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Floor Debate
May 13, 2013

[LB3 LB23A LB99 LB194 LB195 LB198 LB199 LB200 LB216A LB269A LB299 LB384A
LB384 LB407 LB476 LB505 LB536 LB543 LB553 LB553A LB556A LB561 LR181
LR182 LR183 LR184 LR185 LR186 LR187 LR188 LR189 LR190]

SENATOR CARLSON PRESIDING

SENATOR CARLSON: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the seventy-sixth day of the One Hundred Third Legislature, First Session. Our chaplain for today is Pastor Rebecca Hjelle of the First United Methodist Church in Blair, guest of Senator Crawford. Please rise.

PASTOR HJELLE: (Prayer offered.)

SENATOR CARLSON: Thank you, Pastor Hjelle. I call to order the seventy-sixth day of the One Hundred Third Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record.

CLERK: I have a quorum present, Mr. President.

SENATOR CARLSON: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: Mr. President, I have no corrections.

SENATOR CARLSON: Thank you. Are there any messages, reports, or announcements?

CLERK: Mr. President, bills read on Final Reading last Friday, May 10, were delivered to the Governor at 1:20 p.m. (re LB3, LB99, LB299, LB384, LB384A, and LB476). I have an appointment letter from the Governor with certain appointees to the Environmental Quality Council. That will be referred to Reference for a referral to a standing committee for a confirmation hearing. And I have two new resolutions, LR181 and LR182 by Senator Sullivan, both calling for interim studies. Those will be referred to the Executive Board as well. That's all that I had, Mr. President. (Legislative Journal pages 1315-1317.) [LB3 LB99 LB299 LB384 LB384A LB476 LR181 LR182]

SENATOR CARLSON: Thank you, Mr. Clerk. (Visitors introduced.) Mr. Clerk, next item on the agenda.

CLERK: Mr. President, the Transportation and Telecommunications Committee reports on two appointments to the Motor Vehicle Industry Licensing Board. (Legislative Journal page 1265.)

SENATOR CARLSON: Senator Dubas, you are recognized to open on the confirmation

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
May 13, 2013

reports.

SENATOR DUBAS: Thank you very much, Mr. President, and good Monday morning, colleagues. The Transportation and Telecommunications Committee approved the reappointment of Blake Dillon of Fremont, Nebraska, to the Motor Vehicle Industry Licensing Board. Mr. Dillon's reappointment satisfies the statutory requirement for one board member to be a motorcycle dealer. Mr. Dillon and his brother are owners of Dillon Brothers MotorSports in Omaha, along with other Dillon vehicle dealerships around the state. During the confirmation hearing, Mr. Dillon expressed his appreciation for the work of the licensing board, especially at regulating advertising of vehicle dealers to keep the businesses in the state aboveboard and honest. Their goal is never to put a dealer out of business but to help them understand the rules and laws, and comply. The committee also approved the reappointment of William Reeg of Wayne, Nebraska. Mr. Reeg has owned the Ford dealership in Wayne since 1978. Mr. Reeg is committed to keeping the auto industry strong in Nebraska. To prove how strong the industry is, he brought the committee a data sheet on the contribution of motor vehicle sales in the state. In 2012, total sales at new vehicle dealerships in Nebraska equalled \$5 billion, which represents 13.5 percent of total retail sales in the state. Along with the contribution to the state's revenue, dealerships employ over 6,800 people in Nebraska. We appreciate the work of the board at keeping this industry reputable and successful. I urge your yes vote on the reappointments of Mr. Dillon and Mr. Reeg to the Motor Vehicle Industry Licensing Board.

SENATOR CARLSON: You have heard the opening on the confirmation report. Is there any discussion on the report? Senator Janssen, you're recognized.

SENATOR JANSSEN: Thank you, Mr. President. I would just like to rise in support of what Senator Dubas just mentioned, and reaffirm that the Dillon family in Fremont has done an outstanding job not only of selling quality vehicles for a number of years but also donating time, talents, labors, treasure to local charities across the community. Also with William Reeg, having gone to Wayne State College, it was a major employer for college students while I went there and also did much the same in the community of Wayne. They're definitely an asset to the community and these two gentlemen are definitely an asset to the state of Nebraska. Thank you.

SPEAKER ADAMS PRESIDING

SPEAKER ADAMS: Thank you, Senator Janssen. Senator Bloomfield, you're recognized.

SENATOR BLOOMFIELD: Thank you, Mr. Speaker. Bill Reeg is an integral part of Wayne, Nebraska. He has been the Ford dealer for a long time, and I've never bought a Ford, but anytime you have a question of what's going on in Wayne, Bill will be able to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
May 13, 2013

tell you. He is always available and always willing to deal with the interests of Wayne, and I highly recommend that we reappoint him. Thank you.

SPEAKER ADAMS: Thank you, Senator Bloomfield. Senator Brasch, you're recognized.

SENATOR BRASCH: Thank you, Mr. President, and thank you, colleagues. I also rise in support of these confirmations. The Dillon family has also been a strong business in Washington County and Blair, and has done many philanthropic and charitable deeds for the community, especially during the time of the flooding in 2011. I rise in support. Thank you.

SPEAKER ADAMS: Thank you, Senator Brasch. Are there other senators wishing to speak? Seeing none, Senator Dubas. Senator Dubas waives her closing. The question is the adoption of the report offered by the Transportation and Telecommunications Committee. All those in favor vote aye; all those opposed vote nay. Have all voted that wish to? Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 1317.) 34 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

SPEAKER ADAMS: The report is adopted. (Visitors introduced.) Mr. Clerk, we'll proceed to General File, LB543. [LB543]

CLERK: Mr. President, LB543 is a bill originally introduced by Senator Chambers. (Read title.) The bill was introduced on January 23, referred to the Judiciary Committee for a public hearing. The bill was advanced to General File. I do not have committee amendments but I do have other amendments and motions, Mr. President. [LB543]

SPEAKER ADAMS: Senator Chambers, you are recognized to open on LB543. [LB543]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, a sizeable amendment has been filed by Senator Coash, an amendment with which I agree. What it does primarily is to remove what we sometimes refer to as intent language. His amendment streamlines the bill considerably, so if any of you had looked at the green copy and found yourself puzzling over some of the assertions in that intent area, forget that altogether. What this bill would do is to abolish the death penalty, replace it with a penalty of life without possibility of parole. There has been a lot of discussion about the bill. There are speculations galore about what the ultimate outcome of the bill will be. Senator Lautenbaugh has expressed in the newspaper his intent to do any and everything he can to filibuster and otherwise stop the bill. This is a tactic used by me on other types of bills, so I don't see anything wrong with him trying to do that. They will not have my help, however, in doing it. And I think we should go ahead and get a test vote as soon as we can. He's willing to give the rest of the session

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
May 13, 2013

to kill the bill, so the first opportunity to get a test vote, we should take it. He's willing to give up the session on his side, and so am I on my side. I'm presenting these realities so there will be no illusions about what is before us today. Some who oppose the bill may wave the bloody shirt and try to play on your emotions about the horrendous crimes that have been committed by people on death row, and I have about a dozen cases that I collected over a period of time just from the newspapers, ranging from a woman having been beaten, placed alive under a vehicle, set afire. Her breast was amputated, her leg was amputated, which was charred, and she died anyway; and the guy didn't wind up on death row. And some of these others where one woman had 12 bullet holes in her, 22 wounds; no death penalty. One guy drove a car through his wife's bedroom, shot her six times in the presence of her children; no death penalty. Another involved a lady that I knew. And as time goes on, if I think it's appropriate I'll read some of these cases into the record. If you go into the court files, you can find even more cases. What I wanted to do was take those that are found in newspapers to show that there is randomness, arbitrariness, and no standard for applying this penalty which is to be a statewide law. Since you have 93 counties and roughly 93 prosecutors--sometimes a prosecutor or a county attorney may service more than one county--you have the number of death laws as you have county attorneys. They have absolute discretion as to what charge will be filed and whether or not the death penalty will be sought. So even though there must be uniformity in tax laws there need not be any uniformity, and there is not, in taking a life by the state. Some people have not been through any of these discussions; others have. I passed around this morning an article dealing with some of the time that I spent with John Joubert. I'm going to tell you how I wound up doing that. I wanted no part whatsoever, even tangentially, in a death penalty being carried out. Harold Clarke was the director of Corrections, and he and I got along very well. And he told me that the sheriff from Sarpy County wanted to come to the prison as an official observer; not a witness to the execution but an observer. And Director Clarke told me, Senator, this man has made it clear that he intends to taunt John Joubert and make it as hard on him as possible; it's hard enough running the prison while an execution is impending, and I don't need that. So I said, I can't stop him from coming. He said, neither can I, but as a favor to me would you come out here as an official observer; and will you let me announce it in the paper? I said, I will do it. And guess what happened? When the sheriff found out that I was coming--his name was Pat Thomas--he decided he did not want to be an official observer. I spent several days with Joubert and there were things being done which were totally unnecessary. As the Supreme Court said, the vilest criminal remains a human being with basic human dignity, and that must be respected. So things that they were doing were unnecessary, had nothing to do with carrying out the sentence that had been pronounced by the court, such as closing the blinds in the hospital room where he was. He wanted to see the sunshine. If there was a bird, he'd like to see it. He knew his days were numbered, his time was up. So I talked to the deputy warden or somebody, and I said, open the blinds. He said, well, the last time we did that, Wili Otey was going to be executed and all the hubbub...I said, look, that was at night. This is daytime. Look out the window; there's nobody. Open the

Floor Debate
May 13, 2013

blinds. And he opened the blinds. Nothing occurred. When he was on that final walk, some of the underlings were not going to let his spiritual advisor accompany him, and I took care of that right away. I don't have beliefs in things that other people do, but it's hard enough when you're at the end of the trail, whatever brought you there, to face it. And there was no need to do something like sticking the pins in the eyes of a bug or pulling the wings off a butterfly. So I said, contact the director; and this time I think they may have. But at any rate, I talked to somebody who had an upper position and I explained to him this man wants his spiritual advisor, let him walk with him; I'm going to walk with him. So he was allowed to have his spiritual advisor. People who from a distance say they love the death penalty, don't know what a grotesque ceremony it is, opportunities that are given to people to do very bad, inhuman things; and I was there to make sure that didn't happen. And as I told that reporter, of all the people in the state, if anybody needed at least one man who would see to his interests in his last and awful hours, I'll be that man; and I was. And I spent time with Robert Williams, another man who was executed. I was there the night that Wili Otey was executed. So my involvement is not academic, it is not theoretical. And what I told each man, the question of guilt and innocence has been decided against you. The sentence has been pronounced and it's about to be carried out and I cannot do anything about that, so I'm not going to talk about your case or any of those things, but anything you want to talk to me about, even if you want to talk about that, you can. And maybe I will go into a bit of detail about other aspects of it, not gory, not grotesque... [LB543]

SPEAKER ADAMS: One minute, Senator. [LB543]

SENATOR CHAMBERS: ...but just to let you know that people don't cease to be human. And for those who call themselves religious, even Jesus on the cross took time to stop dying to talk a fellow "executtee," if you want to call him that, and offer comfort. So maybe it takes either a god whom you all think one person is or a devil whom you think I am to understand the gravity of these situations and conduct ourselves accordingly. Remember, at the earliest opportunity, when the other side wants a test vote, we ought to take it so that we don't waste time. If the bill is going to be killed, kill it. They need to know if it's not going to be killed and we all need to have some certitude. Thank you, Mr. President. [LB543]

SPEAKER ADAMS: Thank you, Senator Chambers. Mr. Clerk for a motion. [LB543]

CLERK: Mr. President, the first motion I have is a priority motion. Senator McCoy would move to bracket the bill until June 5, 2013. [LB543]

SPEAKER ADAMS: Senator McCoy, you're recognized. [LB543]

SENATOR MCCOY: Thank you, Mr. President and members. At this time I would ask that this motion be withdrawn. [LB543]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
May 13, 2013

SPEAKER ADAMS: So ordered. [LB543]

CLERK: Mr. President, the next amendment I have...or the first amendment I have to the bill is by Senator Coash, AM865. (Legislative Journal page 1139.) [LB543]

SPEAKER ADAMS: Senator Coash, you are recognized to open on your amendment. [LB543]

SENATOR COASH: Thank you, Mr. President. Good morning, members. Let me just start my comments about the technical aspects of AM865, which does become the bill. As Senator Chambers indicated in his opening, he had quite a bit of intent of language in his green copy, and that's still part of the record and I'm okay with that. But when we pass a bill in this body, I want it to be clean, I want it to be straightforward, and I want it to mean what it says and do what it means. It very simply does this: AM865 takes any part in our statutes that refer to capital punishment or execution, and replaces that language with life without the possibility of parole; and this amendment is a straightforward implementation of that policy. We're going to have a debate today, colleagues. It's going to be a technical debate. It's going to be a philosophical debate and the members will take their own views where they are. I'm going to start my comments by saying I'm not going to talk about perpetrators of crime during this debate. I'm not going to do it. I'm leaving the names and the crimes that were committed out of it. The people who do those crimes are not worthy of our breath or mention. As we debate this issue today, here's what I would ask of you, colleagues: Consider the nature and the role of our duty, and apply that. We are here to make policy that does good for people, spends their money wisely, and assures a just society. And I'm going to ask you to answer this question for yourselves today: What good has the death penalty done for our citizens? What good has been done because we have a death penalty? Because without an execution, the death penalty is pretty meaningless. I came to my decision on the death penalty a different way and I'm passing something out that shows you where I came from. But as a matter of policy, I have to answer some questions, and the questions we have to answer is, what good is this policy that we're debating, what good has it done for our state? Has having the death penalty saved our state taxpayers money? Have we saved any money by having this? Has it deterred crime? And most importantly, has it executed any amount of justice? We know the answer to these questions, and the answer is, no, it hasn't saved money, it hasn't deterred a crime, and it hasn't executed any justice. So I want to talk about the money for a moment. Last week, during the budget debate, we had a lengthy discussion about getting rid of positions and people that were ineffective and inefficient; it's a waste of money. Apply that to this debate. If the death penalty were any other government function that operated as inefficiently and as costly as this policy, we would have gotten rid of it a long time ago. We all say when we come here, we're going to cut stupid things out of our statute because we're not going to waste money on things that we shouldn't be

Floor Debate
May 13, 2013

wasting money on; and this is one of those things. We can have...others, I'm sure, are going to talk about putting people to death. I want to talk about why do we have something on our books that is so inefficient, so costly. People say, hey, I've talked to my colleagues, I've talked to other people. They say, you know, it just makes me feel better to have the death penalty on the books; I like to know it's there just in case. It's not going to happen. And through this change in policy we can feel better about our responsibility to the taxpayers and our obligation to them. Colleagues, we owe our taxpayers an efficient system and this is not...our current statute is not efficient and it's not cost-effective. We know that the death penalty doesn't deter crime because we don't even use it. We don't even use this. Where is the justice in a punishment that is never and will never be carried out? Does the death penalty give victims of crime justice? I don't think it does, because it focuses on perpetrators and not the victims. And I want to give you a quote from somebody who came in front of the Judiciary Committee on this very bill. Her brother was a victim and her brother's killer sits on death row. And every appeal...and this is her quote. "Every appeal and on and on, everything about the horrible death again, year in, year out. If execution ever comes, it will be another day about Michael Ryan and nothing about my brother Jim. Death penalty supporters say that carrying out the death penalty is a family closure. Closure is a myth. The death penalty does absolutely nothing for families except more pain." Think about the hell that we put victims through. Every time there's an execution date, what happens? We say to the families, today is the day; your family is going to have justice; today your family...the person who killed your family member is going to pay for his crime. That day comes, that day goes, and it never happens. Where is the justice in that? And you may hear some people say today, well, we need to shorten the appeals process. You can't shorten the appeals process. If you could do it, attorneys and this Legislature and past Legislatures would have done it a long time ago. But they know you can't do it. A competent lawyer knows you cannot shorten the appeals process in a legal manner. So the result is this: We've got a statute that punishes victims. The death penalty punishes victims. So what I would ask is this, colleagues, take a deep breath, look at things for what they really are. We know that we're not going to execute another person in this state ever again. It's just not going to happen. We're not going to have the drugs to be able to do it. No one is going to sell the drugs to the state. Pharmaceutical manufacturers manufacture drugs that help people, so if they know we're going to use that drug to execute somebody, they're not going to sell it. So be thoughtful about this. You can leave your hearts out of it. Use your brains. We know we're not going to execute anybody again. And without repeal we're going to continue to spend money and we're going to continue to talk about perpetrators. This bill is about getting justice. This is about justice to the victims' families. Let the perpetrators of this crime walk a little track in their 5x10 cell until they die and let's speak no more of them. Let's not be the final state in a race in something that we know is going to be inevitable. You can go home and tell your constituents you voted for a measure that cuts an ineffective, expensive system that gives no justice. This is a good government approach. This is a reflection of our values to be efficient and judicious with taxpayer money and rid our

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
May 13, 2013

government of programs that just don't work. And, colleagues, the death penalty isn't working. It's an imperfect system run by imperfect people. And this is our chance to go back to the taxpayers, the people who sent us here and say, we're going to do something that means something. [LB543]

SPEAKER ADAMS: One minute. [LB543]

SENATOR COASH: We're going to take the money and the responsibility that you send to us and we're going to turn it into something that means something to victims because I'm not going to talk about the perpetrators. Let them sit. Let them die in prison. Let's not give the victims false hope that someday that their loved ones are going to be avenged, because this is revenge. Let's not give them that. Let's give them closure. Imagine what we can do with what we save. What could we do with the victims? How could we help them? With that, colleagues, I will end my comments and ask that we keep this discussion on the victims. [LB543]

SPEAKER ADAMS: Time, Senator. [LB543]

SENATOR COASH: Thank you, Mr. President. [LB543]

SPEAKER ADAMS: Thank you, Senator Coash. Senator McCoy, for what purpose do you rise? [LB543]

SENATOR MCCOY: Mr. President, I would ask for a division of the question on AM865. [LB543]

SPEAKER ADAMS: Would Senator McCoy, Senator Chambers, and Senator Coash, please approach the Chair? The Chair finds that the motion is divisible. Mr. Clerk. [LB543]

CLERK: Mr. President, pursuant to your order, there will be three components of the original AM865. The Revisor's Office is currently redrafting AM865 into those three components. Once that work is completed, I'll be able to identify the members by different AM numbers, how the amendment is being divided. So in the meantime I have up here certain breakdowns that might be helpful to you; but until, I might ask for your indulgence till we actually have the working documents in front of us, which may take a little bit of time. Thank you, Mr. President. [LB543]

SPEAKER ADAMS: Thank you, Mr. Clerk. Mr. Clerk, is there a motion on the desk? [LB543]

CLERK: I do, Mr. President. I have a priority motion. Senator McCoy would move to bracket LB543 until June 5, 2013. [LB543]

Floor Debate
May 13, 2013

SPEAKER ADAMS: Senator McCoy, you are recognized to open on your bracket.
[LB543]

SENATOR McCOY: Thank you, Mr. President and members. I, at the outset, want to detail to you my adamant opposition to what will be now three amendments and the underlying bill, LB543. In light, though, of the seriousness of this topic and what I hope to be the high value of the discussion and the debate that we will have today, it is my intent to withdraw this bracket motion, as I have discussed with Senator Coash, once these three amendments have arrived to us here on the floor. This bracket motion, however, allows us to discuss, until that moment, this issue. I, probably along with all of you, hope that this is a thoughtful debate and one I consider to be more than likely one of the most significant decisions and votes that I could ever cast as a legislator in this body. I know the Speaker, along with all of us, I believe, want this to be a discussion that reflects the seriousness of this topic. I plan to make the case during this discussion that the death penalty is appropriate for certain crimes; that there is no evidence of botched executions in Nebraska; and that certain crimes warranting spending, it's necessary to prosecute first-degree murder cases and to talk about those costs. And if the Legislature decides to repeal the death penalty, the super due process provisions built into our statutes should also be stricken. I believe that the individuals, 11 of them that are currently on death row, belong there. I want to talk about a senator, former Senator Tom White, that I served with and many of us served with. I served with him my first two years in the body, and he used to sit in the chair that Senator Nelson now sits in. And in his discussion on this issue back in March--March 25, to be exact, of 2008--I believe that he outlined some salient points about this discussion that I would like to repeat, and he said: I cannot support this bill because though not frequent there are substantial examples of inmates who simply remain too dangerous to be left alive. There's well-documented incidents of inmates who have repeatedly killed other inmates or guards. There are well-documented incidents of people who have been convicted or awaiting trial who have caused murders to be committed against judges, prosecuting attorneys, and witnesses. I think that this discussion and the seriousness of it is one that I know Nebraskans expect us to make a serious decision about. We may not all agree and I'm sure that we don't. Senator Chambers has been a staunch advocate on this issue for longer than I have been on this earth and many of us here. I think, however, that, members, I don't need a poll to guide my vote on this issue or any issue, but particularly this one, because there are communities that have experienced the most heinous crimes that you can possibly imagine. And unfortunately, I'm sure that we will hear some of that discussed today, because I believe that it must be discussed to truly understand the magnitude, the evil involved with these crimes. I believe that these three amendments will provide a substantive discussion that not only focuses on the overall debate in front of us but also drills down and examines what is in the full AM865 that Senator Coash has brought to us. There are no credible claims of innocence by any prisoners currently on death row in our state. And in my view, there is no question that

Floor Debate
May 13, 2013

the individuals on death row committed the murders for which they've been sentenced. Thirty-two states now, and the federal government, have death as an available criminal punishment. The United States Supreme Court and the Nebraska Supreme Court have never questioned the constitutionality of death as a criminal punishment in cases meeting the requirements of Nebraska's current statutes. Since the modern process of imposing death sentences began in 1973, there has never been a Nebraska prisoner sentenced to death that has been proven to be actually innocent of the murder or murders for which he was found guilty. And since that modern process of imposing death sentences began in 1973, there is no evidence that an innocent person has been put to death in the United States. Under Nebraska statute there is absolutely no difference between a life sentence without possibility of parole and a sentence of life for first-degree murder. Life without parole will not stop the endless appeals. And with that, Mr. President, I would conclude at this time. And as I stated at the beginning of my remarks, it is my intent to withdraw this bracket motion once the three divided amendments have arrived to us on the floor and are available for the members to view. Thank you, Mr. President. [LB543]

