LEGISLATIVE RECORD

OF THE

One Hundred and Seventh Legislature

OF THE

STATE OF MAINE

1975

KENNEBEC JOURNAL
AUGUSTA, MAINE

On motion by Mr. Speers of Kennebec, tabled pending Passage.

Joint Resolution
STATE OF MAINE

Joint Resolution in Support of H.R. 1753 and H.R. 5035 Now Pending in the United States Congress

WE, your Memorialists, the House of Representatives and Senate of the State of Maine of the One Hundred and Seventh Legislative Session, now assembled, most respectfully present and petition the Congress of the United States as follows:

WHEREAS, there are presently before the Congress two bills, H.R. 1753 and H.R. 5035, concerning the transmittal to the states of Decennial Census data which is highly desirable for use for state and local legislative apportionment and for state districting; and

WHEREAS, it is vital for legislatures and other bodies to have access to prompt and usable census data if they are to accurately accomplish necessary legislative apportionment and state districting; and

WHEREAS, passage of H.R. 1753 and H.R. 5035 would materially aid in prompt state access to usable Decennial Census data; now, therefore, be it

RESOLVED, that We, your Memorialists, do hereby respectfully request and urge that the United States Congress this year enact into law legislation, substantially the same as H.R. 1753 and H.R 5035, to aid in the transmittal of federal census data to the states; and be it further

RESOLVED, that a copy of this Resolution, duly authenticated by the Secretary of State, be transmitted by the Secretary of State to the Speaker of the House of Representatives and to the President of the Senate of the United States Congress and to each member of the Maine Congressional Delegation. (H. P. 1600)

Comes from the House, Read and Adopted.

Which was Read and Adopted in concurrence.

Joint Resolution
STATE OF MAINE

In the Year of Our Lord One Thousand Nine Hundred and Seventy-five

Joint Resolution to Commend the President of the United States on his Vigorous Actions to Secure the Release of the Mayaguez and her Crew from the Cambodians

WHEREAS, on Monday, May 12, 1975 a Cambodian gunboat fired at and seized the unarmed United States Merchant Ship Mayaguez some sixty miles off the coast of Cambodia; and

WHEREAS, reflecting the mood of the nation, President Ford demanded the ship and its crew be freed, a demand which was backed by a show of force indicating that the United States would not accept harassment of ships on international sea lanes; and

WHEREAS, on the third day following this act of piracy and the vigorous diplomatic and military response of the United States, the vessel and crew members were successfully rescued from the Cambodians; now, therefore, be it

RESOLVED: That We, the Members of the Senate and House of Representatives of the One Hundred and Seventh Legislature of the State of Maine, now assembled, take this opportunity to commend the efforts of the Honorable Gerald R. Ford, President of the United States and those in the service of our Federal Government who have successfully secured the safe return of the Mayaguez and her crew and hopefully demonstrated to the world that the United States will vigorously resist piracy of our ships on international sea lanes; and be it further

RESOLVED: That a copy of this resolution, duly authenticated by the Secretary of State be transmitted forthwith by the Secretary of State to the President of the United States and to the Senators and Representatives in Congress from the State of Maine. (H. P. 1601)

Comes from the House, Read and Adopted.

Which was Read and Adopted in concurrence.

Communications
Answers of the Justices

To the Honorable Senate of the State of Maine:

In compliance with the provisions of Section 3 of Article VI of the Constitution of Maine, we, the undersigned Justices of the Supreme Judicial Court, have the honor to submit the following answers to the Questions propounded on April 25, 1975.

QUESTION NO. I: Would sections 9 and 1252 of section 1 of Legislative Document 314, as amended by Committee Amendment "A" if enacted into law, violate the Constitution, Article I, section 7?

ANSWER: We answer in the negative.

QUESTION NO. II: Would a crime be "infamous" within the meaning of the Constitution, Article I, section 7, if, irrespective of the length of possible imprisonment, a conviction for that crime could potentially result in a sentence of imprisonment at the State Prison even though the maximum length of that sentence is less than one year?

