the last month, I read at least once a week, or maybe twice a month, where somebody is now being released from prison because they were convicted wrongly, because of new evidence they are now being released, because the wrong man has been convicted and the same thing can happen in the State of Maine.

I guess the gentleman from Waterville, Mr. Boudreau, got me on my feet because I think he is entirely on the wrong track. I can answer his question as to how do we fight the people who get stabbed and the people who get clubbed because I, too, am disturbed at the rate of murders in this country and I would answer him by saying that we fight those kinds of conditions with better housing, with better education, with less slums, that is where we start to fight so we won't have the overcrowded jails we do today, so we won't have an issue facing us as a legislature today dealing with capital punishment, that is where we start the fight. There is nowhere in the bill where anybody has expressed that kind of sentiment. It is always after the fact, after somebody has committed murder.

I read an article in last night's paper where a court case was being heard in one of the western states where a step-father and a mother were being tried because they burned the words "I cry" on the youngsters' back. That disturbs me also but I think it is time we as a responsible body start looking at the facts beforehand instead of afterward.

I hope you will indefinitely postpone this particular bill.

The SPEAKER Pro Tem: The Chair recognizes the gentleman from Lewiston, Mr. Cote.

Mr. COTE: Mr. Speaker, Ladies and Gentlemen of the House: Like the gentleman from Portland, Mr. Talbot, I hate to speak to an empty House but the facts are there, I don't even know if we have a quorum.

You might say, how come a mild-mannered man like the gentleman from Lewiston, Mr. Cote, has his name on such a bill. For many years I have heard about the death penalty. For many years I have heard the people on the street talk about it and I decided after Mr. Laffin from Westbrook asked me to put my name on the bill that if there was a referendum on the bill, I would try to help support it, to get it in front of the people.

I think this is one of the most important issues of our day and I feel that the people of this state should have a chance in referendum to vote for or against. To tell you the truth, if I was in the polling booth today, I would be undecided how I would vote on this issue, but because of the importance, because of the things that we read in the papers, because of the comments of the people on the street, I think it is time, on an important issue such as this, to give them a chance to voice their opinion.

The SPEAKER pro tem: The Chair recognizes the gentleman from Millinocket, Mr. Marshall.

Mr. MARSHALL: Mr. Speaker, Ladies and Gentlemen of the House: I made my decision on this issue after much deliberation. I recently distributed in Millinocket 1500 questionnaires to my constituency and contained in that letter was the question dealing with the death penalty here in Maine and of those returned questionnaires to date, the people are favoring the reimposition of the death penalty by almost but not quite a 3 to 1 margin.

As an individual, I would make my decision regarding this issue in a ballot booth in November, but as a legislator today, I make my decision to send this issue to the people for their collective deliberation.

The SPEAKER pro tem: The Chair recognizes the gentlewoman from Hampden, Mrs. Prescott.

Mrs. PRESCOTT: Mr. Speaker, Ladies and Gentlemen of the House: I, too, sent out a survey to 500 people in my district. Over half of those people responded to me and 29 percent of those people said no to the death penalty but 62 percent of my people wanted the death penalty on the ballot.

The SPEAKER pro tem: The Chair recognizes the gentleman from Sangerville, Mr. Hall.

Mr. HALL: Mr. Speaker, Ladies and Gentlemen of the House: I might as well put my four cents worth in. I, too, sent out a questionnaire and it came back the same way.

The SPEAKER pro tem: The Chair recognizes the gentleman from Brewer, Mr. Cox.

Mr. COX: Mr. Speaker, Ladies and Gentlemen of the House: I feel, despite the empty seats here, that I cannot remain silent on this bill. We are asked to send this out and let the voters make the choice. People refer to the overwhelming number of their constituency that are in favor of it. In many cases, I am willing to follow the opinions of my constituency, but in the words of Martin Luther, no man can command my conscience and 100 percent of my constituents cannot command my conscience on a question like this. Within each of us for as much it is God, there is much of it as man, there is much as a pigmy groping in the mist and there is a small amount of beast in each of us. It is a beast in each of us that gives rise to murder. Some people have more of it than others but the motive for killing a person, whether it be murder or execution, comes from this dark side of man and I feel that in his long progress from brutishness to perhaps his Godself, he has left behind many of the barbarous punishments that have been inflicted in the past.

The time was that the death penalty was inflicted for things like stealing. It reached the point in England at one time where a nine-year-

old boy was hung for stealing a loaf of bread. It is hard for us, and I have to admit that I have no compassion for someone who has committed a brutal murder, however, I think that when the state says that if a person deserves to die, we are simply advancing to the dark side of man, we are perhaps giving a person who decided that the state has failed to punish someone personal justification to take the law into his own hands. Since the state has said that certain people deserve to die, that the state can make this decision that certain people deserve to die, I think this advances the idea that each of us had the right to decide that a person should die. I believe that no person and no group of persons has the right to decide that someone shall die.