SENATOR CARLSON PRESIDING

SENATOR CARLSON: Thank you, Senator McCoy. Members, you've heard the opening on the motion to bracket. Senators wishing to speak include Pirsch, Lathrop, Ashford, McGill, Hadley and others. Senator Pirsch...okay, Senator Lathrop, you're recognized. [LB543]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good morning. This is my eighth occasion to address the death penalty, and we actually did it twice one year. And each year we come to take up I think the most serious bill of the year. And every year people will stand up and recite the circumstances of some really awful crimes. And so I want to begin today by, first, acknowledging that those who find themselves on death row have done some awful things, and I don't want our debate to diminish what the victims' families have experienced. That's not the point. The question is whether we should continue with the death penalty, an institution; an institution that exists by virtue of the laws of the state of Nebraska. And we will hear a variety of arguments in addition to those who will stand up and talk about some awful circumstances; that I will stipulate--I will stipulate--that these people did awful things. That's not the question, however. The question is whether this institution is serving the people of the state of Nebraska. It is a creature of this Legislature and the issue today is not whether there was a terrible murder in your county or in a county or whether these people are guilty or committed some awful crimes. They did. That's a given and we can stipulate to that, and then we can get on with discussing whether the death penalty is doing what we thought it would do for us when it became the law in Nebraska. Through the course of the debate you will hear people talk about the fact that it is a deterrent, that we're entitled to have the ultimate punishment; and there will be a variety of arguments dealing with

Floor Debate
May 13, 2013

deterrence and its effect. I want to run through some numbers for you so that we can get to what I think is the problem with the death penalty as an institution. Since 1973, there have been 1,600 homicides; 260 of those have been first-degree murders, making them death penalty-eligible. Only 33 of those first-degree murders were sentenced to death. Out of 260, only 33 were sentenced to death. So 13 percent of the cases where there had been a first-degree murder since 1973 was a death sentence imposed; 87 percent, no death. Fifty percent of those people who have been given death, almost 50 percent, have had their sentences vacated. So we're going to talk about appeals. Almost 50 percent of them have their death penalty vacated. Fifteen percent of the people that have been given the death penalty, three people died of natural causes, sitting on death row. Only 7.9 percent of the death sentences issued in this state have ever resulted in an execution. But consider this: Of all the first-degree murders, 260 death penalty-eligible cases, only about 1 percent have actually resulted... [LB543]

SENATOR CARLSON: One minute. [LB543]

SENATOR LATHROP: ...in an execution. So you have to ask yourself, for all the death penalty-eligible cases there are, when the death penalty is imposed in only 1 percent of those cases, after all the appeals, after countless appeals, on average about 14 years' worth of appeals, is that a deterrent? Is that a program that has been serving the people well? Because it costs you three times more to put somebody on death row than it does to simply give them a life sentence without the possibility of parole. When you add up the cost of institutionalizing them, keeping them in jail, all the appeals, all the trials, all the lawyers on both sides, it's three times more. And half of the people you spend three times more on,... [LB543]

SENATOR CARLSON: Time. [LB543]

SENATOR LATHROP: ...are going to have their execution vacated. Thank you. [LB543]

SENATOR CARLSON: Thank you, Senator Lathrop. Senator Ashford, you're recognized. [LB543]

SENATOR ASHFORD: Thank you, Mr. President and members. And I, too, have filed a bracket motion which will come up at some point. I agree with Senator Chambers that we do need a vote on this. We need to see where people are. Let me go back a bit. First of all, I would like to comment on Senator Coash's statements today. I can tell you, I have rarely heard such thoughtful comments as I have from Senator Coash. And in the seven years we've been--well, five years--that we've been together on the Judiciary Committee, Senator Coash has exhibited incredible thoughtfulness on this issue. And his testimonial that he has passed out, which traced the evolution of his thinking on this issue, is extremely important reading, in my view. So I commend Senator Coash. I've served in the Legislature for 15 years. Of those 15 years, nine of them have been on the

Floor Debate
May 13, 2013

Judiciary Committee, some with Senator Chambers and some not with Senator Chambers. I started out my years in the Legislature in 1987 as a member of the Judiciary Committee supporting the death penalty, as I think many of my colleagues in those days did. Many senators that I served with came to the Legislature with the sense that the death penalty was an appropriate punishment. But clearly, throughout my nine years, that opinion of mine has shifted dramatically. And let me just, as Chair of the Judiciary Committee, I think it's our responsibility, number one, to sort through what we are presented with. And obviously, every year we are presented with more bills than any other committee, and every single one of those bills is complicated because we're dealing with deciding what the law is and how it applies, in many cases in the criminal law, how it applies to all Nebraskans. So it becomes very, very difficult to sometimes sort through those proposals, because...and oftentimes, they are proposals which have a very emotive factor, whether it's sex abuse cases or other kinds of criminal law violations where there are victims. It's extremely difficult sometimes to explain to the public why we as the Judiciary Committee feel that a particular proposal or proposed law is not appropriate for the entire state and it should not be enacted. The standard that I use in evaluating these various proposals is, in the criminal law, is simply this: Is the public safer because we have such a law? Is the public safer? Are we going to, in effect, by enacting a particular piece of legislation, are we going to reduce crime? Are we going to reduce behaviors that we feel are abhorrent? And that's a standard that I generally use. Since I've been back in the Legislature, we have heard, I believe, seven times...we've heard a proposal on repeal of the death penalty seven times. And there have been several votes by the general Legislature on this issue and at one point there were 24 votes to repeal the death penalty a few years ago. What I was able to report to the Legislature when those bills came to the floor and I'm able to report to the Legislature now is that the evidence presented to us by...at the committee... [LB543]

SENATOR CARLSON: One minute. [LB543]

SENATOR ASHFORD: ...during the committee hearings was, clearly, by county attorneys, the county attorney from Hall County, Mark Young; the county attorney from Lancaster County, Joe Kelly; Don Kleine and others, there is no evidence. There is no evidence that having in place the death penalty will make the public safer. We have to only look...we only need to look at the crime stats that were presented in the committee to see that crime goes up and down based on factors unrelated totally to the death penalty. So I cannot, members, in good faith present to you any other option other than to get rid of this punishment which, as Senator Lathrop has so correctly stated, is way too expensive, is arbitrarily applied to some cases that are just as heinous as those that where the death penalty is applied, and suggest to you that we get rid of something on the books of our statutes that do not make the public safer and create... [LB543]

SENATOR CARLSON: Time. [LB543]

Floor Debate
May 13, 2013

SENATOR ASHFORD: Thank you, Mr. President. [LB543]

SENATOR CARLSON: Thank you, Senator Ashford. Senator McGill, you're recognized. [LB543]

SENATOR MCGILL: Thank you, Mr. President and members of the body. Most people here would probably assume that I've always been opposed to the death penalty, and that is not the case. While I was in college, it was during my time as a television reporter, that I covered the sentencing hearing of Jose Sandoval. And I saw the surveillance video of what happened in that bank and it changed me. It was horrifying and despicable and it made me realize maybe there are some people who commit crimes that are deserving of this. When I was first elected here, you know, I still felt that way. I still didn't like the death penalty but I thought there are some specific cases that I think it should be there for. But then I sat through hearings in the Judiciary Committee and debate here within the Legislature, and I listened to the evidence, the evidence that Senator Ashford, Senator Lathrop, Senator Coash, Senator Chambers have already shared with you this morning, and I realize how inequitable the death penalty really is. You know, and my beliefs, now that we no longer need the death penalty, are only reassured and reaffirmed by the people that I've talked to. Even within the last year I've seen a change in the folks that I talked to in the public who say, you know, this is just costing so much and the length of time; I believe we should have the death penalty but this is just a waste; let's get rid of it already. That's what I'm hearing from people. One of the issues I'd like to further elaborate on that Senator Coash started to talk about is victims and families, victims and the families of all murders, not just those who their murderer is given the death penalty. But in our state every year we have dozens of murders. In 2011, there were 67; in 2010 there were 54; in 2009 there were 41; in 2008 there were 69; in 2007 there were 68. These are all families hurting. I'm sure all of them want to see the murderer of their loved one, dead. So it's not surprising that most of these families do support the death penalty, but many of them with their loved one's murderer serving on death row have also started to become disillusioned because of all the reasons Senator Coash stated. In fact, here with us today in the balcony is Miriam Thimm Kelle; that is the sister of James Thimm who was killed in the mid '80s. Senator Coash shared some of her thoughts that I was going to share but won't reiterate. But just about how every year, as the appeals process comes around, her family is haunted by the case. She did, at one point, say take your Michael Ryans and lock them up and throw away the key so they are forgotten. There are so many false promises associated with the death penalty that families will have justice. But cases drag on and many sentences are changed. And what about those families who don't get the death penalty? Is their pain any less? There are about 250 unsolved murders in Nebraska. As you've heard already, appeals in death penalty cases have taken up to twice as long as those who are sentenced to life in prison. And imagine if we had those dollars, we could save and invest them into solving these cold cases and bringing justice to those families, or investing those monies in protecting us... [LB543]

Floor Debate
May 13, 2013

SENATOR CARLSON: One minute. [LB543]

SENATOR MCGILL: ...from murder; protecting us from, as Senator McCoy stated, some of these folks who are serving life sentences who are still a threat. That money can be invested in protecting us in those cases. We need to be wise with our dollars and wise for all victims' families and find justice for as many of them as possible, which means identifying the murderer and bringing some sort of justice, life in prison without parole, throwing away the key and letting the public and families do their best to forget about them. Thank you, Mr. President. [LB543]

SENATOR CARLSON: Thank you, Senator McGill. Senator Hadley, you're recognized. [LB543]

SENATOR HADLEY: Mr. President and members of the body, good morning. This is a very serious debate, as Senator Coash said in his handout. I go back to 1957. I knew a young man named Charles Starkweather. He lived about six blocks from my house. I remember in gym class he was the gym assistant, little short guy, wore cutoff sweatpants, red hair, bowlegged. I knew his father and mother, Guy and Helen. His sister was in my class. I can remember going to the prison the night he was executed. Very pro death penalty. And I've been pro death penalty pretty much all my life. But I've come to the conclusion, I don't think it works. Now I'm not trying to change anybody's mind here. I think it's a personal decision everyone has to make. But I wanted to give you a little thought on my reasoning and my thought process. The people that are in favor of the death penalty usually talk in terms of deterrence and retribution. Those that are against it either talk about it from a moral standpoint or the fact that it's arbitrary and capricious. Quite often, if you're pro for the death penalty, you talk about deterrence. I think most studies have shown that it's not a deterrent. For something to be a deterrent, it should be meaningful, swift, and certain. That certainly is not the death penalty. I see one person has been on death row something like 30 years here in our state. That certainly isn't meaningful. Retribution, probably the strongest argument in favor of the death penalty, an eye for an eye, I want revenge; but even retribution pales when you figure the time that people are on death row. And you have to ask yourself or I ask myself, does retribution outweigh what I consider some of the flaws in the system? And what do I mean by flaws in the system? It's not equal. It's not handed out equally. That's just a given. And you can argue with the data and everything else. The race factor. Since I've been doing reading the last year or so on this, I found something interesting. I think we all probably agree that the race factor of the defendant, the perpetrator is a part of the process. More minorities are on death row than white people. But the factor I found out that was interesting is the relationship of the victim. If the victim is a minority, the chances of the perpetrator getting the death sentence are significantly less than if the victim is a white person. A lot of the studies have shown that the race factor is just not a significant factor but it may be the contributing factor of unevenness, unequal

Floor Debate
May 13, 2013

application. It's interesting, most of the people who have been executed and on death row have three things in common: they come from a poor background, they have a lack of education, and they generally have been abused as children. [LB543]

SENATOR CARLSON: One minute. [LB543]

SENATOR HADLEY: The one that got me was the risk of error. We talked about it already a little bit. In the last 20 years there's been 17 death row sentences overturned because of DNA. But what do we do in the cases that do not have DNA? Have we put people to death that if there had been DNA they might have been found innocent? The risk of executing a person who is wrongfully convicted is just a tremendous burden we have to bear. So the answer for all of us is in our mind and hearts. I do not...I understand completely the people who are on the side that we ought to keep the death penalty, but I just wanted to stand up and tell you why I've changed my mind. [LB543]

SENATOR CARLSON: Time. [LB543]

SENATOR HADLEY: Thank you, Mr. President. [LB543]

SENATOR CARLSON: Thank you, Senator Hadley. Senators wishing to speak include Harms, Brasch, Murante, Chambers, Conrad, and others. Senator Harms, you're recognized. [LB543]

SENATOR HARMS: Thank you, Mr. President and colleagues. I rise in opposition of LB543 and the amendment. Colleagues, there are some crimes that are so heinous they deserve death. Every time I say that, every time I bring that up over the last seven years, it tugs at my heart; it bothers me. But that's how I feel. Two of the most heinous crimes occurred where I live, where I grew up, where my children grew up, and now where my grandchildren are growing up. Jeffrey Hessler kidnapped and killed 15-year-old Heather Guerrero. Heather Guerrero was a beautiful girl. She was a beautiful child. She was a popular teenager. She was a great athlete. She was involved in antidrug skits with her friends. She was well liked in her school. Jeffrey Hessler abducted her a block from her home after she had finished delivering her papers. He took her to an abandoned building in the country. He raped her. Half-clothed, he tied her hands, and gang-style, he shot her. And then he went home and listened on the scanner in his bed, fell asleep. No remorse. He didn't care. He wasn't concerned. Raymond Mata. Raymond Mata kidnapped and murdered Adam Gomez, probably the most heinous crime that's ever occurred in this great state. Adam was three years old. Raymond Mata allowed his dog to chew on the skull of Adam. He cooked parts of the body; he fed it to the dog. He peeled off the flesh of the skull. He placed duct tape over the eyes, placed the skull above the bed in the attic of his home. Now you tell me what's wrong with this picture. You tell me that going home and looking in the eyes of the parents and the families, the grandparents and other children, to say we've taken care

Floor Debate
May 13, 2013

of Raymond Mata; we have given him life imprisonment. You know, when I see the parents, I see sadness. I see anger. I see fear for their own children and grandchildren, and I believe they deserve to be treated better. You know, you see, Heather Guerrero didn't get her opportunity to go to the senior prom. She didn't get to go to the graduation exercise. She didn't get a chance to go to college. She didn't get a chance to graduate. She did not get a chance to get married and have children. Colleagues, Adam didn't even get a chance to go to school. So you tell me whether imprisoning someone is adequate or not and that death is not the right question or the right thing to do. [LB543]

SENATOR CARLSON: One minute. [LB543]

SENATOR HARMS: Thank you, Mr. President. I will tell you that it is. I will tell you that those crimes are so heinous that you have no other choice. Don't kid yourself, colleagues. Those are horrible things that have taken lives away from families. So I'd urge you, as you think about LB543, I'd ask you to object to it. I'd ask you to vote against it. And, quite frankly, it's the right thing to do. Thank you, Mr. President. [LB543]

SENATOR CARLSON: Thank you, Senator Harms. Senator Brasch, you're recognized. [LB543]

SENATOR BRASCH: Thank you, Mr. President. Good morning, colleagues. This is a very painful subject, painful law. But it is a law and it is our duty to exercise jurisprudence. It is our responsibility as legislators. I do not support LB543 or AM865, and do support the bracket motion. Our law talks about the jury system, and it says for an aggravator to be considered in sentencing, the jury has to find unanimously that the aggravator was proved beyond a reasonable doubt. And what the aggravators...what the statutes list, as Senator Harms just said, that these murders are especially heinous, atrocious, cruel, or manifested exceptional depravity by ordinary standards of morality and intelligence. When Speaker Flood was here, he recounted in detail the shootings of the bank in Norfolk. Living near Norfolk, it was real, not just to the families that suffered but the communities, the adjacent communities that suffered and died a little that day as well. That bank building no longer stands. It was demolished; demolished to help remove some of that horrific pain and remembrance. Many still remember to this day. This weekend I spoke with a retired law enforcement officer, and he--in our district--and he stressed that the death penalty is an important penalty to remain. He talked about his many years in working with many criminals of different degrees. But when it comes to murder, he said that there are too many who suffer on, years in the making and the years moving forward, and that as legislators and as the state and as a country, you know, we should support the death penalty. We talk about expense. It seems, I don't know, like something we shouldn't be talking about expense when it comes to murder, because there is no price on these human lives. You talk about the expense and appeals. Life without parole does not stop the endless appeals. There is no reason to believe that those sentenced to life in prison without parole will file any fewer appeals

Floor Debate
May 13, 2013

and reduce those litigation costs; that convicted individuals, they're always hoping to reduce punishment imposed for their crimes in hopes to get closer to freedom. We do have a responsibility to fix people before those crimes are committed. We don't need to fix the punishment. We need to work as a state, as a culture and as a society in behavioral health problem areas and finding people to help those before they commit a crime. The zero to five, you know, those early years, identifying children at risk. But these murderers have killed innocent children, innocent women, innocent men, and we are to protect those lives. [LB543]

SENATOR CARLSON: One minute. [LB543]

SENATOR BRASCH: Thank you, Mr. President. And by having someone who is even capable of murdering others in prison, as they do, we are not correcting or helping change anything. So the punishment should stay intact. If it takes a long time to carry it out, that will able technologies, further witnesses, others to come forward should that be the case. But our juries are there to protect innocent people. And when they are found guilty, murder of this type should be punished. Thank you, Mr. President. Thank you, colleagues. [LB543]

SENATOR CARLSON: Thank you, Senator Brasch. Senator Murante, you're recognized. [LB543]

SENATOR MURANTE: Thank you, Mr. President and members. This is one of those issues that has been, as stated on the microphone, has been discussed numerous times, I think every year since I started serving as a staff member to Senator Nelson in 2007. And one of the perks of having that experience is you enter the debate pretty much already knowing what everyone is going to say and what the arguments are. You've heard it all before. I know Senator Harms is going to stand up and speak passionately about his sympathy towards the victims of crimes. I know Senator Coash is going to stand up and speak passionately about how he believes the death penalty erodes the sanctity of human life and perpetuates what Pope John Paul II called "the culture of death." And what I stand here...the conclusions that I have reached as I've listened to this debate over the past few years are as follows. First of all, I completely agree with Senator Hadley's assertion that the death penalty is disproportionately applied on a racial basis. We know that if you are a minority, you are substantially more likely to get the death penalty than if you are white person; and if the victim of the crime is white, the perpetrator is more likely to get the death penalty than if the victim is black. We know this to be the case. Now some will stand up and say that the death penalty has a deterrent effect; some will say that it is not a deterrent. My position is more of a middle ground, that I don't believe that deterrence of the...that the death penalty...I have not been convinced that the death penalty does deter crime but I am also not completely convinced that I can say with authority that it does not. And in light of the situation, I think that the onus is on the proponents of the death penalty to convince me

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Floor Debate
May 13, 2013

that it does deter crime, and I'm not there at this point. We know that it's expensive. We know it takes decades to implement. And also, on a practical basis, we know we don't have the drugs to implement our lethal injection laws that we have right now. So that's on one side of the scale. And on the other side of the scale I'm not at all convinced that the state of Nebraska or elsewhere are executing people in an arbitrary...specifically, that innocent people are being executed. And I don't believe that the death penalty is an intrinsic evil. I don't think that it is something that across the board should never be done. I can conceive of a way in which the death penalty could be justly enforced. So what are we to do about that? What's a person in my position who kind of sees both sides of the issues but...and can come up with a way to justly enforce the death penalty, what's our conclusion supposed to be? The problem I have is, even though theoretically we can justly enforce the death penalty and the death penalty could be implemented in an appropriate way, we're not there right now in the state of Nebraska and we're not really even that close to being there in the state of Nebraska. The statistics that I cited initially, those are facts. That's the lay of the land in the state of Nebraska right now. One can argue that we should have the death penalty anyway, but you can't argue that what I cited initially is incorrect. And so...and how I came to a conclusion on how I decided to vote... [LB543]

SENATOR CARLSON: One minute. [LB543]

SENATOR MURANTE: ...on LB543, I thought of the issue that really is the root of all other issues facing the Nebraska Legislature, and that's the learning community. And my position on the learning community is...I know, Senator Kolowski, it's a stretch between one and the other. However, my position is fundamentally the same between the two. Both have fundamental structural problems, neither are intrinsically problematic and, with changes, could be appropriately administered. But the best way to do that is to abolish and start over, because we can't fix it along the way. I think that we have seen that throughout the course of this legislative session, that if you want to fix a program that is problematic, you abolish it and you start over. And we've seen that the death penalty has... [LB543]

SENATOR CARLSON: Time. [LB543]

SENATOR MURANTE: Thank you, Mr. President. [LB543]

SENATOR CARLSON: Thank you, Senator Murante. Senator Chambers, you're recognized. [LB543]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, I'll touch on some of the practical problems related to the death penalty. First of all, the U.S. Supreme Court has said in numerous Opinions that when somebody is sentenced to death, even the Supreme Court treats that differently, gives it more time, that death

Floor Debate
May 13, 2013

cases skew the entire functioning and operation of the entire judicial system. That cannot be avoided; the death penalty law in any state has so many moving parts. That is why people stay on death row so long, because the very provision that Senator Brasch touched on and Senator Harms touched on, extremely "heinous," "cruel," and so forth, is the most litigated part of the Nebraska law. And it has been the basis of the reversal, the vacating, of sentences of death and retrials. The federal court has overturned death sentences in Nebraska because that language was inappropriately utilized. The County Attorney in Douglas County, in a recent high-profile case, said he would not even use that particular language because it was so problematic. Courts don't know what it means; no court can tell you what it means. Now in addition to that, they tried to redefine the term in Nebraska; it didn't work. Many of the cases that involve homicides in Nebraska are resolved by plea bargains. So not only does the person not get death but, in most cases, a term of years, and those murderers are going to be back out here among you. Innumerable people who have committed murder, been convicted of murder, were allowed to plea bargain to a lesser charge than first-degree even though the facts indicated a first-degree murder. They got a term of years by way of a plea bargain. So all of this talk about the most atrocious murderers being given the death penalty is untrue: It can be established factually, it can be established by statistics. But there seems to be a peculiar love affair that some people have with the death penalty. I'm opposed to the state taking any life, regardless of who the perpetrator is, who the victim is, what the circumstances of the murder are. In fact, every so-called advanced country has taken that position and abolished the death penalty for any and every case whatsoever. Some pharmaceutical companies have found such revulsion in Europe for executions that they have stopped manufacturing sodium thiopental, which is one of the mandatory drugs for lethal injection in this state. It has affected what happens in the business world. And these companies said that in Europe there is so much objection to the use of these drugs in executions that they will no longer manufacture them. Those that do manufacture have said they will not send it to any state where it will be used in an execution. There is no other crime or punishment that skews everything in society. I'm not going to try to appeal to anybody's emotions. Emotions are not going to change anybody's mind. The nephew that I had who was the child of my youngest sister, with whom I was very close, was murdered. They'll never find who did it. And I was asked almost gleefully by people: How do you feel about the death penalty now? [LB543]