ANSWER: We answer in the negative.

Although the Senate has propounded two questions we find that they are directed in substance to a single constitutional issue.

The issue has arisen because prior decisions of the highest Court of this State have stated that crimes punishable by imprisonment in the State Prison are, for the purposes of Article I, Section 7 of the Constitution of Maine,1 "infamous" and must

1. Said Article I, Section 7 provides in part that:

"No person shall be held to answer for a capital or infamous crime, unless on a presentment or indictment of a grand jury, except in cases of impeachment, be prosecuted by a grand jury indictment. Yet L. D. 314, as amended by Committee Amendment "A", if enacted into law, would (1) eliminate as determinative of the necessity of prosecution by the indictment of a grand jury that a crime is punishable by a sentence to the State Prison, 2 and (2) establish as the exclusive criterion of the crimes which "shall be prosecuted by indictment" the duration of the period of confinement by which the crime is punishable, to-wit: that the period of confinement can be one year or more.3

The key factor underlying our answers is the recognition that the prior references by the Law Court to a crime as "infamous" if it is punishable by imprisonment in the "State Prison" were intended to connote substantive content other than the features that the commitment is to a penal institution which bears the name "State Prison" and is common to the State as a whole. The true intendment was, rather, to identify specific types of punishments for criminal conduct to which a person, because committed to the "State Prison", becomes subject.4

These kinds of punishments were identified in **Jones v. Robbins**, 8 Gray (Mass) 329, 349 (1857) as the subjection to

"solitary imprisonment, to have. . .hair cropped, to be clothed in conspicuous prison dress,. . .to hard labor without pay, to hard fare, course and meagre food, and to severe discipline."

Or in such cases of offenses, as are usually cognizable by a justice of the peace, or in cases arising in the army or navy, or in the militia when in actual service in time of war or public danger."

2 This results insofar as under Section 1252 a person convicted of a Class "D" or a Class "E" crime can be sentenced to the State Prison regardless that the "definite period" of confinement for a Class "D" crime (by virtue of Committee Amendment "A") is "less than one year" and for a Class "E" crime "not to exceed six months."

3 This is the consequence of the provisions of Section 1251, those of revised Section 9 of Committee Amendment "A" and said Amendment's modification of the punishment for a "Class D crime" as "a definite period of less than one year. . ."

4 The statement in **State v. Vashon**, 123 Me. 412, 123 A. 511 (1924) that a statutory felony is an infamous crime added nothing new in concept. It was merely a restatement in other terms of the "State

By virtue of P.L. 1971, Chapter 397 § 3 (now 34 M.R.S.A. § 701) the Maine State Prison has since 1971 been denied authority to utilize as punishments for criminal conduct either hard labor of solitary confinement. Because of this important modification, the penal institution which presently has the name "State Prison" and is "common to the entire State", is not the same institution, in terms of its punishment functions and powers, as the one in contemplation of the Law Court when it referred to a crime punishable by a sentence to the "State Prison" as "infamous."

We must conclude, therefore, that our present problem is essentially the same as that faced by the Massachusetts Court in 1857 when it decided **Jones v. Robbins**, supra, and established the foundational contours upon which both the Supreme Court of the United States and the Law Court of Maine had previously relied to give meaning to the concept of a crime as "infamous."

In **Jones v. Robbins** the Massachusetts Court reviewed the history of penological developments in the United States and noted the earlier use of the punishments of

"pillory, sitting on the gallows, cropping one or both ears, branding on one or both cheeks, with indelible ink, the letter T for thief, or B for burglar, whipping, setting in the stocks;. . ." (p. 348)

and the like. These were the kinds of punishments which by their degrading nature could readily be regarded as "infamous."

By 1857, however, these methods of punishment had been abolished. In the penology then current in Massachusetts confinement in a penal institution had become the essentially exclusive method of punishment (other than capital) for criminal conduct and, therefore, the