The SPEAKER pro tem: The Chair recognizes the gentleman from South Portland, Mr. Howe.

Mr. HOWE: Mr. Speaker, Ladies and Gentlemen of the House: Years ago, society literally got its pound of flesh, not only did society execute murderers, they cut off the hands of robbers. We couldn't stomach that cutting off the hands of criminals anymore, but some of us will propose taking a whole life. There are some people who commit such horrible crimes that they should be locked up for a very long time. Perhaps in some cases, they should even throw away the key.

The gentleman from Portland, Mr. Joyce, the voice of law and order as it were in this House, reassures my faith that there is 'reasonable' left in the conservative community.

Two years ago, I was the chief opponent of the death penalty at public hearing before I was a legislator. I had a long legalistic speech and I have none this year. The referendum provision doesn't change my mind. The death penalty is wrong and I won't vote to let others vote to establish it if I can't vote that way in good conscience myself.

I would suggest to members of this House that they no more flick the switch for this bill than they could personally flip the switch on the electric chair.

The SPEAKER pro tem: The Chair recognizes the gentleman from Biddeford, Mr. Lizotte.

Mr. LIZOTTE: Mr. Speaker, Ladies and Gentlemen of the House: I have very little to say on this bill for the reason that much has already been said. We are concerned with the murderer's fate. I honestly believe that we should be discussing what warning did the victim have. At least in this bill, we are telling the murderer that he is being warned of his penalty.

The SPEAKER pro tem: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

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

The SPEAKER pro tem: The Chair recognizes the gentleman from Lewiston, Mr. Cote.

Mr. COTE: Mr. Speaker, I wish to pair my vote. If the gentleman from Eagle Lake, Mr. Martin was here, he would be voting yes; I would be voting no.

The SPEAKER pro tem: The gentleman from Lewiston, Mr. Cote, wishes to pair his vote with the gentleman from Eagle Lake, Mr. Martin. If the gentleman from Eagle Lake, Mr. Martin were here, he would be voting yes; Mr. Cote from Lewiston would be voting no.

The SPEAKER pro tem: The Chair recognizes the gentleman from Hallowell, Mr. Stubbs.

Mr. STUBBS: Mr. Speaker, I would like to pair with the gentleman from Lisbon Falls, Mr. Tierney. If Mr. Tierney were here, he would be voting yes; I would be voting no.

The SPEAKER pro tem: The gentleman from Hallowell, Mr. Stubbs, wishes to pair his vote with the gentleman from Lisbon Falls, Mr. Tierney. If the gentleman from Lisbon Falls, Mr. Tierney were here, he would be voting yes; Mr. Stubbs from Hallowell would be voting no.

The SPEAKER pro tem: The Chair recognizes the gentleman from Portland, Mr. Jensen.

Mr. JENSEN: Mr. Speaker, I would like to pair my vote with the gentlewoman from Bethel, Miss Brown. If she were here, she would be voting no and I would be voting yes.

The SPEAKER pro tem: The gentleman from Portland, Mr. Jensen would like to pair his vote with the gentlewoman from Bethel, Miss Brown. If Miss Brown were here, she would be voting no and Mr. Jensen would be voting yes.

The Chair recognizes the gentleman from Springvale, Mr. Wood.

Mr. WOOD: Mr. Speaker, I wish to pair my vote with the gentleman from Kennebunk, Mr. McMahan. If Mr. McMahan was here, he would be voting no and I would be voting yes.

The SPEAKER pro tem: The gentleman from Springvale, Mr. Wood, wishes to pair his vote with the gentleman from Kennebunk, Mr. McMahan. If Mr. McMahan were here, he would be no and Mr. Wood would be voting yes.

The Chair recognizes the gentleman from Biddeford, Mr. Lizotte.

Mr. LIZOTTE: Mr. Speaker, I would like to pair my vote with the gentleman from Augusta, Mr. Bustin. If Mr. Bustin were here, he would be voting yes and I would be voting no.

The SPEAKER pro tem: The gentleman from Biddeford, Mr. Lizotte, pairs his vote with the gentleman from Augusta, Mr. Bustin. If Mr. Bustin were here, he would be voting yes; Mr. Lizotte of Biddeford would be voting no.

The Chair recognizes the gentleman from Wayne, Mr. Ault.

Mr. AULT: Mr. Speaker, I would like to pair my vote with Mr. LaBlanc from Van Buren. If he were here, he would vote yes and I would vote no.

The SPEAKER pro tem: The gentleman from Wayne, Mr. Ault, pairs his vote with the gentleman from Van Buren, Mr. LaBlanc. If Mr. LaBlanc were here and voting, he would be voting yes; if Mr. Ault were voting, he would be voting no.