SENATOR CARLSON: One minute. [LB543]

SENATOR CHAMBERS: I said: The same way; I'm opposed to it. My son was shot, not killed. I'm against the death penalty. A young black woman named Kenyatta Bush, a student at North High, was murdered, and her family wanted me to go with them to the hearing of the white guy who was charged with killing her. And they knew I was against the death penalty. And I told them: I will sit with you; I will comfort you and support you as much as I can; but if they convict him and sentence him to die, I'm against him being

Floor Debate
May 13, 2013

executed. That is my principle; that can be called my quest. I think it was Jason who sought the Golden Fleece; well, I will do all I can to abolish the death penalty. And some of those who support it, such as my friend Senator Lautenbaugh, will be gone and I'll still be here. I will still be here, and I will still fight against it in every way that I can. Thank you, Mr. President. [LB543]

SENATOR CARLSON: Thank you, Senator Chambers. Senator Conrad, you're recognized. [LB543]

SENATOR CONRAD: Thank you, Mr. President. And good morning, colleagues. Colleagues, I think my position in regard to capital punishment is well documented over my seven-year tenure in the Legislature, and I remain a staunch opponent of capital punishment and supportive of abolition efforts that Senator Chambers has brought forward through LB543. Let me tell you why, briefly. I know that time is limited, so I'm going to speak in generalities my first time on the mike and then drill down to some more specifics as we move forward. I grew up in a home that shared these same beliefs, based upon my family's religious beliefs. That guided my thinking in regard to these issues as a young person. However, my current opposition is something that's very different. And it is because of my legal training and the time I spent at the University of Nebraska College of Law and particularly in taking a class specifically devoted to capital punishment and the death penalty, where we spent an entire semester going through all of the legal and policy arguments in favor and against this antiquated mechanism. And that's where my opposition as a legislator derives from. I believe that capital punishment is indeed antiquated and unnecessary from a legal, policy, fiscal, and moral perspective. When you talk about it from a moral perspective, proponents will bring forward the idea of the Old Testament *lex talionis*; this is the concept of an eye for an eye or a tooth for a tooth. But let's take a step back there and remember that that was actually a limitation or clear parameters in terms of punishment rather than meant to be meted out specifically for the underlying crime. So that is not really a worthy underpinning from a moral or policy perspective. Then it comes to utility. I believe that the death penalty is ineffective from a utilitarian perspective, whether that means specific or general deterrence. And as we've heard from some already in the debate, when we talk about deterrence, there was a recent study published by the National Research Council in April 2012 that based its review of more than three decades of research on both sides of this topic that claimed there was a deterrent effect on murder rates from the death penalty; and their findings, colleagues, were that these studies were fundamentally flawed. They noted, quote: We recognize this conclusion will be controversial to some, but nobody, nobody, is well served by unfounded claims about the death penalty. Nothing is known about how potential murderers actually perceive their risk of punishment. So let's keep that in mind when we talk about studies regarding deterrence, specific or general. I have the complete study and review if people are interested in that, but it is thick, so I will not spend my time going into that further at this time on the mike. I also come to this position from that of a fiscal

Floor Debate
May 13, 2013

perspective. During my time as a member of the Appropriations Committee, I can tell you how difficult our decisions have been. And there is nothing different in the course of this debate that should exclude a fiscal analysis. Members, this body fought very diligently to provide specific cost estimates and studies of our system of capital punishment in Nebraska in 2010, only to be thwarted by opponents. But the facts are clear. The death penalty is incredibly expensive. And the chief litigator for the state for many years in this regard calls the cost "staggering." Let's also talk about... [LB543]

SENATOR CARLSON: One minute. [LB543]

SENATOR CONRAD: Thank you, Mr. President...from the fairness perspective. We cannot remove the issue of human fallibility; we cannot remove the application on a racial or socioeconomic basis; and there are still questions as to arbitrariness and, of course, the risk of executing an innocent. It's been noted by some that the alternative, life without opportunity for parole, won't cut down the number of appeals filed. And that's just not true. An analysis in Nebraska demonstrates that the average number of appeals for a life sentence is 1.6. The average of appeals filed in a death sentence is 7.7. The average appeal time for a life sentence is 5.8 years; the average appeal time for a death sentence is 13.3 years. And there is a host of litigation issues that are only available in death penalty cases that we'll go into further, into the record. [LB543]

SENATOR CARLSON: Time. [LB543]

SENATOR CONRAD: Thank you, Mr. President. [LB543]

SENATOR CARLSON: Thank you, Senator Conrad. Senators wishing to speak are Karpisek, Christensen, Dubas, Lautenbaugh, McCoy, and others. Senator Karpisek, you're recognized. [LB543]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. As Senator Lathrop said, this is our eighth time, maybe, on this issue. I've always been a firm supporter of the death penalty. And I guess the first time that we got here and we debated it, it was hard to push that button, to not vote for the bill to do away with it. And it did shake me to my core, on something that I thought that I had very definite feelings about. So I did take quite a bit of time to go back over and actually think about why I felt the way I did. And we hear a lot of people say they were for the death penalty, but after they thought about it and different things they've come against it. I haven't. I've come back still on the side of the death penalty. My reasoning is not an eye for an eye, any of those things. Is it a deterrent? I don't know if it is or not. I think that not having it would be less of a deterrent, obviously. Senator Coash talked about that we all know that there won't be another execution in the state. I disagree. Senator Coash has thought this through, and he's done a great job expressing his views and his feelings. I don't agree that there won't be another execution. We talk about revenge: possibly. A lot of things

Floor Debate
May 13, 2013

that we go to court for, it's punishment. I agree that putting someone in jail and throwing away the key, to some, might be worse than death. To me, I don't think so. I would rather be alive, to still be able to see my family at times, to still be alive. There are many people who are in their own jail in their own bodies, that were maybe born that way. They still want to be alive. Later on maybe I'll ask about the life without parole, if it's not appealable, if there won't be a lot of lawsuits still filed. I agree that the cost and the time is not right. But I don't think that doing away with the death penalty is the fix. I also don't agree that doing away with it and coming back with a fix...I don't think that's possible nor prudent. But my thought is, let's work on fixing the flaws rather than throwing everything out. And I realize that there probably won't be one mind changed here today. I agree with Senator Chambers that we should have a vote and see where it is. He's got his bill up here to vote on. Wish I had mine. [LB543]

SENATOR CARLSON: One minute. [LB543]

SENATOR KARPISEK: But I think there are very many ways to fix, or look at, what we're doing here. We talk about all the things that are wrong. Who does the wrong things here? Why is it that minorities aren't represented well here? Why is it, the different things that happen? Is it society? Is it the lawyers? Is it the judges? That's what I'd like to know. And I am surprised, after how many times year after year this comes up, things don't seem to have changed. But I hope that they will. Thank you, Mr. President. [LB543]

SENATOR CARLSON: Thank you, Senator Karpisek. Senator Christensen, you're recognized. [LB543]

SENATOR CHRISTENSEN: Thank you, Mr. President. I sit in Judiciary Committee, and I didn't vote. I'm going to explain that one. I come in, I wanted to have an open mind to what was happening. I had talked to Senator Coash a number of times; him and I have dialogued on this a lot. I've visited with Senator Lathrop and several others on the committee, just seeing where it was at. I wanted to hear the testimony. I got interviewed because I was the only one that didn't vote for it to come out of committee. And they asked me why. And I said, you know, I believe the proponents of the death penalty haven't been coming in presenting their case. I realize when you're a proponent for something that more people come. But I still believe you need to have people presenting both sides of it. So I sat back, just trying to see what my people would say in my district. I sent neutral letters out to my district. Previously I'd always said I supported the death penalty. This time I tried to make it very generic. I told people I wanted to hear from them. And it was amazing how my district spoke up. It's one of the few times I can say I got a lot of responses. My district supports the death penalty. You can go onto McCook Gazette Web site right now and you can see a poll that's been running for quite some time. You've got to realize I'm from a small area; there's not a lot of votes, 600-700-800, I don't remember what it was. But the fact is, the poll numbers...and the

Floor Debate
May 13, 2013

question is stated this way: Should Nebraska abolish the death penalty and replace it with life without the possibility of parole? Twenty-nine point one percent said yes; 70.9 percent said no. And I know, in visiting with a couple of the senators, you've got to make sure you word that question right. Don't word it in such a way that it says: Do you support the death penalty? Should be: Do you support the repeal? So I asked that it be done that way. Still come up that people in my district support the death penalty. But that's not really what convinced me to stand up today and support the death penalty. There was two individuals come together into my office; and they made an appointment saying, "Well, I have scriptures to share with you why you should support the repeal of the death penalty." I was anxious to hear it. I was extremely disappointed. The pastor that come along, I used to sit under him in college. Not one scripture did he give me. When I asked him about the scriptures, he says, "Well, I can get you some." I said, "Well, you were coming here to share them with me." And the fact is, he wasn't prepared; they didn't do what they told me they were going to do. They give me emotional appeals. They give me, there are people that are accused that shouldn't be, and all these examples and reasons. And I'm going, "Wait a minute. You said you was coming here to give me the..." [LB543]

SENATOR CARLSON: One minute. [LB543]

SENATOR CHRISTENSEN: Thank you..."the biblical reasons." And I said, "Well, I don't feel like you've done that." I said, "You've actually convinced me to support the death penalty, in coming in here. Your group says you're here to oppose it, but you didn't come in and tell me what you said you was going to." I'm going to share a scripture out of Genesis 9:5-6: Surely I will require your lifeblood; from every beast I will require it; from every man, from every man's brother, I will require the life of man; whoever sheds man's blood, by man his blood shall be shed; for in the image of God he's made man. You know, in the Ten Commandments, too, if you go back to the original Hebrew on it, it says: Thou shall not murder. Not kill. Kill is justice. Murder is premeditated and wrong. And when I shared these scriptures with these guys... [LB543]

SENATOR CARLSON: Time. [LB543]

SENATOR CHRISTENSEN: Thank you. [LB543]

SENATOR CARLSON: Thank you, Senator Christensen. Senator Dubas, you're recognized. [LB543]

SENATOR DUBAS: Thank you, Mr. President. This debate can take several tracks. We can be talking about the technical aspects, the court process, arbitrary application, the costs, the facts, and the figures. Those are pretty easy to sort through: you just sit down and look at them and weigh them out and make your decision based on what you see in front of you. But then the second track comes in, where you're dealing with personal

Floor Debate
May 13, 2013

convictions, deeply held beliefs, retribution, victims' families, judgment. That's not so easy, because we each come at these perspectives from our own life experiences, our religious influence, what goes into forming those feelings and those convictions. And perhaps those two tracks can intersect, but perhaps not. In my district there was a case, a murder case, Randy Reeves. And he murdered two young women, one from his church, one that he grew up with his entire life. And I've had interactions with both of those families, the Reeves family and the Mesner families. And those conversations have had a very deep impact on me. The first day of the trial for Janet Mesner's death, her father--this was in 1981--her father was not at the courthouse for the trial. He was here at the Statehouse; he was testifying in support of a bill to repeal the death penalty. And that family has been staunch supporters of this repeal ever since. My comments that I'm about to make to you today are not an attempt to persuade. This is a vote that each one of us have to look deep inside of ourselves. We each must make a decision that we could live with for the rest of our lives. At the end of our service we leave this building with ourselves and our conscience. The decision of 49 of us will have...we will all have to make peace with. When I came into the Legislature, I really wasn't sure where I stood or how I felt about the death penalty. I thought perhaps there were those who deserve it. But as I went through that first debate and following debates, I knew I had to take a position, that I had to make up my mind. I had to examine my deeply held convictions about the sanctity of life--that includes all life--and who is ultimately our judge, who makes those judgments on our actions. When it came time for me to press my button, just like Senator Karpisek said, that was a real eye-opening experience. It was just...there really aren't words to describe how I felt at that moment. But I came to the decision that I could not vote against the repeal and be at peace with my conscience. It's not that I have sympathy for those who have committed these heinous crimes, because I certainly do not. But after having conversations with the Mesner and the Reeves families... [LB543]

SENATOR CARLSON: One minute. [LB543]

SENATOR DUBAS: Thank you, Mr. President...after listening to the points on both sides, the facts, the figures of this issue, and ultimately, just like I know every one of us are doing in this, sitting down with myself and my conscience, I've made a decision to support the repeal. So I do not support the bracket motion and will be supporting the repeal. Thank you, Mr. President. [LB543]

SENATOR CARLSON: Thank you, Senator Dubas. Senator McCoy, you're recognized. [LB543]

SENATOR McCOY: Thank you, Mr. President and members. I appreciate this next time on the mike because I want to talk a little bit more about why I am opposed to LB543 and why I support maintaining the death penalty in the state of Nebraska. In 1972 the United States Supreme Court issued its decision in Furman v. Georgia. I think that's a

Floor Debate
May 13, 2013

key case because that really started the era of the, quote-unquote, modern death penalty convictions. As Senator Chambers well knows, the year after the Furman decision the Legislature passed LB268, which created the framework for our current aggravator-and-mitigator system, of which we will be discussing later on today with one of the divided amendments of AM865. A majority of the justices in Furman did not conclude that the death penalty, on its face, violated the Eighth Amendment's prohibition against cruel and unusual punishment. The issue for the plurality was with the way the states were implementing the death penalty. I think that's an important distinction to make. A later Supreme Court decision, Gregg v. Georgia, stated that Furman mandates that where discretion is afforded a sentencing body on a matter so grave as to the determination of whether a human life should be taken or spared, that discretion must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action. I mentioned the Legislature acting on LB268 the year after the Furman decision. In 1973 the Legislature also passed LB146, which was Senator Chambers' repeal bill. But Senator Chambers' bill passed first. LB268 passed second, but it had an E-clause. And the Attorney General at the time said: Later in time, of course, prevails. I'm sure we're going to hear a lot of discussion, which we already have, on this issue. I hope that discussion continues. As I stated in an earlier time at the microphone, at the conclusion of my remarks in a few moments I will withdraw this bracket motion. However, behind that bracket motion is one that Senator Ashford, as Chairman of the Judiciary Committee, has filed. Members, I want to be very clear about something. I don't support that bracket motion by Senator Ashford. I'm withdrawing this bracket motion, and I withdraw it earlier this morning as well, because the people of Nebraska, in my opinion, deserve a full and fair debate on this issue. I said earlier I believe this might be the most serious decision that I could possibly imagine casting a vote on while serving in the Legislature. I believe the people of Nebraska expect that debate to be vigorous, serious, and robust. That takes time. I don't believe a bracket motion is in order at this time, which is why if we go to a vote on Senator Ashford's bracket motion later on this afternoon I... [LB543]

SENATOR CARLSON: One minute. [LB543]

SENATOR McCOY: Thank you, Mr. President...I will not be supporting it. AM865 has been divided into three important and substantive amendments that Senator Coash has yet to be able to open on and introduce to the body. And I hope that all of us weigh in on them, all three of them. We wouldn't get that opportunity if Senator Ashford's bracket motion were to prevail. I think this debate deserves to go on and should go on. And at this time, Mr. President, I would ask to withdraw my bracket motion. Thank you. [LB543]

SENATOR CARLSON: Thank you, Senator McCoy. Without objection, so ordered. Mr. Clerk. [LB543]

CLERK: Mr. President, Senator Ashford would move to bracket LB543 until June 5 of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
May 13, 2013

2013. [LB543]

SENATOR CARLSON: Senator Ashford, you're recognized to open on your bracket motion. [LB543]

SENATOR ASHFORD: Thank you, Mr. President. May I ask Senator McCoy a question? [LB543]

SENATOR CARLSON: Senator McCoy, would you yield? [LB543]

SENATOR McCOY: I would. [LB543]

SENATOR ASHFORD: Senator McCoy, do you think we deserve a final vote on this bill? [LB543]

SENATOR McCOY: Well, Senator, I believe that we're going to have the opportunity to have a number of votes along the way on this legislation. [LB543]

SENATOR ASHFORD: Do you think...do we deserve...could you answer this question, Senator McCoy, please? Would you answer a question for me, please? [LB543]

SENATOR McCOY: I believe I already said I would, Senator. [LB543]

SENATOR CARLSON: He's yielded. [LB543]

SENATOR ASHFORD: Senator McCoy, do you think we should have a final vote on the repeal of the death penalty, or not? [LB543]

SENATOR McCOY: I don't understand what you mean by a final vote. [LB543]

SENATOR ASHFORD: Do you think we should have a final vote on Senator Chambers' bill, or not? [LB543]

SENATOR McCOY: What do you mean by a final vote, Senator? [LB543]

SENATOR ASHFORD: Should we have a vote on LB543, or not, Senator McCoy? [LB543]

SENATOR McCOY: What type of a final vote are you speaking of, Senator? [LB543]

SENATOR ASHFORD: A final vote, yes or no, on repeal of the death penalty. Yes or no? Do you believe we should have such a vote? [LB543]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
May 13, 2013

SENATOR McCOY: On the divided amendments AM865, Senator? Or what do you mean as a final vote? [LB543]

SENATOR ASHFORD: Senator, let me try to say it this way, try to use some better English, I guess. Do you believe we should have an up-or-down vote on LB543 in this body this year? [LB543]

SENATOR McCOY: Again, Senator, until we have had the opportunity to view and talk about the amendments that substantively...and I might add, as you well know as Chair of the Judiciary Committee, Senator Ashford, replace the underlying bill...until we have had that discussion and a full and fair debate on said bill, I can't speak as to what final votes you're describing. [LB543]

SENATOR ASHFORD: I think we all know what the question is, Senator McCoy. And your answer is, I take it, no. So what I am suggesting to this body, this is an important issue, and it does need to have full and robust debate, but it also needs a final vote. It clearly needs a final vote. We aren't going to have a Medicaid vote this year, in all probability, because we couldn't have a vote on that bill; there's no way we can have a vote on that bill. Now we're coming to the repeal of the death penalty. It is a grave debate; it's an important debate; it's a critical debate. Our committee put this bill out 7-0. I don't know whether all 7 people support repeal, but they were willing to bring to this floor this debate and to have it discussed and to have, hopefully, a final decision. But to avoid...to avoid...this body is getting too much into this sort of sense of avoidance: we'll just keep these bills in a place where we don't have to vote on them; that's what we're going to do; and we're going to show that the minority will win out. This bill deserves a final vote, yea or nay, so that the people of this state can evaluate their individual senators, they can evaluate the body as a whole to determine whether or not they can make the tough decisions on the tough issues, something Washington does not do, but something we do. It was interesting, I was reading The New York Times yesterday about a...there was a columnist, Gail Collins, whom I like to read. And she wrote about the culture of the New York legislature and how corrupt it was and how corruptible it was, and is. And she concluded in one of her final paragraphs by saying: But in Nebraska, they have the Unicameral Legislature, in contrast to what we have in New York. The purpose of our Legislature, the way it is designed, the way it was set up, the way it must work, is to have the ability to make decisions on tough issues, whether it's Medicaid or the death penalty or whatever. This strategy of stopping votes is ludicrous. And it is contra...it is contra to our tradition since 1937. It is contra to the way we are. I would...how much more time do I have, Mr. President? [LB543]

SENATOR CARLSON: 5 minutes and 30 seconds. [LB543]

SENATOR ASHFORD: I would give Senator Chambers some time, if he so desires. [LB543]

Floor Debate
May 13, 2013

SENATOR CARLSON: Senator Chambers, 5 minutes and 30 seconds. [LB543]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Ashford. Members of the Legislature, I know nobody's mind will be changed today. Here's where I'm different from the cliques and the claques. If I'm going to kill a bill, you know it, don't you? Have you ever heard me avoid and evade giving an answer, stand up here and talk about morality and the need for a robust debate? I tell you: If you debate it, you'll help me because my aim is to kill the bill. Senator McCoy is not being honest. Even Senator Scheer, who made it clear he's for the death penalty...probably kill for it. He didn't say that. But he could see through what Senator McCoy was doing. You think he doesn't know, as long as he's been in politics, what Senator Ashford was asking him? But he didn't want to tell an outright lie with his words, but his conduct achieved the same thing. He does not want the Legislature to have an up-or-down vote. Senator Ashford used every construction of language he could in case Senator McCoy was not conversant with ordinary idiomatic English. And that's what I get tired of around here, and it's why I lambaste them and call them out on it. They're going to try to be so innocent and...nah, I just want to vote...we owe Nebraskans this vote...I meant this "debate." Senator Lautenbaugh said in the paper that he is going to do everything he can to stop the bill, filibuster and whatever else. And I suppose he's willing to give up the session, the rest of the session. Well, he'll give it up at this point, but he won't really mean that. But in the way that people in Congress will allow themselves to be bullied by the Tea Party and "Tea Potters," whatever they're called, and not fight them back...I'm not like that. I can take the rest of the session. And I will tell you that, if that's what I'm going to do; I'm not going to lie to you. I'm not going to pretend something else is on my mind. Senator McCoy and all the rest of his clique and claque ought to just stand up, if they say anything, that they're against the bill being voted on because they believe there are enough votes to pass it. I've told you on occasion, if you get to a vote I know what's going to happen. But you also know where I am. He pretends that he's dividing the question so we can have a serious debate. That's a delaying tactic which is not even needed, because all he has to do for his purposes is offer an amendment to strike various portions from Senator Coash's amendment, if he were legitimate and if he were conducting a legitimate opposition to the bill. But he wants to have it both ways, appear to be honest, appear to be altruistic, and he's none of those things. And every one of you on this floor knows it, but you won't say. But I will. I've told you in the past, there's nothing that I have before you this session that means so much to me it will make me change what I believe, make me not say what is on my mind. I've told you, kill everything I've got. Kill it; you don't kill me. Can you take it for the rest of the session? Can you take it for the rest of the session? Senator McCoy has got a bill on drugs. I can divide the question on that, and we'll never get a vote on the bill because every single one of those sections on the drugs is a freestanding item. And I can move to divide every other question, but I don't have to do that. However, on his, no telling what I'm likely to do. But we'll just have to see. And when Senator Ashford offered the bracket

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
May 13, 2013

motion, it is to force a debate. And Senator McCoy is trying to submarine that by saying: Well, I'm going to vote against the motion, too, so that means you can't say that everybody who votes against the motion is for the bill. And he might tell his "claquites" and "cliquites" to do the same thing, because they are gutless. Stand up and show yourself. Don't fight from ambush, as your Attorney General did... [LB543]

SENATOR CARLSON: One minute. [LB543]

SENATOR CHAMBERS: ...when he stiffed the court on that drug. And I'm preparing an ethics complaint against Jon Bruning. And he knew it, because when you deliberately deceive and mislead the Supreme Court, then you have violated your ethics. And I'm saying it, and it's no surprise to him. But I take my time. And I wanted to establish that at the time they tried to get the court to enter a death warrant they had no drugs they could use and there was no way for them to get them, and they knew it. So they lied to the court, and they were even criticized by a district judge for having done it. I tell you what I'm going to do. Let him. I'm a man, m-a-n. And any male who won't do as I do is not a man. "A-man. A-man." So let it be written; so let it be done. Thank you, Mr. President. And I do feel good. [LB543]

SENATOR CARLSON: Thank you, Senator Chambers. You've heard the opening on the motion to bracket of Senator Ashford's. (Visitors introduced.) Mr. Clerk, for announcements or a motion. [LB543]

CLERK: Mr. President, a series of resolutions. LR183 and LR184, by Senator Larson; those are calling for an interim study; those will be referred to the Executive Board. Senator Krist offers LR185; that resolution will be laid over at this time. LR186, by Senator Krist, an interim study, again referred to the Executive Board. And LR187 is by Senator Burke Harr, LR188 by Senator Gloor, both study resolutions, both referred to the Executive Board. (Legislative Journal pages 1325-1328.) [LR183 LR184 LR185 LR186 LR187 LR188]

Mr. President, priority motion: Senator Gloor would move to recess the body until 1:30 p.m.

SENATOR CARLSON: Members, you've heard the motion to recess. All in favor say aye. Opposed, nay. We are recessed until 1:30. [LB543]

RECESS

SENATOR CARLSON PRESIDING

SENATOR CARLSON: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
May 13, 2013

please record your presence. Mr. Clerk, please record.

CLERK: I have a quorum present, Mr. President.

SENATOR CARLSON: Thank you, Mr. Clerk. Do you have any items for the record?

CLERK: I have nothing at this time.

SENATOR CARLSON: Thank you, Mr. Clerk. We'll proceed to the first item on the agenda.

CLERK: Mr. President, pending is Senator Ashford's motion to bracket LB543 until June 5, 2013. Senator Ashford opened on his motion right before the Legislature recessed, Mr. President. [LB543]

SENATOR CARLSON: Thank you, Mr. Clerk. And the floor is now open for debate. (Visitors introduced.) Senators wishing to speak include Campbell, Avery, Coash, Davis, Wallman, and others. Senator Campbell, you're recognized. [LB543]

SENATOR CAMPBELL: Thank you, Mr. President and members of the Legislature. So what is this vote about today? First, is it about the money? As a county commissioner, I used to cringe every time I'd wake up to hear the radio announcer talk about another murder in our community. And I would cringe for the victims' families, but I would also cringe because of the county budget, because I would know that we would have great additional costs in a capital murder trial. And when I served on the Indigent Defense Task Force, I learned that there were counties across this state who would plea bargain in a capital case because they could not afford either the defense or the staggering expense of the death penalty. Is the vote today about our legal system? I have great respect for all who serve in this system. But, time and again, the disparity of sentences of people of color, the inexplicable arbitrary results of some who are given life while others of similar crime are given the death penalty. Is this a vote about the victim's family, in order to give them a sense of closure? Is it about a matter of faith? For me, in the years I've been in the Legislature, the issue of the death penalty has been the most difficult issue that I face every time it comes up. In years past, I could discount the money if fair and equitable justice was served. I stood behind the legal system from my respect for those who do their part and the importance of the law. I hoped the victims' families would be given a sense of finality and peace. And so, in the past, I voted to retain the death penalty. But in preparing this year, I realized I could no longer ignore my own faith nor the words of the James Thimm family. We cannot remove the suffering for victims' families; but in retaining the death penalty, the emphasis remains on the killer, not the remembrance of the victim. So what is this vote about? It's about all the factors that have now come together for me and, I would guess, a lot of other people: the escalating, staggering cost; the inexplicable application of the justice system and its

Floor Debate
May 13, 2013

inequity; the never-ending replay of the horrendous, life-changing moment for the families. We cannot take their grief away with the death penalty. You know, when I was a small girl... [LB543]

SENATOR CARLSON: One minute. [LB543]

SENATOR CAMPBELL: ...my mother would always say, "Do not wear your faith on your sleeve." And so it will have to suffice to tell you that this time I listened to my faith and all the information I had been given and changed my position to support the repeal of the death penalty. Thank you, Mr. President. [LB543]

SENATOR CARLSON: Thank you, Senator Campbell. Senator Avery, you're recognized. [LB543]

SENATOR AVERY: Thank you, Mr. President. I was a freshman senator in 2007 the first time we debated this issue when I was in the body. And I confessed at that time that I was undergoing a great personal struggle in my mind and in my heart on this issue. Before I was sworn in as a member of this body, my opinions on important issues such as this didn't have much importance. I was, however, fully confident that my opinions were right and that they were fully informed by fact and reason. And I could debate these issues that involved my opinions tirelessly, and I did so with great vigor. Now, however, my opinions have taken on a new dimension. And I said that in 2007. I can no longer be casually confident that I've arrived at the correct position, because now I have to assume some responsibility for the consequences of my opinions because now I have a responsibility to vote yes or no. And that responsibility is a responsibility that cannot be taken lightly. It requires me to search my conscience and my heart to make certain that I am doing the right thing. And I am sure that many of you share these feelings. Many of you continue to struggle with this issue. We all know that what we do in this body matters. And because it matters, we have to be sure that we get it right. I'm not so certain about the absolute correctness of my opinions today as I was several years ago. Things are different for me now. When I ran for office in '06, I ran as a supporter of the death penalty. But I have voted to repeal the death penalty every time it has come up. And that surprised me. But I reexamined my conscience and examined again the empirical evidence on the death penalty. And for the sake of argument, let's set aside the argument that the death penalty is immoral; good and honest people can disagree on that. Let's also set aside the argument that the death penalty is a deterrent to further capital crime; good and honest people can disagree on that too. But what we cannot set aside is the compelling evidence of disproportionality and bias in the sentencing involving the death penalty and capital crimes. Proponents of the death penalty, in my mind, do not adequately deal with this issue. There may not be much difference in the crimes that are selected for the death penalty, but there certainly is a very big difference in who gets sentenced to death. The first person today to address this was Senator Hadley. Who are they? They are minorities, the poor, those whose

Floor Debate
May 13, 2013

victims are white. This we know. This is not conjecture; it's not made up; it's not fiction. This we know; it's fact. Is this sufficient to vote to put these people in prison for life without the possibility of parole? I would say yes. So I will support this motion. For me, this debate is not about the people currently on death row. This is not even about the nature of their crimes, as horrible and as vile as they may be. We are making policy for this state for now and for the future. [LB543]

SENATOR CARLSON: One minute. [LB543]

SENATOR AVERY: I believe we should separate the policy from specific individuals and specific crimes. We need a policy that is fair and a policy that serves justice in our state. And until we eliminate bias in sentences in these cases, we cannot continue to execute people. When we get it right, when we know the convicted are not innocent, when we have confidence that bias is eliminated, then we can have confidence in the death penalty. But we're not there. And therefore I think we should support the underlying bill, LB543. And that's what I will do. Thank you, Mr. President. [LB543]

SENATOR CARLSON: Thank you, Senator Avery. Senator Coash, you're recognized. [LB543]

SENATOR COASH: Thank you, Mr. President. Good afternoon, colleagues. I want to start my comments by saying this: Wherever you land on this issue, I respect that. If you feel that we need to have this on the books, if you feel that you'd like...I think some people feel like they'd like to see this implemented; I respect that as well. But I want to focus back on the policy a little bit here, and let's live in the reality of what we'll see, what we have seen, and what we will see as a result of this bill passing or this bill failing to pass. Some of the opponents of repeal have said that this is an appropriate punishment for certain crimes; I agree. Some people have said that this is maybe needed to keep others safe; that could be true as well. Some have said that because of the vileness of these crimes, that this is the only way to enact justice for the evil that was inflicted. And all that would be great if we actually did it. But we're not going to do this. Not one person is going to be executed. We're not going to get the drugs, colleagues. Nobody is going to sell them to us. And the 11 people currently sitting on death row will die of old age. And in their waning years, they will spend your money. I would like to hear, during this debate, from those who feel more comfortable keeping this on the books, if they truly believe that somebody will be executed. I'm waiting for someone to tell me: Yes, we have to keep this on the books because it's coming, and we've got 11 people currently lined up, and the state is going to execute the sentence that was imposed on them; and it's coming. I'm telling you that it won't happen. I would like to hear from the opponents of repeal how it is they think that we're going to execute this sentence, because it's not going to happen, in my opinion. And if somebody with a legal background can stand up and say, this is how it's going to happen, this is how I believe that somebody is going to have this sentence carried out, I'm going to be

Floor Debate
May 13, 2013

listening very carefully; because if we would have had the ability to do it, we would have done it by now; that 11 would be 9, would be 7, would be 6. If we had the means to carry out this sentence, they would be dead. But we don't. I passed out earlier this morning an article that I wrote about how I came to be where I am. And you've got it, so I'm not going to read it to you, colleagues. But I will just highlight this: In my participation at the rally at an execution, I felt complicit in the death. And I went there thinking I was going to witness justice, but I did not. I witnessed a keg party. I wouldn't wish that feeling... [LB543]

SENATOR CARLSON: One minute. [LB543]

SENATOR COASH: Thank you, Mr. President...on anyone. As you vote today--and I want to talk about the bracket--if you want to keep...this is how I would ask you to vote: If you want to keep the death penalty on the books, vote for this bracket. Show how you...and, again, if you want the death penalty on the books, I respect that. Let your vote on the bracket reflect that value. People are where they are. We're going to do a lot of talking on this floor; I'll probably talk one more time. But I don't expect any words that I say will change somebody's vote; people are where they are on this issue. And for whatever mechanism got them to that conclusion, that is theirs, and I don't think anything I can say is going to change that. So be... [LB543]

SENATOR CARLSON: Time. [LB543]

SENATOR COASH: Thank you, Mr. President. [LB543]

SENATOR CARLSON: Thank you, Senator Coash. Senator Davis, you're recognized. [LB543]

SENATOR DAVIS: Thank you, Mr. President. Good evening, or good afternoon, colleagues; I hope we're not going to be here in the evening, but it could happen. The first thing I want to say is that we live in a civilized society, and one which has the capability to remove dangerous individuals without execution, which was really not true 100 years ago, 150 years ago. So there was a time in our society when the death penalty really served a purpose; it took people who were dangerous individuals and took them off the streets, took them out of our lives so we didn't have to deal with them. Today we have the ability to put those people away so that they cannot threaten society. We can lock them up for life, which, to me, is the humane and Christian approach. But that's not why I really got up here today. I wanted to talk to you a little bit about DNA evidence and what's happened to some individuals over the course of the last several years; I think it's so pertinent and so important to this issue. We've heard people say that the people on death row in Nebraska are there, and it's irrefutable proof. I think that's probably true with the people that are there. But, you know, we don't make laws based on what is current; we make laws on what we expect and what could

Floor Debate
May 13, 2013

happen. That's why we do a budget. That's why we do so many of the things that we do. It's our responsibility and our duty to try to guide the state in a direction that's an equitable and fair and intelligent and humane and compassionate approach. I'm not arguing with the heinous nature of the crimes that we've heard about. They're despicable; the individuals who committed them are beyond belief. But looking at the facts and the figures and realizing that there have been people that have been on death row who shouldn't have been there, it should give you a lot of pause to think about that. So I handed out five different things to you. The first one is...it's called, "Escaping Death: Exonerated Man Vindicated as Maryland Repeals the Death Penalty." Really I handed that out because the individual that's holding his hand up, in that picture, is the first person on death row who was vindicated by DNA evidence. That guy is alive today, and he would not be if it hadn't been for DNA evidence which proved that he was innocent. Colleagues, let me ask you this: Is there any one person in the world who you could say...if Norm was not (sic) innocent, would it be okay for Norm to be killed? Can you look around and say which one of your friends would die based on inappropriate evidence? Because that's what happens. The second piece I handed out talked about problems in Illinois. If you haven't heard about those, for many, many years, I don't know where you've been. But there were 13 people on death row who were wrongly convicted. I handed out a piece about murder cases in Brooklyn which are being reopened because of police issues and evidence issues. I handed out a piece about Willie Manning, his stay of execution, which just took place the other day, based on questionable evidence. And, finally, I handed out a letter from Mr. McCarty, who testified at our hearing. And I thought he made some very pertinent points which ought to be discussed. And that's the last page. He says: The problem is that when the penalty is death there is no way to undo the mistake; that is why the death penalty is fundamentally flawed, because the system is made of humans, and therefore mistakes will continue to be made; for the 303 of us who have been proven innocent, we weren't examples of the system finally working; we were all lucky... [LB543]

SENATOR CARLSON: One minute. [LB543]

SENATOR DAVIS: ...to have escaped. Thank you, Mr. President...and we did so despite the system; in most of these cases it's not the criminal justice system that identified the problem; instead, it's private nonprofits like the Innocence Project or journalism or law students who finally bring that case forward. We had cases in our own state. We had the Beatrice people who confessed to their crimes and were vindicated by DNA evidence. We had the cases at Murdock, where the same thing happened. People confessed to a crime that they did not commit, and DNA evidence reversed that. One hundred forty-two death row individuals have been taken off death row because of DNA evidence, pardons, acquittals, or the like. So that's...look at this Legislature; there's 49 people, times 3 is 147 people. So it's almost three times the legislative body. It's just time, it's time we did away with the death penalty in this state. You know, let's remember what happened when Jesus said to the crowd: Let he who's without sin cast

Floor Debate
May 13, 2013

the first stone. I don't... [LB543]

SENATOR CARLSON: Time. [LB543]

SENATOR DAVIS: Thank you, Mr. President. [LB543]

SENATOR CARLSON: Thank you, Senator Davis. Mr. Clerk, for an announcement. [LB543]

CLERK: Mr. President, I have a message. It's to "Dear Mr. President and members," from the Governor. (Read re LB553 and LB553A.) Mr. President, I also have a Reference report with respect to gubernatorial appointments to a standing committee from a confirmation hearing. That's all that I have. Thank you. (Legislative Journal pages 1329-1331.) [LB553 LB553A]

SENATOR CARLSON: Thank you, Mr. Clerk. We return to debate on the motion to bracket. Those wishing to speak include Wallman, Krist, Bolz, Pirsch, Janssen, and others. Senator Wallman, you're recognized. [LB543]

SENATOR WALLMAN: Thank you, Mr. President, friends all. This is a tough issue. I have a good friend that was murdered, and the family did not ask for the death penalty. And I thought it was interesting...please don't bring up the Bible in this, because when Jesus Christ died, he changed the law from "vengeance is mine" to "love and forgiveness," the two toughest things there is in the Bible. I know, it is hard. So when you know people that went through this, and they tell you their stories...and I have coffee in off-season in the coffee shop: Mennonites here, Lutherans here. And we discuss everything and anything. And it's about the death penalty, it's about taxes. And you learn a different perspective, listening to some people are really for the death penalty, some are really against the death penalty. But they all agreed on one simple thing: we don't have one, and we'll never find a jury anymore to pull it off. Our son-in-law is an attorney, and he says the same thing. If you've got some money, you might do a horrendous thing, but you won't pay the price you should. So is that justice for all? No. It is not justice for all. So I used to think I was pro strong death penalty. But I changed my mind after much debate here the first time seven years ago because I'm pro-life; and pro-life means, I think, everybody. And I'd yield the rest of my time to Senator Davis. [LB543]

SENATOR CARLSON: Thank you, Senator Wallman. Senator Davis, 3 minutes and 10 seconds. [LB543]

SENATOR DAVIS: Thank you, Senator Wallman, Mr. President. I wanted to elaborate a little more on the cases that I referred to; I think they're so important for us to talk about, and also about situations in Oklahoma where a person who worked for the court

Floor Debate
May 13, 2013

system, Joyce Gilchrist, landed 23 men on death row and testified in 3,000 cases. Mr. McCarty's case was one of those. The evidence, when it was finally looked at, about two-thirds of the evidence in a lot of the cases that were inspected, a small number of cases, but were found to have problems with them. And so that's something that happens with expert testimony. It's another reason why we need to think about it. Now remember, 142 people have been pardoned, acquitted, or charges dropped since 1973. And if you look a little bit at the Murdock case, which is Livers and Sampson, you know, the initial targeting of those individuals was on family testimony and something about a tan car. Then they administered a lie detector test to Mr. Livers, and then he was coerced into a confession. He confessed to that crime, but he didn't commit it. Hard to imagine that that happened. There was evidence in the residence; there was a ring that was found, a hash pipe. That was ignored initially as they focused in on the people that they thought had done the crime. And it was a miracle in so many ways that they were able to trace that ring and find out who it was. I think today, had that not been the case, those two young men would be on death row. I think that's just a really good example of what we need to think about and why I hope the body will support LB543 and repeal. Thank you. [LB543]

SENATOR CARLSON: Thank you, Senator Davis. Senator Krist, you're recognized. [LB543]

SENATOR KRIST: Thank you, Mr. President. Good afternoon, colleagues. And good afternoon, Nebraska. Let me first of all start by apologizing to Tess and the other pages that handed out a document. I authorized a document to be handed to you, and I forgot to initial it and put my district on it; but I ask you to look at it none the same. Let me start by saying this, I was appointed to this position by the Governor. And during that interview process he asked me: Are you in favor of the death penalty? And my answer was very clear: Yes, sir, I am. There are those crimes against the United States, such as treason, and also egregious crimes that are committed against this United States that are carried in U.S. Code, and that's what this handout tells you. These are things that the United States government can take jurisdiction or joint jurisdiction with a state, and they have the power to put someone to death. And guess what, they do it. They do it. So, yes, I do believe in the death penalty for treasonous activities and crimes that are so egregious that they need to be taken care of that way. And by the way, the Norfolk bank robbery could have gone to a federal jurisdiction, but we chose, someone chose, to keep it here in the state of Nebraska. And I contend that today if that would have happened...if we would have given it over to the federal government, they would be dead, as I think some people in Norfolk think they should be. But let me also tell you that I stand here today having been educated as a Catholic my whole life: Our Lady of Lourdes grade school, Creighton Prep high school, and St. Thomas. The only education that I received other than that was the United States Air Force flying school and my master's degree at Webster University. And all that time, I was taught, and still believe, that I am pro-life. I'm not pro-birth; I'm not antiabortion. I am pro-life: birth to natural

Floor Debate
May 13, 2013

death. Now I have read all the teachings of the Catholic Church; being raised that long in the Catholic Church, you can't help but read one or two catechism books. But interesting to note that Pope John Paul II, on the death penalty, had this homily on January 27 at the papal Mass: The new evangelization calls for followers of Christ who are unconditionally pro-life: who will proclaim, celebrate, and serve the gospel of life in every situation; a sign of hope is the increasing recognition that the dignity of human life must never be taken away, even in the case of someone who has done great evil; modern society has the means of protecting itself without putting people to death. Now that is the teaching of the Catholic Church. Now I have a responsibility to myself and to my constituents. I represent a district that has an incredible amount of Catholic parishes, Christian parishes, Christian churches. And I have canvassed my district, and I know what they want. Preponderantly, they are looking for me to make a statement and support LB543. That is, support the repeal of the death penalty here in Nebraska. I intend to do that because, quite frankly, we don't have a death penalty here. We don't have one. Senator Coash said it; Senator Davis said it; Senator Wallman just said it. It's true. If someone gets up and tells me that one of those penalties is going to be carried out, I may change my mind. I doubt it. But we don't have a death penalty here. I would ask you to look at the U.S. Code and think of something that would happen inside Nebraska that we could not either have joint jurisdiction or give the jurisdiction to the federal government and let them do their thing. I would also bring to your attention the handout that I put out. Federal law allows for the possibility of death penalty in over 40 statutes. That is an explanation of the other handout. I only intend to talk on this for my five minutes today. I think that it will say it all in how I will vote. [LB543]

SENATOR CARLSON: One minute. [LB543]

SENATOR KRIST: Thank you. To declare it to be treason, to levy war against or adhere to the enemies of the United States...and in the draft Constitution reported by the committee August 6 of 1787, Article VII, Section 2...provides that treason against the United States shall consist only in levying war against the United States, and it has to be confirmed by at least two witnesses, and it is punishable by death. And in that situation, I have lived in countries where their answer to a special-needs baby being born is to put it in the desert; and if Allah has willed it to live, it will, if not, it will die. I have lived and watched "chop-chop square," where someone is beheaded or beheaded because of a crime. I have watched other civilizations that I think are less civilized than my own. I live in a civilized situation. I will live by my pro-life convictions. I will vote for the repeal of the death penalty because we don't have one. Thank you, Mr. President. [LB543]

SENATOR CARLSON: Thank you, Senator Krist. Senator Bolz, you're recognized. [LB543]