The pending question is on the motion of the gentleman from Portland, Mr. Joyce, that this Bill "An Act to Reinstate the Death Penalty," House Paper 943, L.D. 1156, be indefinitely postponed. All those in favor of that motion will vote yes; those opposed will vote no.

ROLL CALL

YEAS — Aloupis, Bachrach, Beaulieu, Bennett, Benoit, Berry, Berube, Blodgett, Boudreau, A.; Brenerman, Brown, K. C.; Bunker, Burns, Byers, Carroll, Carter, F.; Chonko, Clark, Connolly, Cox, Curran, Davies, Devoe, Diamond, Dow, Elias, Flanagan, Fowlie, Gauthier, Gill, Goodwin, H.; Goodwin, K.; Gray, Green, Greenlaw, Henderson, Hickey, Hobbins, Howe, Huber, Hughes, Hutchings, Immonen, Jackson, Jalbert, Joyce, Kane, Kany, Kelleher, Kerry, Kilcoyne, Lewis, Lunt, Lynch, Mackel, Mahany, Martin, A.; Masterton, McPherson, Mitchell, Moody, Morton, Nadeau, Najarian, Nelson, M.; Norris, Palmer, Peakes, Pearson, Peltier, Peterson, Plourde, Post, Quinn, Raymond, Smith, Spencer, Sprowl, Stover, Talbot, Tarbell, Tarr, Trafton, Valentine, Whittemore, Wilfong, Wyman.

NAYS — Austin, Biron, Birt, Boudreau, P.; Carrier, Carter, D.; Churchill, Connors, Cunningham, Dexter, Drinkwater, Durgin, Fenlason, Garsoe, Gillis, Gould, Hall, Higgins, Hunter, Laffin, Littlefield, Lougee, MacEachern, Marshall, McBrearty, McHenry, McKean, Mills, Nelson, N.; Perkins, Prescott,

Rideout, Rollins, Shute, Silsby, Strout, Teague, Theriault, Torrey, Tozier, Truman, Twitchell.

ABSENT — Bagley, Carey, Dudley, Dutremble, Jacques, LaPlante, Locke, Masterman, Maxwell, Tyndale.

PAIRED — Brown, K. L.; Bustin, Cote, Jensen, LeBlanc, Lizotte, McMahan, Stubbs, Tierney, Wood.

Yes, 87; No, 44; Absent, 10; Paired, 12.

The SPEAKER pro tem: Eighty-seven having voted in the affirmative and forty-four in the negative, with ten being absent and twelve paired, the motion does prevail.

The Chair recognizes the gentleman from Brewer, Mr. Norris.

Mr. NORRIS: Mr. Speaker, having voted on the prevailing side, I now move we reconsider our action and hope you all vote against me.

The SPEAKER pro tem: The gentleman from Brewer, Mr. Norris, having voted on the prevailing side, now moves that the House reconsider its action whereby this Bill was indefinitely postponed. All those in favor will say yes; those opposed will say no.

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

Sent up for concurrence.

The SPEAKER pro tem: The Chair recognizes the gentleman from Biddeford, Mr. Lizotte.

Mr. LIZOTTE: Mr. Speaker, I move we reconsider our action of earlier whereby we voted to adhere on Bill "An Act Concerning the Penalty for Sale of Alcoholic Beverages to Minors," Senate Paper 249, L.D. 758, and I hope you all vote against me.

The SPEAKER pro tem: The Chair recognizes the gentleman from Rockland, Mr. Gray.

Mr. GRAY: Mr. Speaker, Ladies and Gentlemen of the House: I have asked that this bill be held. I think we passed over it rather quickly. The other body has asked for a Committee of Conference, so I would hope that perhaps we might reconsider our action on this bill and have an opportunity to have a Committee of Conference with the other body.

The SPEAKER: The pending question is on the motion of the gentleman from Biddeford, Mr. Lizotte, that the House reconsider its action of earlier in the day whereby it voted to adhere on L.D. 758. All those in favor of reconsideration will vote yes; those opposed will vote no.

A vote of the House was taken.

26 having voted in the affirmative and 54 having voted in the negative, the motion did not prevail.

The SPEAKER pro tem: The Chair recognizes the gentleman from Calais, Mr. Gillis.

Mr. GILLIS: Mr. Speaker, I move we reconsider our action on Bill "An Act to Provide County Commissioner Districts in Washington County," House Paper 1225, L.D. 1359, and ask that you all vote against me.

The SPEAKER pro tem: The gentleman from Calais, Mr. Gillis, moves that the House reconsider its action of earlier in the day whereby it voted to recede and concur on L.D. 1359. All those in favor of reconsideration will vote yes; those opposed will vote no.

A vote of the House was taken.

24 having voted in the affirmative and 68 having voted in the negative, the motion did not prevail.

(Off Record Remarks)

On motion of Mrs. Post of Owl's Head,
Adjourned until one-thirty tomorrow afternoon.