SENATOR BOLZ: Thank you, Mr. President. I simply rise to add my voice to support of

Floor Debate
May 13, 2013

repeal of the death penalty. We have nonlethal means to preserve public order and safety, and I believe we should limit ourselves to such means. However, I also want to take just a moment to say that underlying this debate is a bigger conversation about making Nebraska better and safer. We currently have no stable funding for our Violence Prevention Cash Fund, and we invest just a minor fraction of our public safety and corrections dollars for violence prevention purposes. We must diligently work to address these issues in multiple ways. I believe repeal is the right choice today, but we must continue our work to protect public safety tomorrow. With that, I'll yield the remainder of my time to Senator Chambers. [LB543]

SENATOR CARLSON: Thank you, Senator Bolz. Senator Chambers, 4 minutes and 10 seconds. [LB543]

SENATOR CHAMBERS: Thank you, Senator Bolz. Thank you, Mr. President. When the U.S. Supreme Court, in 1972, in Furman v. Georgia, did strike down all death penalty statutes in the country because of the way they were administered, there were many comments made. I believe each judge wrote an Opinion. But what those who were in the majority concentrated on was the notion of human dignity which was embraced in the Eighth Amendment to the U.S. Constitution. It came from the English Bill of Rights because of some terrible things that had happened in England, that idea that you cannot have excessive bail, excessive fines, or the infliction of cruel and unusual punishments. A punishment was unusual if it was not generally imposed on those who were eligible. It was cruel if it was tortuous, inflicting unnecessary pain. And then it included the idea of psychological pain and not just the physical. But one thing that the judges kept talking about, they used words when it came to imposing the death penalty, whether it was carried out or not, randomness, like a lottery; freakish, like being struck by lightning; and almost to a judge, they said there is nothing to distinguish the cases of those who were sentenced to death from those who were not. And in many cases, those who were not, had committed crimes that were far worse than those who were. They pointed out cases where a lawyer made a timely objection to the way jurors were selected using white pieces of paper or blue pieces of paper, and that case was thrown out and the man didn't die. In exactly the same type of system in that state, the lawyer was not competent, did not make the objection; the man was sentenced to death and he indeed was executed. The Supreme Court went through case after case, example after example, and pointed out that what at one time was suitable and acceptable, as time passed and a maturing society evolved and became more civilized, things which at one time were accepted, were not. What a lot of people don't realize is that the first federal crime that would be punished was punished by 39 lashes. A person could be kept in the stocks for an hour. All those punishments were allowed at the time the constitution was adopted, so the mere fact that death is mentioned in the constitution... [LB543]

SENATOR KRIST PRESIDING

Floor Debate
May 13, 2013

SENATOR KRIST: One minute. [LB543]

SENATOR CHAMBERS: ...doesn't mean it cannot be done away with. The Fifth Amendment says a person cannot be put twice in jeopardy of life or limb. Do you know what limb related to? Mutilation. Ear-cropping, nose-cropping, cutting off fingers, that was allowed. There was corporal punishment allowed in federal prisons. All of those things have been outlawed. As the society matures, it is to be more humane. And this is manifested no place better and more significantly than in the punishments that are annexed to crimes. Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Chambers. Senator Janssen, you're recognized. [LB543]

SENATOR JANSSEN: Thank you, Mr. President and members. And I rise before you today knowing, like pretty much all of you know, no matter what I say on this microphone today, I'm not going to change one single vote on this floor. If anybody thinks otherwise, they're probably kidding themselves. And I'm not going to try to. On the one side we have people trying to justify how they feel and why they feel that we should not have the death penalty. And we've had issues and discussions about finances about this; about the humanity of it all. These are tough decisions for anybody. The toughest decisions really we have to make...yeah, the budget. We have to do that constitutionally. We don't have to do this. We don't have to make this decision every year, but Senator Chambers brings it to us. I believe Senator Council brought it to us in previous years while I was here, and I know that Senator Chambers had brought it several years if not every year that he has been down here, because he deeply believes in the repeal of this. I don't support the bracket motion for that reason. We should discuss this. It needs to be discussed. Where you stand, your constituents should know. So I applaud the bringing of this bill. I do not support the bracket motion, especially at this early hour. There are a lot of us that need to speak on this. There's a lot of information that needs to get out there. There's a record that needs to be built. Senator Coash earlier mentioned that these people--and I thought I wrote this down correctly--are not worthy of our breath, the people that are subject to the death penalty right now in Nebraska. And I'll apologize if I'm wrong with that, but it was something along those lines. And I'll say that, sadly, the fact that we have to mention their names is forever the victims will be tied to those names, forever. Not just for this but in this particular case the names will forever be tied. For me, there's two names that come up, and I didn't have to look them up today. I know what they are. Danny Joe Eberle and Christopher Walden. I will say I did have to look up the name Ricky Stetson; he's from Maine. The latter I believe were both paperboys for the Omaha World-Herald, abducted; and many of us know what happened, the tragedies. His name has been brought up already: Joubert. I was the same age, relatively, as all three of those children at the time. All those kids would now be my age, perhaps standing before you, discussing this, working, married with children, you name it. But I remember how scared I was then.

Floor Debate
May 13, 2013

This isn't something you can fake. When you're 12 and 13 years old, and you're told that somebody is looking for people and profiling people that are your age--and you saw this every night on the news, every night--they're looking for you. My two best friends at the time, both were on the paper route for the Omaha World-Herald. I went with them one morning. We had whistles given out to us and any other type of safety device that we could have. [LB543]

SENATOR KRIST: One minute. [LB543]

SENATOR JANSSEN: Thank you, Mr. President. I was in grade school when it started and I was in junior high when it ended. In grade school, I was in a little town, Nickerson. Not far, definitely not too far for what I was told was a tan vehicle to look out for. And the number of days that I got off that bus and ran through a field to my house and locked myself in because I knew this person was out there and could come at any point in time. I remember the relief I felt--I believe he tried to abduct another victim, I'm going off of memory here watching it on the news--and a teacher or a day-care provider at the time made the call and they captured this...well, Joubert. I was very relieved. He went on to death row. [LB543]

SENATOR KRIST: Time, Senator. [LB543]

SENATOR JANSSEN: Thank you. [LB543]

SENATOR KRIST: Thank you, Senator Janssen. Senator Seiler, you're recognized. [LB543]

SENATOR SEILER: Thank you, Mr. President and members of the Unicameral. Good morning, Nebraska...or afternoon, Nebraska. I am a member of the Judiciary Committee and I voted this issue to come to this floor, and the reason I voted for it is it needs to be discussed. But there are some things here that don't need to be discussed, because it's far from the issues we're talking about. The whole death penalty issue is crowded with philosophical debates, ethical dilemmas, religious discussions, and emotional pleas. Those are what we should be discussing. The process that people are talking about on appeals and all these terrible appeals. Let me run through what a trial program they're talking about. A preliminary hearing is filed. If probable cause is issued, a jury trial at the district court. Found guilty; an appeal to the Nebraska Court of Appeals. If found...if sustained, then you go to the Nebraska Supreme Court. Then you file your postconviction in the Nebraska District Court. You go to the Court of Appeals, you go to the Nebraska Supreme Court again. Then you go to the federal postconviction district court, Eighth Circuit, and U.S. Supreme Court. Those, when you count up, are either eight or nine appeals. So when you get that list of all those appeals that these people are taking, they're just going through their rights that you provided. You as the Legislature provided those appeals. So don't condemn the system. The blind justice is

Floor Debate
May 13, 2013

right and she's got the balance there, either for the prosecutor or for the defendant, it'll lean one way or the other. But the system works. The other issue that I take real doubt about is, it's the first time I've ever heard a criminal case talking about costs. Oh, these terrible costs, these terrible costs. Have we ever once anybody ever brought the costs before this group and said, we've got too many drug investigators, we've got too many State Patrol out there on the road trying to catch these drug haulers? Do we have all these trials, the same appeals that a murderer has? Have we talked about that? That's a terrible place to go when you're deciding justice--and that's what we're deciding here. We're not talking about costs. If we want to cut costs, let's cut the budget in a number of places. We're not talking about that. What we're talking about is cutting justice; and that bothers me, that really bothers me. People have a right. And there's a number of articles out there in the Lincoln Journal and the World-Herald. Headlines: Death penalty comes down to dollars and cents. I hope we're not cutting down to dollars and cents with the lives of people. If we ever get to that point, we ought to disband this body, because we're on the wrong track and headed in the wrong direction. So let's just take a look at where we ought to go. We ought to talk about what we're talking about today in a philosophical manner. We ought to talk about where we want to go, not where the criminal defendant has gone and is going. We need to talk about the philosophy of where we want to end up. We already provided the vehicle, and so let's just talk about that and not how much it costs or the process that we provided. Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Seiler. Senator Burke Harr, you're recognized. Senator Lathrop, you're recognized. [LB543]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good afternoon once again. I think I've made the argument in opposition to the death penalty from about every angle you could. I have discussed it in years past from the point of view of a victim who I believe to be revictimized every time the murderer is the subject of another news story. I want to, on this occasion, stand up and talk about...you've heard some people stand up and say, we do not have a death penalty and I no longer support it and I support repeal. And I want to suggest something to you. The Constitution of the United States prohibits cruel and unusual punishment. And if you read the cases on cruel and unusual punishment, you'll see that it is an evolving standard. The Supreme Court talks about it as an evolving standard. What may have been acceptable at one time, as our society evolves, is no longer acceptable. And that's essentially why we got rid of the electric chair, because when the court looked at electrocution as a form of punishment, it concluded that our society had evolved to the point where that method of execution was cruel and unusual punishment. And I will tell you, colleagues, that there are a number of states that are repealing the death penalty. And why is that important to our discussion today? Because it demonstrates the evolution of our society. We may not repeal the death penalty today or by the time we get to a vote on this bill, but other states are, and they are establishing the evolving standard of decency in this country.

Floor Debate
May 13, 2013

And in my judgment you will see in our lifetime the United States Supreme Court conclude that the death penalty, by whatever means, is cruel and unusual. As Senator Chambers said, they used to use corporal punishment, lashes; they used to cut off extremities. They used to do a lot of things that we no longer permit because it violates our standards of decency. And why is that important today? Because in my judgment those people who say we will never see an execution in Nebraska are correct. We have had the problems with the method. After we took care of the electric chair and we established lethal injection, they came up with a protocol. Now we find out that we can't use one of the drugs. And before they can do an execution, whatever stock that we got from wherever we got it, will expire; and then do you know what's going to happen next? We're going to have to come up with a new protocol. And when we come up with a new protocol, we will put in place another five years of litigation. And I will tell you that our death penalty will not get one single execution, in my opinion, before the United States Supreme Court concludes that the whole thing is unconstitutional and cruel and unusual. It is an evolving standard. As states get rid of the death penalty, it demonstrates to the Supreme Court that our standards are evolving and those states that have hung on the longest will simply have it taken away in an Opinion from the United States Supreme Court... [LB543]

SENATOR KRIST: One minute. [LB543]

SENATOR LATHROP: ...concluding that the death penalty is cruel and unusual. We can continue to put money into a system that doesn't work, that will ultimately be unconstitutional, or we can stop that now. We can get ahead of it. We can recognize the evolving standard, appreciate that in a civilized society most developed countries don't have the death penalty. Most developed countries do not have the death penalty. The standard is evolving. It will be gone before we can execute anybody in Nebraska, and we should repeal it today. Thank you. [LB543]

SENATOR KRIST: Thank you, Senator Lathrop. Senator Brasch, you're recognized. [LB543]

SENATOR BRASCH: Thank you, Mr. President. Good afternoon, colleagues. The discussion is truly intense. We are talking about life and death, and not just death but murder. And it's killing that is very cruel and very unusual when it is murder. Is it evolution of our judicial system, as good Senator Lathrop is talking about, or is it deterioration of our judicial system and justice? What about jurisprudence? What are the equitable penalties and the punishment for cruel and unusual death to a child? Rape and murder of a woman? Of people going to an everyday job, going to a movie and having their lives snatched from them suddenly and cruelly? What is the equitable penalty? Is it to put somebody in an institution for a lifetime, or is it death? The comment has been asked about, well, we can't get the drugs, the...you know, it's problematic to end this murderer's life. Well, we're learning that through the evolution process DNA

Floor Debate
May 13, 2013

testing came out in the '60s, and in the '80s it became a tool in many, many capacities. And we're also learning in pharmaceuticals every day, new medicines, new chemicals, new discoveries that also could be effective. I have e-mails coming from constituents that are also aware of different chemicals and methods, because they feel justice needs to be delivered on cruel and unusual murders that are unmentionable. And the deterrence that we're looking at, we do need a deterrence that will not have that person killing, even in an institution. I also have been thinking on the biblical side as people are talking about their faith. Well, the Mosaic Law which we see abounding in the State Capitol in many forms of artwork and throughout this Capitol, the Mosaic Law and many, many scriptures do give just authority to lawmakers in punishment for murder. Killing is just in certain situations; but murder is to be punished. I have thought about this long and hard, and the answer ongoing is the same, that justice cannot deteriorate in our country; that we can work to be more effective. We can have more effective punishment. We can work more effectively on individuals and helping people so they do not be murderers. As pro life, you're protecting the innocent, the innocent in the womb, the right to be born. And we hope that that life can continue on a path of being a good citizen, a person that would not murder someone; but once a murder has taken place, colleagues, that there is punishment for those murders. I will yield the rest of my time to Senator McCoy. [LB543]

SENATOR KRIST: One minute. [LB543]

SENATOR McCOY: Thank you, Mr. President and members, and thank you, Senator Brasch. I want to speak to, very briefly, to something that Senator Lathrop just mentioned. He stood on the microphone a few moments ago and said that we should repeal the death penalty because sooner or later the U.S. Supreme Court is going to do it. And I would submit to you that the Gregg v. Georgia case the Supreme Court concluded...a plurality of the justices concluded that, quote, the infliction of death as a punishment for murder is not without justification, and thus is not unconstitutionally severe. Those are the facts, members, of a Supreme Court decision. I'm not willing to repeal the death penalty based on a guess of whether or not the Supreme Court may do something in the future. Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator McCoy and Senator Brasch. Senator Murante, you are recognized. [LB543]

SENATOR MURANTE: Thank you, Mr. President and members. I rise again in support of LB543. After my last comments on the microphone, a number of colleagues came up to me and said that they agree with my assessment that the death penalty has some systemic flaws with it, that the application is unfair and unjust; but rather than repealing it and trying to fix it, why don't we just fix it on the fly? To me, that's like trying to repair a car while you're driving down the highway, but that's the suggestion that's been made. And I don't know quite how that's going to happen. First of all, of the systemic problems

Floor Debate
May 13, 2013

that I talked about, one that has been...seems to be universally accepted, that no one has challenged at this point, is that the application of the death penalty is race-based. It is race-based and everyone seems to accept that. And I don't know how we pass a legislative bill which would compel a jury to not make a decision based on race. I wish it was that easy. I wish we could just draft a bill, pass it through the Legislature, and racial intolerance and discrimination would just magically go away. But I don't see how that's going to happen. I don't think we as a Legislature have that authority. So I don't know what that bill looks like. I don't know what piece of legislation can be crafted to alleviate those problems. If someone can explain it to me about how on a legislative basis we can continue to have a death penalty but fix that problem, I'd be happy to hear it. And the issue of deterrence, again I haven't really heard any compelling arguments that the death penalty in its current application effectively deters crime. So that once again begs the question, if we're going to fix that problem, what's that fix look like? How is it that we can keep the death penalty and make it more of a deterrent? I suppose we can amend our constitution and eliminate due process and just proceed with the application of the death penalty in a swift manner notwithstanding the rights of the accused. But I'm not sure that's an appropriate method of resolving the problems that we have right now. So the issues remain. We have systemic problems that I've yet to hear anyone contradict, and no proposed remedies. And when I say that our solution ought to be to abolish it and if there's a way to start over, start over, I'm told, let's just fix it. I don't think that's good enough, colleagues. I'm not an attorney. I don't know what remedies can be made to fix these problems but they haven't been solved anywhere else. I haven't heard any ideas introduced in this Legislature to fix the problems, and until there are some solutions to the problems that I've identified and introduced, to me, I don't think we have a choice. I think we have to advance LB543 and go from there. And it was asserted that once we had abolished the death penalty, it can never come back. Well, that is historically inaccurate, colleagues. [LB543]

SENATOR KRIST: One minute. [LB543]

SENATOR MURANTE: The death penalty was abolished not just in Nebraska but across the entire country, and it took an act of the Legislature to take the death penalty, which was abolished, and put it back into law. So if the problems that I have identified and that many others have identified on this floor are at some point fixed, this Legislature has a history of taking an abolished death penalty and putting it back into law. It has been done. It can be done. It might not happen in the near term but until the problems that we're talking about have been fixed, colleagues, I don't see any other way to address the issues than to advance LB543 and to abolish the death penalty. Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Murante. Senator Conrad, you are recognized. [LB543]

Floor Debate
May 13, 2013

SENATOR CONRAD: Thank you, Mr. President. Good afternoon, colleagues. Colleagues, again I'm going to start with a few general propositions and more philosophical kind of policy issues related to this topic, and then move into some specifics, particularly in relation to the comparative analysis in death penalty cases and cases in which life without the possibility of parole is at issue and talk about some of the misinformation and confusion that exists on this topic. Whenever thinking about the death penalty, the words that are burned in my heart and in my mind emanate from Callins v. Collins in Justice Harry Blackman's dissenting Opinion in 1994. It's a famous quote that many of you will be familiar with, but I do want to reiterate for the record: From this day forward, I shall no longer tinker with the machinery of death. Going on...the death penalty experiment has failed. No combination of procedural rules or substantive regulations can ever save the death penalty from its inherent constitutional deficiencies. Capital punishment is not representative--my words now--of the evolving standards of decency that do mark a civilized society, which is the constitutional standard that governs this area. Capital punishment offers no justice, no relief, no finality, and it diminishes each one of us in a society that is complicit in its application. We've heard from some that we have to keep capital punishment on the books because it ensures that we're tough on crime. But rather, when you talk to law enforcement, colleagues, on this very topic, they have a very different belief in this regard, and at least one study has indicated that law enforcement, those on the front lines of this policy, believe that a greater investment in terms of alternative strategies such as reducing drug abuse, improving economy and jobs, simplifying court rules, increasing prison sentences, putting more cops on the streets, and reducing guns are more effective strategies; and that in this menu of strategies available, they rank the death penalty last in terms of deterrence and crime prevention strategies. In my last time on the light I'm going to talk specifically about the issues involved with the procurement of drugs to carry out the flawed lethal injection protocols and system that we have in place in Nebraska. But I do want to spend the rest of my time on this light talking about the misinformation and confusion that exists on the topic of appeals. In a death penalty case, it is litigated differently than other cases. In essence, there are three separate trials. This is not the case for other areas of criminal law. There's, first, the guilt and innocence phase; second, the proof of aggravators phase; and third, the sentencing and decision phase. As a result, a range of issues has to be presented at each phase and are subject to appeal. Without the death penalty, the costs involved in those two additional trials are eliminated. Subsequent appellate litigation to correct serious error and constitutional defect that occurred at stage 2 and 3 is eliminated because it is unique to death penalty cases. Now I'm going to run through a laundry list here as quickly as I can, which is nonexhaustive, of substantive and procedural issues that are litigated on appeal only in death penalty cases. These aren't available for other criminal cases or when a sentence of life without the possibility of parole is presented. [LB543]

SENATOR KRIST: One minute. [LB543]

Floor Debate
May 13, 2013

SENATOR CONRAD: (1) Untimely notice of intent to seek the death penalty; (2) failure to adequately specify aggravating circumstances sought; (3) failure to assign adequate defense team, including investigator and mitigation specialist; (4) death and life qualification challenges under Witherspoon and Wainright ; (5) failure to comply with state discovery rules related to mitigating evidence; (6) failure to adhere to rules of evidence during aggravation phase; (7) denial of expert assistance during sentencing phase, Ake-like issues under the Sixth Amendment; (8) challenges to the method of execution; this comes in multiple forms including challenges to lethal injection drugs, their effectiveness, at issue of whether or not they're lawfully obtained by the state; (9) whether the death penalty imposed is arbitrary or disproportionate; (10) prosecutorial arguments to inflame the passions of the jury during aggravation phases; (11) prosecutorial argument that misleads jurors on parole practices and eligibility; (12) prosecutorial... [LB543]

SENATOR KRIST: Time, Senator. [LB543]

SENATOR CONRAD: Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Conrad. Senator Kolowski, you are recognized. [LB543]

SENATOR KOLOWSKI: Thank you, Mr. President and fellow colleagues. I stand in support of LB543 and AM865 as well. I would like to thank everyone who has talked today as far as their own personal journeys. We have 49 various specific individual journeys that we've all been on with this particular topic. And in my own case, as I look at the philosophical, ethical, religious reasons for why I am where I am, they are over many years and it takes time to evolve to that particular position, as I did my homework on that to try to get my background filled with the correct information to make a decision on where I am. The idea of the no chance for parole, lifetime in prison, seems like it's an issue that would be very fair, depending on the crimes, and it's something we can deal with and live with. But we've all gone through these personal searches and I think it's pretty important that we understand and respect one another for where we are and where we stand today. During campaigning in the last year, I stopped by the homes of many former students that I had the chance to work with in the Millard schools. It's always great to find out how they're doing, that we sent them to top universities all over the country. And two students in particular, two families in particular, I stopped and visited with. I also had students at the other end of the spectrum. One is currently and will be a long time in the state prison, and another one had been released from the state prison and was sorry he couldn't vote for me because he did time. And I talked with both families and, in fact, caught up with where their sons were and the things that happened in their lives. And I would hope that the time and effort that we would put into the correct work with students of all ages and all backgrounds would make a difference so we don't fill prisons but we fill more community colleges, universities, and other locations with

Floor Debate
May 13, 2013

those seeking to improve themselves. Another aspect of my own development I think would be the looking at the cost of appeals that has been discussed, the millions of dollars over the years that could be used in other ways in our state, and I hope that will be a consideration as we move on. Another impact on my own thinking is one of my own sons. My oldest son is a CSI guy. He spent the last 12 years of his life in the office of the chief medical examiner in New York City. He's a DNA specialist and now in this last year he is the director of a forensic science laboratory in the District of Columbia, Washington, D.C. And all he can tell you, with all the stories he's related to me, is that you don't want to be a bad guy today. The DNA efforts are extremely sophisticated and there's not much that they miss. In connection with that, he turned me to the Innocence Project. We all have our gadgets. If you have time, look at the Innocence Project as to the impact since 1992 of the question of incarceration versus exoneration testing versus the death penalty arbitration meeting appeals and what's happened. [LB543]

SENATOR KRIST: One minute. [LB543]

SENATOR KOLOWSKI: Over 300 prisoners have been released because of DNA testing, 18 of those were on death row; and the average time in prison was 13 years. So as part of my emphasis--part of my emphasis--for the next three years that I have here will be directed toward forensics emphasis--having the correct staff, equipment, procedures, and processes in place so we don't have those situations take place where someone is incarcerated because objective evidence was not examined or was poorly examined or not examined at all. Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Kolowski. Senator Kintner, you're recognized. [LB543]

SENATOR KINTNER: Thank you, Mr. President. You know, I have a great deal of respect for both sides of this issue. I have friends that have struggled, and as Senator Kolowski said, been on a personal journey to figure where they are in this issue, and some have evolved and some have not. And I've...because of the people I respect, I've been continually looking at where I stand on this very important issue. And I've had to search my soul. I've had to read the Bible. I've talked to pastors, theologians, and people that really understand the scriptural basis for our justice system. And I want to say for the record that I support the death penalty. I don't say that with any glee, with any joy. I take no joy when someone is put to death anywhere in our country. But, you know, it's been argued that Senator Kolowski talked about the cost of appeals. Well, let me tell you something. Justice is not up for sale to the lowest bidder. Justice is what is right. Justice is what the Bible calls us to do, and when we look at the Bible our morals and true justice do not evolve, because they are rooted in the eternal immutable God who created us. And someone said that he who is without sin cast the first stone. Well, the Bible tells us we're not allowed to cast stones. Vengeance is given by God to the governments. Personal vengeance is never allowed. It is talking about personal

Floor Debate
May 13, 2013

vengeance. The Bible has vested governments with justice and the Bible says that when you kill someone, it is perfectly right and the obligation of the government to take your life. Now we talk about statistics. You know, since 1976, 1,329 convicted murderers have been executed; 51 percent white and 33 percent black; and there have been over 500,000 murders. We do not have a problem with race. If anything, there's a lower percentage of blacks that get put to death proportionately than whites. And, you know, there's something else I do want to say also is that Senator Ashford talked about the human and Christian approach. And I've just talked about what the Bible has told us that we should and can do, and that justice is not for individuals against other individuals; it's for the government. Governments are placed there by God. And Senator Ashford said, you know, we should have a vote. Well, we have a Unicam system in our state and it's very unique, and because we do not have two houses, we have some safeguards put in place to make sure that we don't rush bad legislation through. The first thing that we do that other states don't do is that we give every bill a hearing. That's very unique. I don't know of another state that does that. The second thing that we do is we vote three times on every piece of legislation. And finally, we have a filibuster in our state; it's totally within the rules. And to tell you the truth, this is an important issue and we intend to use this filibuster. [LB543]

SENATOR KRIST: One minute. [LB543]

SENATOR KINTNER: And we intend to stop this because this drive to change the death penalty by people that say it's so expensive, well, those very same people that have put every roadblock up to stop us from executing people, they've challenged the way we execute people, the...and now that we've got a way, the chemicals that we use, they're challenging those. They've taken every appeal they can take. They've driven up the cost of the death penalty. And then they say it's too expensive. I don't think that's a very good argument. If you cause something to be expensive and then you try to use that as an excuse to get rid of it, I just don't think that that's the way we should operate here in our state. And I appreciate the civil discussion here. I hope I've added to it. And once again, this has been a very tough journey for me also. Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Kintner. Senator Christensen, you are recognized. [LB543]

SENATOR CHRISTENSEN: Thank you, Mr. President. You know, first of all, I'm going to address what Senator Ashford talked about right ahead of dinner. You know, he questioned Senator McCoy, whether we could have an up-or-down vote. If that's what we want to do, let's eliminate the filibuster rule and let's pass every bill out of committee and let's give them up-and-down votes. If we're going to do that, let's get rid of the committees. You know, we have a set of rules here. And you know what? I've been on the end of a filibuster. Senator Chambers has taken me to task several times. Some of

Floor Debate
May 13, 2013

them I've even killed my own bill. That's all part of the rules. That's fair game. When we visited after, I said congratulations. That's the way I treat it. I didn't like his attitude. And I appreciate pretty much everybody has had a positive attitude out here, whether you support it or you don't support it. That's the Nebraska system and I like it that way. You know, I just...I'm always shocked at when people talk about, you know, we're going to have an up-or-down vote when they're afraid of a filibuster. But when they don't want an up-or-down vote, they like the filibuster. You know what? It is the rules. I like Senator Chambers. He says we're going to play by the rules and I'm going to try and beat you at it, and I appreciate that in him. And he's beaten me before and that's fine. You don't see me chewing him out for it or anything else. That's just the way it works and that's the way it should be on this bill also. Unfortunately, he's the one on the end of the filibuster, most likely, and that's just the way the process works. You know, I hope Senator Murante is serious about what he said a little bit ago when he spoke. Senator Avery has told me the same thing, that if there's some positive changes that can come and eliminate the discrimination stuff, he'd support it. Well, I'm going to ask him to vote against cloture, against these bills, and I'll introduce it next year. We'll have it set up so that it has to be by DNA evidence or video only. That eliminates the race card, because if you're caught by DNA evidence or caught by video evidence, like the Norfolk murders, there would be no question. Should eliminate some appeals. You know, Senator Chambers wanted to remove a number of them aggravators, and I've wondered why. I've changed my mind; I think he's probably right. We need to change them because some of them can be contested and challenged too much. You know, that's a part of what I said in the paper after the hearing. I don't think the pro death penalty people have been showing up, have been speaking enough, and have been looking at making positive changes to it. That is our job here is to change legislation, introduce new things that we believe that need to be done. And I'm as guilty as everyone else on this because I have voted against the repeal every time; that's where I'm going to be again. I went into this one with the most open mind I'd had, but I've come to the same conclusion. But I do agree that there's problems out here, that we need to address some problems that we have. And I've challenged several other senators to introduce the legislation or support it if I do it, because I will bring it if nobody else wants to, because I believe that discussion needs to be had. [LB543]

SENATOR KRIST: One minute. [LB543]

SENATOR CHRISTENSEN: Thank you. So, you know, I think it's very clear, I have sat back here a number of times and heard people misquote scriptures and things this way, so this year I decided I was going to make sure I brought some that I could share that clearly showed what scripture says, because quite often we hear scriptures that are used the wrong way. Romans 13:1 says every person is subjection to the governing authorities, for there is no authority except from God and those who exist to (sic--are) established by God. So that says we can have a death penalty or not death penalty. But you go on down, verse 4 says that it is for the ministering of God to you for good, but if

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
May 13, 2013

you do what is evil, be afraid, for it does not bear the sword for nothing for it is a ministry of God, a revenger who brings wrath on one who practices evil. [LB543]

SENATOR KRIST: Time, Senator. [LB543]

SENATOR CHRISTENSEN: Thank you. [LB543]

SENATOR KRIST: Those still wishing to speak: Senator Chambers, Gloor, Karpisek, McCoy, Smith, McGill, and others. Senator Chambers, you're recognized. [LB543]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, I'd like to ask Senator Kintner a question, first. [LB543]

SENATOR KRIST: Senator Kintner, will you yield? [LB543]

SENATOR KINTNER: Yes, I will. [LB543]

SENATOR CHAMBERS: Senator Kintner, you said God established the government to do various things. Did you say that? [LB543]

SENATOR KINTNER: Yes. Yeah, that's Romans. Yes. [LB543]

SENATOR CHAMBERS: Okay. So did God put me where I am right here now? Did God put me in the Legislature? [LB543]

SENATOR KINTNER: Yes. [LB543]

SENATOR CHAMBERS: Thank you. You ought to pay attention to me then. Senator Christensen, I'd like to ask you a question or two. [LB543]

SENATOR KRIST: Senator Christensen, will you yield to a question from Senator Chambers? Senator Christensen, will you yield to a question from Senator Chambers? [LB543]

SENATOR CHRISTENSEN: Yes. [LB543]

SENATOR CHAMBERS: Senator Christensen, you said you were going to enlighten people on the scriptures, and I think earlier you went back to Genesis. Is that correct? [LB543]

SENATOR CHRISTENSEN: Correct. [LB543]

SENATOR CHAMBERS: Did you say something about he who sheddeth man's blood

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
May 13, 2013

by a man's hand shall his blood be shed? [LB543]

SENATOR CHRISTENSEN: Yes. [LB543]

SENATOR CHAMBERS: Is that in the Bible? [LB543]

SENATOR CHRISTENSEN: Yes. [LB543]

SENATOR CHAMBERS: Do you believe it? [LB543]

SENATOR CHRISTENSEN: Yes. [LB543]

SENATOR CHAMBERS: Do you believe it's true? [LB543]

SENATOR CHRISTENSEN: Yes. [LB543]

SENATOR CHAMBERS: Who was the first killer? [LB543]

SENATOR CHRISTENSEN: Cain. [LB543]

SENATOR CHAMBERS: And what did God put on Cain? [LB543]

SENATOR CHRISTENSEN: He actually just put a curse on him, a mark... [LB543]

SENATOR CHAMBERS: He put a mark on him, didn't he? [LB543]

SENATOR CHRISTENSEN: ...so nobody would touch him. [LB543]

SENATOR CHAMBERS: All right. Now if the Bible that you're saying said that he who sheds blood, by blood by man shall his blood be shed, why would God put a mark on the first murderer so that no man would harm him? [LB543]

SENATOR CHRISTENSEN: But you've got to go back... [LB543]

SENATOR CHAMBERS: That's okay. Thank you. I just want you to go by what the Bible says. He said people misquote it. Then when you show him that there's a conflict, he says, well, you've got to do this. He knows more than God. The Bible said that that mark was put on Cain so nobody would touch him. So what became of the part that said, if you kill, every hand should be raised against you and you die? Be killed by man...that's nonsense. We have to be practical. We have to be realistic. Because if people who quote the Bible like that, believe the Bible, they would be wanting to take care of those who are sick. And when I hear people say that we shouldn't talk about the cost when it comes to killing people by means of a death penalty, why do they talk about costs when

Floor Debate
May 13, 2013

it comes to education to improve minds, when it comes to expanding Medicaid to take care of people's health? Immediately, it costs too much, it costs too much. But if you want to punish, don't spare the costs of building jails. If you want to kill, don't spare the cost of killing somebody. That's how I judge all these people when they talk about all that religion and that's why it means nothing. It's convenient. But what we need to look at here is the fact that you're dealing with a system that even the courts have said failed. In a Supreme Court decision that one of the people back there, it might have been Senator McCoy who first mentioned, Furman v. Georgia, the judge was talking about how difficult it is and practically impossible to do anything with a capital punishment system. He said some states tried to fix it by saying, all right, we'll say that every murder carries a death sentence. It was ruled unconstitutional to have mandatory death sentences for all murders because you have to take into consideration the individual and the circumstances involved, so they struck down those kind of sentences when they said, then let the juries go ahead and make their decision, and the judges. Those sentencing methods were struck down because there was too much arbitrariness and no standard by which the jurors could make a decision or judges making the decision. So Furman struck down all death penalty laws. So then they set up a system where they said, well, we'll give guidance on how the jurors should reach their decision. [LB543]

SENATOR KRIST: One minute. [LB543]

SENATOR CHAMBERS: You have aggravators and mitigators, and if one out voids the other, you go one direction or the other. It's all subjective. But anyway, that was supposed to help. Do you know what happened? A guy out in Arizona said, wait a minute, that's not going to work; you're going to have to have a separate trial for the sentencing phase. So that other part, the latest, didn't work. And now they've got, as was pointed out, in effect, three trials when it comes to a death penalty case. But since money is no object, time is no object, the courts being cluttered is no object, because you're going to kill. Just admit what it is. You'd rather kill than do anything else and you'll spend money for killing although you can't get it done, then you spend to uplift society, show an example of civilizing society and our being an example by teaching and showing that better way. Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Chambers. Senator Gloor, you're recognized. [LB543]

SENATOR GLOOR: Thank you, Mr. President. Good afternoon, members. This has been interesting to sit and listen to because regardless of what's said, you can tell, and it's been mentioned several times before, that we are respectful not just of each other but of the importance of this specific issue, bill, that we have to come to grips with. And knowing that it was up on Monday, I know people joined me in spending not a small amount of time over the weekend thinking about the issue, their stand on this issue in

Floor Debate
May 13, 2013

the past, their stand on this issue now if it's the first time for them, and being reflective and perhaps even thinking about it in their church that they go to. I also agree that most of us have made up our minds on how we would vote, and I want to explain again, as I did several years ago, why I am in opposition to LB543 and the amendment. I appreciate especially starting the day with Senator Chambers' handout and the review of his experience with the Joubert case and the Joubert execution. And with all due respect to Senator Chambers, I don't have the time to read all the stuff that you give us to review and I think you understand that we don't have the time to do it. But this review was a significant and important way for me to start my contemplation on my stand on this issue. I don't suppose most of us have the courage and humaneness to do this, and so I have a new respect for the fact that you did this, even though we are on different sides of this issue. And I'm not so sure that any of us that went through what you went through with Joubert and his execution wouldn't have a visceral reaction against the death penalty. But I also know myself well enough to know that were I called and able to do this, I would also back up enough and say, but what would my stand be if I were on the site of one of these horrendous murders? Not the murder scene but actually there while that execution was going on versus the state's execution. That's a tough, tough thing to think through, and not something that we would wish on anyone. I recognize the application of the death penalty is arbitrary, racially biased at a national level. But I have to make a decision as a representative of Nebraska. And those Nebraskans on death row don't even protest their own innocence. I think someday it's likely that nationally a decision will be made and the death penalty will go away, but right now I have to make a decision in Nebraska. And here's why I'm supportive, and it's that practical, realistic part of me that Senator Chambers mentioned that comes into play. I ask myself, how many times a day do Nebraskans have murderous thoughts about another Nebraskan? Dozens, hundreds, thousands? Murderous thoughts that emotionally they get control of; horrific murderous thoughts that their emotions eventually subside and they get a handle on. And how many times when they get control of those emotions is there a thought that if I kill this person, the state will kill me? [LB543]

SENATOR KRIST: One minute. [LB543]

SENATOR GLOOR: Thank you, Mr. President. How many times do you think that happens over the course of a day, a week, a year, during the term that we've had the death penalty? And I say it has happened at least once it has happened where somebody took their finger off the trigger or put a knife back in their pocket and said, no, no, no, they'll kill me if I do this. At least once. At least once. And so we have 11 men on death row and we have somebody who is alive as a result of knowing that threat was out there, and that's the deterrence I see in the death penalty and why I continue to be in opposition to its repeal. Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Gloor. Senator Karpisek, you are recognized. [LB543]

Floor Debate
May 13, 2013

SENATOR KARPISEK: Thank you, Mr. President and members of the body. I know we've talked about being glad that Senator Chambers brings this and...because it is his passion. And I understand that and I am glad that he can do this. I have to say I don't look forward to it every year but we get here anyway. I just can't agree with him on this one. We talk about the death penalty and that we can't get the chemicals. I don't think we've talked about different means. I understand the electric chair was found unconstitutional. Now if we can't get the drugs, there are other ways that over the years have been carried out. I don't know if that would change the situation or not. It may or may not. I've looked at other states and how they do it. There are others that still do hangings, firing squads, different type of things. I guess another thing that kind of makes me wonder is I'll agree that maybe the deterrent might not be a whole lot to play but if someone is in jail for murder, what is to keep them...and they know they're going to be put away for life, what keeps them from killing another inmate or a guard? There's nothing more that they can do to them. They can take away privileges, I assume; solitary confinement, those sort of things. But what else can they do? And what goes through those people's minds? It's just something that we were talking about. We also talked about, on the appeals, that it brings back the memories for the victims' families. There is a lot of things that bring back memories: birthdays, anniversaries, holidays. Anyone that has lost anyone knows that. Maybe even a smell in the air or a spring day, a football game. So to say that the appeals process just puts these people through it all over again, I don't know about that. And if we would follow through with the death penalty, then that might put that reliving away for that family. I would...I will vote for the bracket motion. I wish that those who don't support the bill would. It's fairly obvious that we just want to take some time here, whether we're saying that it's out of respect for Senator Chambers and the importance of the bill, and I don't think that that's being very truthful. I think we need to get to a vote on the bracket and see where we're at. I think that our constituents and the whole state deserves to see where our votes are. I've said it before and I'll say it again. I came here to vote on things... [LB543]

SENATOR KRIST: One minute. [LB543]

SENATOR KARPISEK: ...and I will continue to vote on them, up or down. I was going to say that if another bracket motion gets pulled, I'll put one in and I won't pull it. But now what I've kind of heard that some people won't vote for it anyway because they think it needs to take more time, and that's fine. Maybe we need to go longer, but I think we need to see where the votes are. We don't need to just waste a lot of time. We all know where we're at. Most everyone knows where we're at and I would appreciate getting to a vote sometime today. Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Karpisek. (Visitors introduced.) Senator McCoy, you are recognized. [LB543]

Floor Debate
May 13, 2013

SENATOR McCOY: Thank you, Mr. President and members. I would yield my time to Senator Lautenbaugh. [LB543]

SENATOR KRIST: Senator Lautenbaugh, 4:56. [LB543]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. And I think this has been a good discussion and I have been listening to it and taking notes. And there are many, many, many facets of this that I would want to respond to and they won't all be in this one time at the mike. I do join Senator Karpisek and I do say that I will vote for the bracket motion at this point. I understand exactly the sentiment earlier, and that was we did not want to prematurely move ahead with the bracket motion and have people not vote for it out of a sense that we had not given it full and fair debate. I think with each passing half-hour we are moving away from any sort of concerns such as that, and we are having a good and focused discussion based upon the death penalty, as well we should. But we get into trouble, I think, with some of the statistics that we are talking about and some of the other factors that we are dealing with here and we are being presented with as a justification for walking away from capital punishment. The racial disparity that we've talked about, and Senator Murante said no one has contradicted or declined or denied. To a certain extent I guess you could call me a denier because if you adjust for location, suburban versus urban, whether or not the prosecutor is inclined to seek the death penalty, the fact that only certain crimes are capital crimes and who the victims of those crimes predominantly are, more often than not the disparity, especially when factored in with just basic socioeconomic issues, melts away. There have been...this has been presented in case after case, and so many judges have commented while attempting to prove a disparity what the studies have actually shown, is that it's fairly fair when you account for other factors. You always have to be on the lookout for the fallacy of the false cause and the easy explanation. And the deterrence--there's a point at which you just have to rely on common sense regarding deterrence, because it's hard to know. How do you know what really deters people? I mean, we have, you know, stories of people who have taken a victim from one state to another to murder them because they knew the state they were in did have the death penalty where the one where they took them to murder them did not have the death penalty. So I would say that the death penalty is a factor certainly in the commission of some crimes, and it just seems to me to be common sense that there's a deterrence effect. And I think the criticism is that, well, you can't prove that it's a deterrent. Well, I don't know how you prove that it is or it isn't, other than just to bring your common sense to bear and ask yourself if harsher penalties, including this most harshest of penalties, wouldn't be a deterrent? I don't think you can say there's a study out there that shows it is not; I don't think you can ever find one that conclusively says it is. I listened to Senator Lathrop earlier when he talked about our evolving standards and whatnot, and sometimes some of us don't agree with the direction of a proposed evolution and that's okay. Sometimes it's okay to stand up and say, no, I think for the certain most heinous crimes we have, this is a just penalty. And no one yet has gone

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
May 13, 2013

through the litany of horrors committed by the 11 individuals on death row, none of whom maintains... [LB543]

SENATOR KRIST: One minute. [LB543]

SENATOR LAUTENBAUGH: ...his innocence. Thank you, Mr. President. Not a one maintains that he is not guilty. Their crimes are horrific and this penalty is just for them. This is a serious topic and this is a somber topic, and I think everyone has treated it as such. But I stand opposed to the repeal and I'll not apologize for using whatever means in the rules to prevent there from being a repeal of capital punishment in Nebraska. I don't think we're supposed to reserve filibusters for the inconsequential things and take a pass on the important things. That makes no sense to me. And this is an important thing to me and I think I've been very clear where I am on this. I'll support the bracket motion and whatever else is necessary to resist this repeal, which I think is just wrong. It's shrinking from a responsibility we have as a society... [LB543]

SENATOR KRIST: Time, Senator. [LB543]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Lautenbaugh and Senator McCoy. Senator Smith, you are recognized. Senator McGill, you're recognized. [LB543]

SENATOR MCGILL: Question. [LB543]

SENATOR KRIST: The question has been called. Do I see five hands? I do see five hands. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Senator McGill, for what purpose do you rise? [LB543]

SENATOR MCGILL: I'd like to request a call of the house. [LB543]

SENATOR KRIST: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Please record, Mr. Clerk. [LB543]

CLERK: 32 ayes, 0 nays, Mr. President, to place the house under call. [LB543]

SENATOR KRIST: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Mello, Senator Burke Harr, Senator Larson, Senator Murante, Senator Chambers, Senator Schilz, please return to the Chamber. Senator Larson, please check in. Thank you. Senator Chambers, please return to the Chamber. Senator

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
May 13, 2013

Chambers, please report to the Chamber. Senator McGill, how would you like to proceed? [LB543]

SENATOR MCGILL: Fine. [LB543]

CLERK: Senator Larson voting no. Senator Murante voting yes. Senator Mello voting yes. Senator Burke Harr voting yes. [LB543]

SENATOR KRIST: Please record. [LB543]

CLERK: 26 ayes, 11 nays to cease debate, Mr. President. [LB543]

SENATOR KRIST: Debate does cease. Senator Ashford to close. [LB543]

SENATOR ASHFORD: Thank you, Mr. President. This vote is in my view a vote for or against LB543, and that's why I brought the motion in the first place. And I believe there are 25 votes for LB543. The reality is that it may very well take 33 votes in order to get a final vote on this bill. I think it's important for the body to have an opportunity to express their views for or against the death penalty. Senator Lautenbaugh and Senator Karpisek were absolutely correct when they suggested that they were going to vote yes for the bracket motion for the reason that they support the death penalty. I think that is the proper vote on this motion. This is an incredibly important bill. And yes, there are other bills that are filibustered and there are other issues that don't come to a vote, and I understand that. But once in a while there comes down the pike an issue such as this where I believe sincerely that this body has an obligation to the people of the state of Nebraska to register their view for or against. This happens to be, I believe, one of those times. In the years that I've been here, the 15 years I've been here, I don't recall how many times I voted on this issue. But in every case I...in no case has there been a situation where I haven't been able to vote on it, I don't believe, in all the years I've been here. I've always had an opportunity to register my vote for or against. I just think it's one of the times when we as a Legislature need to not so much...it's sort of euphemistic to say, go on the record. I don't think that's really it. But to express our deep-seated views. And the deep-seated views that have been stated today on either side of the issue are important, and they're important to the people that make those statements and it's important to the process of this place that those statements are made for or against, because they are deeply felt. Senator Harms has made his comments on this issue seven times as far as I know, and they're deeply felt. I don't think anything is going to change anyone's mind on this issue between now and tomorrow or the next day or the next day after that. I think we do know how we feel about this issue. I just felt that as a member who has been here for a long, long time, in a relative sense, that I give to this body an opportunity to do what I think we all want to do, which is to register our view on this bill. So to reiterate...and I'm going to ask Senator Coash if he would be willing to say a few words on this as well. But I...just to be clear, a vote for the bracket bill in my view

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
May 13, 2013

is a vote against LB543, and that's how I think it should be considered. A vote no on the bracket motion in my view is a vote for LB543. That's how I view this vote. With that, I would give my time, the rest of my time, to Senator Coash. [LB543]

SENATOR KRIST: Senator Coash, 1 minute 20 seconds. [LB543]

SENATOR COASH: Thank you, Mr. President, and thank you, Senator Ashford. Given the time, I'll probably wait until after this is done. But what I'm going to say in the short time that I have here is this: We are where we are. I think most of us have gotten up and spoke, and I don't think there's any secrets about where you are on this bill. If you're... [LB543]

SENATOR KRIST: One minute. [LB543]

SENATOR COASH: Thank you. If your constituents want to know, I think we've made it clear where you are. And I respect both sides of this issue, I really do, because however you came to where you are is a different path than how I came to where I am. So with that I will ask that you use this bracket as a way to show where you are. And we'll have time...we've got a divided amendment. There is plenty of time, if you don't feel like you've had your say, to say it. But we know through this bracket motion where we are, and I'll encourage you to vote for the bracket if you want to keep the death penalty and vote against the bracket if you think it ought to change. [LB543]

SENATOR KRIST: Time, Senator. [LB543]

SENATOR COASH: Thank you. [LB543]

SENATOR KRIST: You have heard the closing on the motion to bracket. Those in favor vote aye; opposed, nay. Have all those voted that wish to? Record, Mr. Clerk. [LB543]

CLERK: 18 ayes, 26 nays, Mr. President, on the motion to bracket the bill. [LB543]

SENATOR KRIST: The motion fails. Mr. Clerk for items. Let's raise the call. [LB543]

CLERK: Thank you, Mr. President. Some items before we proceed. Senator Ashford has an amendment to LB561 to be printed. Enrollment and Review reports LB23A, LB269A, LB407 as correctly engrossed. Enrollment and Review also reports LB195, LB198, LB199, and LB200 to Select File, some of those having Enrollment and Review amendments. (Legislative Journal pages 1332-1333.) [LB561 LB23A LB269A LB407 LB195 LB198 LB199 LB200]

Mr. President, pursuant to the division this morning, Senator Coash's original AM865 has been divided. The first component, Senator, is AM1367--AM1367. (Legislative

Floor Debate
May 13, 2013

Journal pages 1318-1322.) [LB543]

SENATOR KRIST: Senator Coash. [LB543]

SENATOR COASH: Thank you, Mr. President. Colleagues, I'll briefly explain. First of all, we've got three amendments. Everything that was in my original amendment is one of these three, okay? So we're not taking anything out; we've just divided it. That was the request from Senator McCoy and that's resulted in three separate amendments. You put them all together, they equal what we had previous, but they have different areas of subject matter and I will tell you what AM1367 does briefly. The first thing that it does is it strikes reference to the criminal violation for which death may be imposed. It amends the section to change the penalty of a Class I felony from death to life imprisonment without possibility of parole. It amends another section, the first-degree murder statute, to remove from this section the ability to convict for a first-degree murder offense a person by willful and corrupt perjury or subornation of the same he or she purposely procures the conviction and execution of an innocent person. And we do that because as the penalty is being repealed under this act, a person would not be able to procure a conviction and any execution going forward. It amends Section 4 which strikes the word "therein," and replaces it with "in the information." It amends Section 5 which creates a new section to provide that only that subject of the constitutional power provided to the Board of Pardons a person sentenced to a Class I felony shall serve a time of life imprisonment without parole. Section 6, it adds new language clarifying that the changes made by this bill shall not restrict or limit the ability of the court to order restitution in cases other than a first-degree murder conviction or restrict the ability of the Department of Corrections to determine appropriate security considerations for confined offenders. It adds new language requiring death sentences issued prior to the effective date of this act which have not been carried out, to be changed to life imprisonment without the possibility of parole. And finally, it amends a section which provides for medical parole to replace those sentenced to death to those who have life imprisonment without parole. It amends the section that says somebody with this sentence cannot go to the Work Ethic Camp, and it rewrites some of the other technical language. So that is what AM1367 does. It is the meat, the heart of the repeal. The other two amendments that will follow address different components of this. But here's where I want to talk to you, colleagues. We are where we are on this and I want to talk procedure for a moment because I want to wait for a time to explain how this fits with other bills that we have debates on. There are some sound reasons to question this use of the death penalty. They're legitimate concerns, colleagues. We've got concerns about geographical disparities. We've got concerns about application. And many question whether it serves as a deterrent. We certainly have a bunch of appeals and I guarantee none of us want to execute an innocent person. But what we have in place right now is imperfect. Colleagues, it's just like we are; we're not perfect. Senator Harms and others talked about some gut-wrenching stories of crimes that have been committed against innocent people, defenseless members. And when we hear those stores that Senator

Floor Debate
May 13, 2013

Harms talked about, if you don't have a response that says that deserves justice to those atrocities, you don't have a heart. But what we want to do is we want to find a just response to an imperfect world, and we're just not there. How are we going to achieve this, colleagues? How are we going to achieve justice? Some of us have talked about faith, and I have left that out of the debate but I'm going to throw it in because it applies to this debate. I don't believe that justice ultimately lies with us but I do believe our laws have to be based on moral ideas that go beyond our imperfections, our ideals, and reflect that what we as human beings aspire to be is who we were created to be. And the moral principle I believe is most fundamental to forming these laws is the recognition that life is sacred, every life, from the moment of conception to death. And it is not our decision to give that life nor should it be ours to take it away. And every one of those lives deserves protection under the law. Every one. Some day the hearts and minds of the citizens, those in this Chamber, are going to change. And we're going to recognize the truth of that principle when it comes to the unborn life, but it is because of that, that I have to continue to vote for repeal. Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Coash. You've heard the opening on AM1367. Those wishing to speak: Senator Harms, Scheer, Pirsch, Wallman, Cook, Janssen, and others. Senator Harms, you're recognized. [LB543]

SENATOR HARMS: Thank you, Mr. President and colleagues. I want to take a moment this afternoon to talk a little bit about deterrent. And as we look at these...breaking this down into different divisions for review, I did want to talk a little bit about...that I've heard the discussion on the floor that we don't really believe that the death penalty does any deterrent. I want to just quote some studies for you that says just the opposite of that. In 2003, the American Law and Economics Review study indicates...and the title of that study was, "Does Capital Punishment Have a Deterrent Effect?" And I quote: Our results suggest that capital punishment has a strong deterrent effect; each execution results, on an average, in 18 fewer murders. And in 2006, the Stanford Law Review article entitled, "Is Capital Punishment Morally Required?" And I quote: A leading national study suggests that each execution prevents some 18 murders, on an average. So when you look at that, regardless of how we feel, what the research shows us, that it does, in fact, have an impact. And I'm sure there are other studies that I just didn't have time to find that will also support this. Those are pretty legitimate studies done by legitimate organizations that brings this about. Now let me take a moment to just talk to you about the argument about the fact that life imprisonment or life without parole will stop endless appeals. Colleagues, we're kidding ourselves. That, in fact, is not correct. That's not going to happen. No matter what we say, there is no reason to believe that these people sentenced to life imprisonment without parole will file any fewer appeals. Show me anywhere in any of these states that have gone through this process whether they have less appeals or reduced litigation costs. I don't think you're going to find that. It's not going to reduce litigation costs than death row because the convicts are always looking for and will continue to look for the lower rung of ladder to freedom, no matter

Floor Debate
May 13, 2013

what it is, no matter who it is. So let's don't kid ourselves that we think that this is going to be in the end results. It shouldn't be about money, but I don't think I can tell you...we're not going to save any money by doing this. And they will continue to make the appeals, they will continue to look for freedom. Let me give you some other data done by our own Attorney General's Office on the number of appeals. James Sherrod (phonetic), first-degree sexual assault, second offense, habitual criminal: 26 appeals. James Hall, second-degree murder: 15 appeals. Ernest Harper, first-degree sexual assault, robbery: 15 appeals. Arthur Lyle (phonetic), first-degree murder: 12 appeals. My point is they are going to do it; it is going to cost you money; and it is not going to make that much difference in regard to what happens into our court structure or our court system and through the appeal process. If you want to really deal with the appeal process, just limit the number of appeals, cut it back, and you won't have 25 appeals or 15 appeals or 11 appeals. If you're worried about cost, that will take care of that issue. Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Harms. Senator Scheer, you're recognized. [LB543]

SENATOR SCHEER: Thank you, Mr. President. I have not rose yet today to speak. I had my light on this morning and took it off, and then I put it back on and have had to wait approximately a little over two hours to speak again. First, I have listened very closely, and, as it probably is no surprise to anyone, I am in favor of the death penalty. I'm opposed to LB543. But what I've heard a lot about today talks about what has happened in other states and in New York and in Oklahoma. We can't do anything about those states, we can only do what we can do to ensure equal justice in the state of Nebraska. We have not had problems in Nebraska. We don't have anyone sitting on death row that has ever questioned their guilt. They will look at technicalities to try to reduce their sentence. And their attorneys should do so; that's what they get paid to do. We've had a lot of talk about the deterrent or the retribution. We can argue that because there is no answer; there is no finite. But what we can know for certain is that the death penalty is not retribution, it is not a deterrent, but it is a punishment for the act of killing someone. It can be justified by those other means, but it is truly the punishment. We can talk about costs. All justice has costs. And probably one of the reasons ours have a larger cost is because we have not heard about stories about Nebraska's judicial system like we have in New York or Arizona or Oklahoma, because we do afford our prisoners and those that are accused adequate counsel to make sure that they are not convicted for falsely doing something. DNA has changed a lot of things, especially in the judicial area. And I guess my final point that I just am at a loss for is we keep talking about that we have to do away with the death penalty because the system is broke and it's unfair. And this is my first year, so I am somewhat of a rookie in this extent, but I have not heard us talk about any other problem on the floor that we have failed to address and tried to find solutions for the problems. We've talked about the juvenile judiciary problems. Senator Ashford has brought forth a couple things that will improve

Floor Debate
May 13, 2013

that, I'm sure, dramatically. I'm not an attorney; I wasn't aware of the problems. But we didn't turn our back on those. We've had lots of problems that have come in front of this body this year, and not once did I ever hear anyone talk about: It is just so screwed up, let's just drop the whole thing and forget about it. But yet this is the rationale that we have for discontinuing the death penalty. Now we can have an argument, if you have a belief...your political beliefs, your religious beliefs, all those are fair game; we all get here from a different path, I understand that. But if indeed our judicial system is as broken as we say, then shame on us and shame on you that have been here for years for not changing it or at least attempting to change it. Don't let it continue to be broke so we have an excuse to do away with something. That's wrong. That is just as wrong as those that accuse the system of being wrong. [LB543]

SENATOR KRIST: One minute. [LB543]

SENATOR SCHEER: So regardless, think about this, we will still have murderers, and we still will have trials. And if the system is that bad, we should be changing it to make sure that we don't incarcerate anyone, regardless if the ultimate penalization of death is awarded to them; we should be changing the system so it functions. So shame on us if we don't do anything. And having said that, I would expect something in January to be coming forward, not just from Senator Christensen but others, that would help the judicial system improve its mechanisms. We should be doing something to solve the problem. Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Scheer. Senator Pirsch, you're recognized. [LB543]

SENATOR PIRSCH: Thank you, Mr. President. Members of the body, the topic of the death penalty is a very serious topic, one of primary importance, and I think it is altogether appropriate for this body to address this. As we talk about the death penalty, I feel it would be more useful and helpful if we were to focus our attention on how the penalty is used in our state, Nebraska, in particular. We are fundamentally different and distinct from other jurisdictions. And the evolution of this penalty in the state where we are now differs greatly from other jurisdictions and just kind of is an illustration of...you can see, from 1976 to, I think, 2007, the death penalty was implemented in Texas in some 382 instances, which in one year alone...24 instances, I think, in 2006. Well, you can compare that to the state of Nebraska, which, as compared to 382 executions, there was 3 total throughout those years and none at all in the year 2006, by comparison. So we're talking about apples to oranges if you're talking about national problems that may or may not exist. So I think it's more helpful that we direct our remarks to the particular state and how it exists here today. I do appreciate the comments. With respect to the...there are many subcategories with respect to this issue. And with regard to the subcategory of actual innocence, I believe it is a very important category and one we need to address. But I do focus that question. Other

Floor Debate
May 13, 2013

states aside, is that actually an issue right now in the state of Nebraska, in light of the safeguards that have been put in place over the last decade, and even before for that matter? With respect to...I have somewhat of a concern when issues are brought with...one case in particular, the case of Jeremy Sheets in the murder of Kenyatta Bush. The fact that he ended up not going to jail and not being retried, to my mind, in looking at the facts of the case, do not indicate that he was an innocent individual convicted unfairly. But rather he, in my estimation, was a guilty individual who, because of the safeguards of the system, got off and is...so I think we have to be careful in how we address that. With respect to the issue of deterrence, there is, of course, two types of deterrence: specific and general. Specific, pertaining to that individual who has, you know, committed murder and then would be incarcerated. And I think Senator...the point that was brought out and that I think Senator White had agreed with in earlier years, that with regard to some individuals, specific deterrence is an issue. With respect to general deterrence, I know there was a comment that was put forth earlier on the floor that there really is no, in this day and age, disagreement with the fact that there is no deterrent effect. And that just flies in the face of information that I have received. I have received at least several studies that would indicate a "different." So, at best, you can posit that it's in controversy and that you disagree with several studies that suggest that. But... [LB543]

SENATOR KRIST: One minute. [LB543]

SENATOR PIRSCH: ...2003, Emory University Economics Department Chairman Hashem Dezhbakhsh and Emory Professors Paul Rubin and Joanna Shepherd state that their results suggest that capital punishment has a strong deterrent effect. There's a number of others: a 2003 Colorado-Denver study, a 2001 University of Houston study, 2001 SUNY Buffalo, 2003 Clemson, another 2003 Emory study, a 2005 review of Illinois state data. So I think it's...undoubtedly, that it is in contest, at best, but there are studies that suggest that it is a deterrent effect, common sense aside. I know that there's a number of other issues; I'm going to... [LB543]

SENATOR KRIST: Time, Senator. [LB543]

SENATOR PIRSCH: ...use other occasions to address those. Thank you. [LB543]

SENATOR KRIST: Thank you, Senator Pirsch. Senator Wallman, you are recognized. [LB543]

SENATOR WALLMAN: Thank you, Mr. President. Good afternoon, colleagues. This is...we're going here for...first, Senator Coash, I appreciate him and Senator Chambers and Senator Ashford bringing this forth. And we're leaving out a certain portion here, are the victims. Trust me, if you're on death row, you're going to have lots of appeals. And college students and all these people make sure that they try your cases and find

Floor Debate
May 13, 2013

mistakes, and there would be another appeal and another appeal. And I really appreciated Senator Seiler's remarks that it's hard on the victims, and it costs the victims. And then you make death penalty deals; you know, you're going to get the death penalty unless you squeal on this person or that person--I think you all know we went through that in our county--because they don't tell the truth. If it's two or three or four people in a gang or something, they're going to point somebody out to get away from the death penalty, so that person may be free the next day or the next week. So you talk about justice for all? We're not capable of that, folks. I don't complain about our judicial system; we just are not capable of being perfect in the judicial system when it's hard to find truth, nothing but the truth. And it always will be. And so that's why we have to be very careful what we do and think about the person that gives the shot or pulls the lever. These people also have mental anguish. And so we're not even talking about them. Should we be? We as a state are telling them to kill somebody. So unless we, each one of us individually, would like to do that ourselves...I could think that if I wanted to do something like that, I could see where it would be a member, could be a member, or would be a member of the family who requests this to happen. And then it would probably happen. But as it is now, with professional jury selection, trial attorneys, court-appointed attorneys--some are a lot better than others--some public prosecutors are very, very good, to further their careers, in putting somebody in jail; that's how they get where they're going. So it is not necessarily for the justice for all; it's justice for the few. And it'll always be that way. If you can afford to hire a very high-powered attorney...look at O.J. Simpson, some of those. And did they spend much time in prison? No. Should they have? It's up to you; you're the judge and jury. Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Wallman. Senator Cook, you are recognized. [LB543]

SENATOR COOK: Thank you, Mr. President. And good afternoon, colleagues. I rise in support of AM1367 and LB543 and reaffirm my support of repeal of the death penalty in the state of Nebraska. It is my hope, along with many of you, my colleagues, that we can bring this to a vote on the issue today or as soon as possible. I feel very fortunate to represent a district, Legislative District 13, where this issue of repeal of the death penalty is very clear. My constituents support repeal of the death penalty and recognize the facts as they relate to access to adequate representation, the accompanying sentencing disparities, and the fact that the death penalty here in this state and in the United States and around the world has been recognized not to deter crime, violent crime, and other reasons why it might be applied. We've talked, made reference this morning about different violent crimes visited upon people around the state. I also rise with the personal knowledge that demographically I probably am the best representative in the room of the person most likely to be a victim of a violent crime, in terms of a murder. The statistics in terms of people being victims are, I won't say primarily, but disproportionately people of color, and they are women. We've heard people talk about

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
May 13, 2013

people being...young people being abducted in their daily rounds or other violence that's been visited during the perpetration of other crimes. What I have not heard yet today or at any time, really, in the last few months as we have discussed justice issues: the fact that domestic violence exists. In most cases, I would say more than half of the cases, murder is the final act of domestic violence. Once again, I rise in support of AM1367 and the repeal of the death penalty in our state. It really does not make us any safer. I say that, once again, as somebody who has lived in Nebraska for most of her life, has lived in neighborhoods where a great deal, unfortunately, of violence, gun violence, occurs, property crime. We've had this law on the books; it doesn't make people living in neighborhoods any safer on a day-to-day basis. I would like us to repeal the death penalty and invest our time as a Legislature in creative and innovative ways to ensure that the people who live in this state, visitors to our state can thrive and enjoy their lives here. Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Cook. Mr. Clerk, items for the record? [LB543]

CLERK: Yes, Mr. President, I do have some items. And then I have an amendment to the amendment. Enrollment and Review reports LB194 and LB536 to Select File. I have amendments by Senator Mello to LB200, LB198, LB195, LB199. Senator McGill offers two study resolutions, LR189 and LR190; those will both be laid over. A new A bill (Read LB216A by title for the first time.) And Senator Nordquist has filed motions with respect to LB553 and LB553A, that those two bills become law notwithstanding the objections of the Governor. (Legislative Journal pages 1333-1337.) [LB194 LB536 LB200 LB198 LB195 LB199 LR189 LR190 LB216A LB553 LB553A]

Mr. President, back to LB543, Senator Carlson would move to amend Senator Coash's amendment. (FA77, Legislative Journal page 1337.) [LB543]

SENATOR KRIST: Senator Carlson. [LB543]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. If LB543 passes, I really believe it's important that we extend our concern about not ending life, about protecting life, about the sanctity of life of the guiltiest of the guilty in our country. LB543 is an effort to value life of the worst of the worst in our society. And if this is done for the guilty in our society, or in our state, something must be done for the innocent in our state, especially those that are incapable of protecting themselves from forced invasion when they are helpless. In the last 63 years in Nebraska, we've put three people to death for terrible crimes for which they were guilty beyond any doubt. And since 1990, there have been 92,163 reported killings of innocent unborn babies in Nebraska. Three as compared to 92,163. Where's our concern and focus on the killing of these 92,163 individuals? I think our focus is way short of what it should be for the viable unborn as well as those born. And my amendment is not an attempt to be unconstitutional, it's not an attempt to destroy this bill. But what it simply does is reinsert

Floor Debate
May 13, 2013

some of the wording that Senator Chambers had in the green copy and I've added a couple of words. And so on page 1 on AM1367, and after Section 1, it inserts, "Life is the most valuable possession of a human being. The state of Nebraska should exercise utmost care to protect its residents' lives, born and unborn, from homicide, accident, and arbitrary taking by the state." So, certainly, in addition to what Senator Chambers had in that first statement, it adds, "born and unborn." And I would ask that you support FA77 to AM1367. Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Carlson. You've heard the opening on FA77. Those wishing to speak: Senator Janssen, Nelson, Lautenbaugh, Brasch, Price, Burke Harr, and Conrad and others. Senator Janssen, you are recognized. [LB543]

SENATOR JANSSEN: Thank you, Mr. President and members. And I wasn't prepared to speak on the floor amendment, so I won't. And I really, kind of, want to follow up on where I was at this morning in discussing the overall issue of LB543, although at that time I was also discussing a bracket motion. I think Senator Gloor referenced that we get many things, many handouts, from Senator Chambers. And while that's true...and you glance at all of them, you read some of them, some of them you laugh at, some you read more in depth, some you don't. The one handed out today very much so caught my attention, and I spoke to it earlier this morning. And he, Senator Chambers, highlighted a couple of things in there, and I wanted to read those as well. From Lincoln, 7-18-96: A single tear may have run down John Joubert's right cheek as a state prison official sheared his hair Tuesday night in preparation for his death in Nebraska's electric chair. Quote, they...Senator Chambers' quote, which he underlined for us: They've sentenced you to die; don't let them take anything more from you than your body, Chambers said he told Joubert; you've got to keep your dignity, you can keep them from taking that; you can't falter or waver, you can't faint or fight; you can't give them anything; Joubert's face twitched slightly and his eyes seemed to moisten, but he shed no tears as they talked, Chambers said. As I spoke this morning, those children that were murdered were the same age as myself. As I said this morning, they may very well have been standing here with me or been off on to careers and with families of their own. And I wonder to myself, the tears of those three children that we know of, the tears that they felt, the tears that their family felt, the tears that their family still, still to this day, feels, knowing not only that they'll never get to see in this world those children again but the way they left this world, carvings on their body, teeth marks on their body, and I won't go any further with that, but it does get more gruesome. And those weren't the only children that something was stolen from. I can think of children my age who did shed tears--I can think of one standing before you--of fear, of, could they be next? It was that close. To me, Omaha, from where I lived, was not that far away; it still isn't. To see that every night does something to somebody at a young age. There was innocence stolen from many children. Probably some children weren't allowed to watch TV--if you want to call somebody a child at 12, 13 years old--probably for good reason, maybe not. But I hustled home every day, like I said, out of fear. And I did watch TV,

Floor Debate
May 13, 2013

and it was covered quite extensively... [LB543]

SENATOR KRIST: One minute. [LB543]

SENATOR JANSSEN: ...what went on. Thank you, Mr. President. So think of the tears that were shed just there. I would also like to talk...we talked about the finances of this. Okay, we're talking that justice has a money issue now. Well, if you want to look at it, two of these children that were from Nebraska were paper route...usually enterprising young men take on a paper route at a young age, taking on a job. Average income would be \$4.4 million per, for a lifetime, just if we want to talk income. It's \$13.2 million for three children that were killed, that would have most likely went on to have families, been citizens, taxpayers, and the all. So if we start talking about money and about justice, let's play it both ways. Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Janssen. Senator Nelson, you are recognized. [LB543]

SENATOR NELSON: Thank you, Mr. President, members of the body. I stand here in support of FA77 by Senator Carlson, although I am opposed to AM1367 and LB543. I'd like to take you back to November of 1959, when in a farmhouse in Holcomb, Kansas, four members of the Herb Clutter family were executed by two ex-convicts. The two ex-cons, thinking that there was a safe in the house, entered the house while the family was sleeping, woke up Herb Clutter, and demanded money. He gave them a few dollars; that's all, he said, that there was there. They ransacked the house, couldn't find anything more, so they woke up the entire family. When law enforcement arrived, Herb Clutter was found sprawled on a mattress in the basement, with his throat slashed and a shotgun fired into his head. His hands were bound, and his mouth was taped shut. On a couch in an adjoining room, Herb Clutter's 14-year-old son, Kenyon, was found bound, gagged, and shot in the head. In separate upstairs bedrooms were the bodies of Bonnie Mae, his wife, and the daughter, Nancy, age 15. Bonnie had been bound and gagged, Nancy only bound; each had been shot in the head. Within seven months, the sentence of death was imposed on the two of those ex-convicts; and five years later they were executed by hanging, in April of 1965. And I assume, during that five-year period they exhausted their appeals. Senator Coash felt complicit in the death of the young man that was--and I can't think of his name right now--from Bellevue...no...it was Walkin' William Otey. That's right, Walking William Otey. Felt complicit in that death. As far as I was concerned in 1959, I was eternally grateful that those two ex-cons didn't come 100 miles north into Nebraska and execute my father, mother, my sister, and me. I'm also grateful that Walkin' Willie didn't go a mile farther north, over Pacific Street, where my wife might have been home. And we know the atrocities that he perpetrated. So that's how I came to oppose the death...or in favor of the death penalty and oppose repeal. I only want to mention one thing here, and that's the argument we've heard about the excessive costs. On our budget for 2014, we have allocated \$166,798,000 for

Floor Debate
May 13, 2013

the correctional system. And for 2015, \$170,604,827. You want to compare the cost of a few appeals to the overall cost of our correctional system? And from 1995 up to 2065 (sic), the population increased 34 percent, and it's come even more, because even with the budget that we passed, we also know that there's an extra allocation of \$4 million in additional payments that we had to authorize from the committee. [LB543]

SENATOR KRIST: One minute. [LB543]

SENATOR NELSON: We do complain about costs. But in the overall picture of things, the cost of these appeals--as many of them that are taken, as many that are possibly frivolous--it's a cost that we have to bear to make sure that justice is done. I believe in justice, and I think there are others on the floor that will talk about that. And I may talk about it myself at a later time. But for the time being, I don't think cost should be a factor or an important part of our argument. It's justice that we're after, justice as part of our judicial system and on behalf of our society and on behalf of the victims that have suffered the injustice at the hands of murderers. Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Nelson. Senator Lautenbaugh, you're recognized. [LB543]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I do rise in opposition to the underlying amendment, in support of the floor amendment, I guess, if it comes to that. And as I indicated before, there are several aspects of this matter and what has been said over the course of debate that I would like to address. And one of them in particular deals with whether or not the state of Nebraska has a valid, legally obtained supply of the pharmaceuticals used for an execution. There is one in particular, sodium thiopental, which I am going to just refer to as "the drug" so I don't have to try to keep avoiding mispronouncing that. There was a statement made earlier that the state is under an order not to use that. I don't believe that is currently correct. There were two gentlemen on death row who appealed, or brought challenges, based upon the use of these drugs for their execution. And the district court denied both of them. One of them has appealed to the Supreme Court, and that is pending. I think it was indicated that the supply had expired. That is also not correct. And there is a very long history here--and if I have to give it, I will--as to what the Attorney General's Office went through to obtain a supply of sodium thiopental. And there's been--I won't say there's been an impression given--there's been blatant allegations made that somehow it was done inappropriately or illegally or deceptively, with words to that effect. And I think it's important for you to know that that is not the case. Our Attorney General's Office and the Department of Corrections obtained permits, worked with the feds to get the proper permits, jumped through all the hoops they thought they were supposed to jump through. And I believe, ultimately, some people will be eating their words on this, but it becomes part of the ball of facts surrounding capital punishment. You're being told: we don't even have a means to carry it out; we don't have the drugs, they've

Floor Debate
May 13, 2013

expired. They have not. You're told: we are ordered not to use them currently. We are not under any such binding order to do that. These things just aren't correct; they just aren't true. And if we have to go into more detail as to the exact time line on that, I will at another time on the mike. This topic has long been on my mind. I can remember as a new attorney, fresh out of law school, I was at a panel discussion. There were two anti-capital-punishment attorneys that had represented Wili Otey and two prosecutors, a woman from the Attorney General's Office and a gentleman from the Douglas County Attorney's Office, who had prosecuted him. And they debated the death penalty, moderated by a federal judge. And I can remember one of the gentlemen opposed to capital punishment, in the middle of his presentation, gave us the benefit of a little aside, where he stood up and said: And you all need to understand this; I've been to death row, I've met these gentlemen; these aren't animals, these are just people, people who made a mistake. Think on that for a moment, because I surely did at the time as a brand-new attorney. People who made a mistake. Read the disgusting details of the Ryan case, and see if the word "mistake" comes to mind. Read about the Joubert case, and see if "mistake" comes to mind. Read about Wili Otey's case, and see if "mistake" comes to mind? [LB543]

SENATOR KRIST: One minute. [LB543]

SENATOR LAUTENBAUGH: We're not talking about lapses, of errors of judgment, here, folks. And we're talking about some of the same people who have been ardent opponents of capital punishment and have helped provide some of the information that we are talking about here. You have to understand that in some ways there's almost a "say anything" mentality here, as long as enough will stick to call into question the process, to make it appear that there's something unconstitutionally infirm or unsound with what we're doing, despite the fact no court has held that. And you have to be on your guard when you're told things like this on the floor, when you're told our Attorney General did this or some court has held that, because it isn't always true. If the courts had held these things, would we still be talking about this? If we really couldn't do it, would we still be talking about this? [LB543]

SENATOR KRIST: Time, Senator. [LB543]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Lautenbaugh. Still in the queue: Senator Brasch, Price, Burke Harr, Conrad, Christensen, Ken Haar, and others. Senator Brasch, you're recognized. [LB543]

SENATOR BRASCH: Thank you, Mr. President. Thank you, colleagues. I would like to yield my time to Senator Carlson. [LB543]

Floor Debate
May 13, 2013

SENATOR KRIST: Senator Carlson, 4:50. [LB543]

SENATOR CARLSON: Thank you, Mr. President. Thank you, Senator Brasch. Many of you may know that Kermit Gosnell was today convicted of three counts of first-degree murder for performing late-term abortions. And we're debating whether to get rid of the death penalty in Nebraska. You might say that the death penalty is too good for him. There's the worst of the worst. He did things to minority women and, actually, babies that survived the birth, then he saw to it that they died. That's why it's three counts of first-degree murder. That kind of thing is just a horrible, horrible blemish on our society. I recall when we went through this debate, Senator Chambers brought the bill, in 2007, my first year in the Legislature. And I woke up at 3:00 in the morning after listening to debate for two or three days and really thought: I have to speak on this. And I think that...I said that I looked back at, I believe, what...there were two atrocities in the history of our country: first one was slavery, second is abortion. And, as I indicated in introducing FA77, I'm not trying to be hostile to this bill; I liked the wording of Senator Chambers in the original. But I think it is vital that the state of Nebraska exercise utmost care to protect its residents' lives, born and unborn, from homicide, accident, and arbitrary taking by the state. And those that totally, totally ignore that, those that plan evil murders, that carry those out, especially on innocent children, should receive the maximum penalty. Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Carlson. Senator Price, you are recognized. [LB543]

SENATOR PRICE: Thank you, Mr. President, members. I hit my light a long time ago. Everybody wants to weigh in and talk about this, and I think that's good. At first, I wasn't supporting the bracket motion. I wasn't going to support it because it was brought by an individual who actually supported the underlying bill, therefore it said to me this was a parliamentary, slash, political maneuver, and I didn't want to support it. But, in the end, after listening to Senator Lautenbaugh, I did support the bracket motion that ultimately failed. I want to be clear, I do not support LB543. It was said the law is applied in a flawed manner, therefore it should be abolished and rewritten. We rewrite laws all the time out here on the floor without abolishing them. Were we to abolish every law that was not applied properly, where would we be? Is that too far-fetched? Perhaps. But did we establish an area where we say, at this point we'll no longer follow that process? I don't think so. I agree with Senator Seiler, saying this is not about money. The process was put in place by some of those people here; we support it, we swore to defend and uphold it. And that is just what it is, a process. And if it costs, it costs. We don't talk about money when we talk about the children; we go ahead and we do things; we try to do the best we can. Cost is not the driver here. What is a driver for me is the concept of consequence. It is not revenge; it is not anything born of that. It is, for me, personally, a consequence. The people who are found guilty go through a, as we've heard on the floor, a very lengthy process to say, are they capable of standing for the trial. They go

Floor Debate
May 13, 2013

through all the trial process, all the extra things put in place. And a consequence is what this is. Finally, I have the dubious distinction, at times a very good distinction, but in this case a dubious distinction, of being a graduate, in my high school that in its first graduating class, the first year, graduated Sharon Tate, who was murdered by Manson who is not going to get the death penalty. But I assure you, every time that is brought up for parole, or the story, the family and the community have to relive it. So removing the death penalty from our books will not stop it. That reason doesn't hold water, based on what we already know. So in...and with regard to FA77, I support that, if for no other reason than, as everybody said, we should try to do the best we can for the unborn. I've often pondered and thought we should at least give them the same appeal process... [LB543]

SENATOR KRIST: One minute. [LB543]

SENATOR PRICE: ...we give...Thank you. We should give these unborn the same appeal process we give those who have been found by their peers worthy to stand trial and convicted; there is no appeal process for the unborn. But we don't. With that, I agree with FA77. Thank you. [LB543]

SENATOR KRIST: Thank you, Senator Price. Senator Conrad, you are recognized. [LB543]

SENATOR CONRAD: Thank you, Mr. President; again good afternoon, colleagues. I did not have a chance at my earlier time on the mike to continue laying out the at least 40 different substantive and procedural grounds for appeal that are, again, only available in death penalty cases. And I want to make sure to complete that discussion. I think I got stuck on number 12, so I'll start there. Prosecutorial argument and attestations related to a prosecutor's personal opinion during an aggravation phase. Number 13: Prosecutorial argument the jury has a duty to impose a death sentence during aggravation phase. Fourteen: Prosecutorial argument of facts not in evidence during aggravation phase. Number 15: Insufficient proof for aggravation under Aggravator (1)(a), "The offender was previously convicted of another murder," etcetera, etcetera. Number 16: Insufficient proof for aggravation under Aggravator (1)(b). Number 17: Insufficient proof for aggravation under Aggravator (1)(c). Number 18: Insufficient proof for aggravation under number...Aggravator (1)(d). Nineteen: Insufficient proof for aggravation under Aggravator (1)(e). Twenty: Insufficient proof for aggravation under (1)(f). Twenty-one: Insufficient proof for aggravation under (1)(g). Twenty-two: Insufficient proof for aggravation under (1)(h). Twenty-three: Insufficient proof for aggravation under (1)(i). Twenty-four: Claims of juror misconduct during aggravation phase. Twenty-five: Jurors not adequately instructed on requirement that aggravating circumstances be found beyond a reasonable doubt. Twenty-six: Determination of whether defendant has mental retardation or intellectual disability and thus is ineligible for death penalty. Twenty-seven: Brady v. Maryland issues, failure to disclose mitigating

Floor Debate
May 13, 2013

evidence or other evidence material to punishment, which is a good reminder. Senator Scheer noted, well, why don't we reform the system to make it work better? My seatmate and good friend Senator Karpisek said, well, why don't we do something to limit these appeals and get rid of some of these grounds? Well, folks, there's that pesky constitution on both the federal and state level that doesn't allow that and a clear and comprehensive body of law that does not either. Twenty-six...I'm sorry, twenty-eight: Denial of due process and equal protection due to racially disparate application of the death penalty. Twenty-nine: Ineffective assistance of counsel during direct appeal of capital case on representation of aggravation and sentencing issues. Thirty: Determination of whether any of the trial court or three-judge panel ruling during the aggravation and sentencing phase were harmless error. Thirty-one: Improper denial of evidentiary hearing. Thirty-two: Statute of limitation on aggravation and sentencing phase issues. Thirty-three: Procedural default in aggravation and sentencing phase. Thirty-four: Inmate's competency, slash, sanity for execution under either the Ford or Panetti standard. Thirty-five: Challenges to death penalty as cruel and unusual punishment, classic Eighth Amendment challenges. Number 36: Challenges under Ring and Apprendi to the finding of aggravation by jury and imposition of death sentence by a three-judge panel, which, again, is unique to Nebraska. Number 37: Nebraska's capital sentencing scheme as improper inducement to waive a jury trial. Number 38: Endeman (phonetic) or Tyson questions on accomplice liability for felony murder. Thirty-nine: Failure of a three-judge panel in Nebraska Supreme Court to implement identical proportionality review. Number 40: The sentencer, i.e., judge panel, accorded an inappropriate wait to aggravation phase findings. Colleagues, again, when you hear from folks that there will be no savings in time and there will be no savings in state resources if we move to a viable alternative, which is represented in LB543 and which is life in prison without the... [LB543]

SENATOR KRIST: One minute. [LB543]

SENATOR CONRAD: Thank you...without the possibility of parole, you have to question those assertions, because just there in my last couple times on the mike I've been able to provide 40 separate and distinct grounds that are available for appeal only in death penalty cases, that don't exist when the sentence is different, that don't exist in a typical criminal case. So ask yourself...and that's not exhaustive. That's a quick list of some distinctions. That doesn't even take into account complications from federal courts. When folks say that it's not going to save us anything in time, it's not going to save us anything in resources, they are just not taking into account what the state of the law of the land is. Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Conrad. Senator Christensen, you are recognized. [LB543]

SENATOR CHRISTENSEN: Thank you, Mr. President. You know, I've heard several

Floor Debate
May 13, 2013

people talk about how there's this particular problem or that with the death penalty, that they could support it if it was changed. Again, as I've said earlier, I believe people on the pro side need to be more aggressive on changing things. I don't think just nixing something, instead of fixing it, is the right policy. If you don't like the death penalty not working, fix it. If you don't like the speed limits and people speeding, since people still speed, do we just take off the speed limits? If...you know, you could go on to example after example of doing that. You can just eliminate the law because people don't follow it or you don't like it or it causes more appeals or...it's just one of those situations. What do you really want to do? You know, it's time to take some proactive steps to fix it. DNA evidence, video appeals, as I've said before, will definitely, if they had to be in there to go to a death sentence, would eliminate any of them objections. It should eliminate...I've read two different things: that there are more people that are black or a different race than white being put up than the other; I've seen an e-mail saying that's not true. I haven't had time to investigate them. But I've always heard the opposite side Senator Chambers has used a lot of times in the committee. But the fact is, why aren't we correcting the problem? You know, why aren't we bringing it out? If somebody is discriminating out there, let's figure out how and why and get it taken care of. You know, the amendment up here, FA77, Senator Carlson's there, I appreciate. Life is the most valuable possession of human beings. The state of Nebraska should exercise the utmost care to protect its residents' lives, born and unborn, from homicide, accident, and arbitrary taking by the state. The fact is, the people on death row are there because they have taken life. They've given up their rights. When you are speeding down the road, you give up your right to free passage without being stopped. The State Patrol is not allowed to come out and stop you just because they want to stop you. But the fact is, they have to find you doing an offense: not having your car up to date, something that way. Same way here, these criminals got there because they have done something called a crime they got caught for. They have given up their rights; they deserve their punishment. That's what this debate is about: what is a just punishment? Unfortunately, the constitution, federally and state, don't allow it. But a just sentence would be to give them the exact same death that they caused on their victim. That would be justice, in my eyes. That would probably be the best deterrent you'd get from that angle too. They've given up their rights, folks, when they committed these crimes. [LB543]

SENATOR KRIST: One minute. [LB543]

SENATOR CHRISTENSEN: Thank you, Mr. President. That's why this is different. The pro-life issue that Senator Carlson talked about, whole different; you got an innocent one, versus "uninnocent." That's the whole different situation here. And that's why I appreciate the amendment and some discussion on that, because I believe it is justified and something we need to look at. Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Christensen. Senator Ken Haar, you are recognized. [LB543]

Floor Debate
May 13, 2013

SENATOR HAAR: Mr. President and members of the body, I won't get up too many times and talk on this, but I support repeal. And so I don't think anybody is convincing anybody at this point but to look at ourselves and why we stand where we stand. And there are two things I've tried to look at: one is the purpose, and one is the criteria. So, first of all, the purpose: What is the death penalty about? We've heard it gives closure to the victim's family, although other people have said otherwise. Punishment: And then is it for any murder, or is it only for the most heinous murders, and why the difference? Is it a deterrent? Is it about money? Does it save money or cost us money? And we've heard that probably the death penalty isn't good enough for some people, some murderers, and that we ought to do to them what they have done to their victim. Gee, wouldn't that be good reality television, to show somebody dismembered for the whole nation? Probably get rave reviews. So I have real problems ever trying to figure out the purpose of the death penalty, because as far as I know I've always been against it. And, again, trying to say on the mike right now why I am for repeal. And then you look at the criteria. So what is to be the criteria? And we've heard all kinds of things as well. Okay, and the law does recognize that we try to be as certain as possible if we as the government are killing someone. So is premeditation good enough? What about if someone is mentally ill? It was brought up earlier that if somebody is on the...if we catch them on video, that ought to be good enough. What if mental illness is involved? If we catch them on video, and even though they're, like, 5 years old, does age make a difference? Should that be sufficient purpose for the death penalty? What about if the victim's family wants it, or they don't want it? What if there's a confession? We saw in the Beatrice case that people confessed right and left and involved other people, but they weren't guilty. What about if it's racially biased or not? Should that be a criteria? Should it be gender biased? Should it be DNA required? Well, the trouble with that, too, is that there may be three people involved in a murder and they find the DNA of one person, or not, and then a group is involved by confession. So is DNA enough? What is the criteria? There's too many "ifs." If...if...if...and for myself...and I was very open about this as I campaigned, as I went door to door. Frankly wasn't asked about it very much, but it was in the newspaper because that's a question they always ask: Are you for or against the death penalty? I've always been very open that I would be for repeal, I would support repeal of the death penalty. And so those are just some of my reasons. What's the purpose? Everybody seems to have a different purpose. And what's the criteria? There are just too many "ifs." And then one "if" may trump another "if" may trump another "if." These are the reasons I support repeal and support LB543. Thank you very much. [LB543]

SENATOR KRIST: Thank you, Senator Haar. Senator Kintner, you're recognized.
[LB543]

SENATOR KINTNER: Well, thank you, Mr. Chairman. (Inaudible) follow up on something that Senator Lautenbaugh said. You know, murder is a premeditated moral

Floor Debate
May 13, 2013

choice to commit the highest crime on earth and to strike against God. And that would be Genesis 9:6, what is the basis for that comment. And I wanted to also follow up on something that Senator Janssen said a couple hours ago, because Senator Chambers handed out a fascinating Omaha World-Herald story about his involvement with John Joubert. And it says, "Chambers: Joubert May Have Shed a Tear"; that's the name of the article here. But I think we ought to really look at exactly what happened there, because it happened in Sarpy County, and, as Senator Janssen said, it really struck fear into young boys, 12-13 years old, who were delivering newspapers and going to school at that time, because, you know, for a while they didn't have the person that did it. But, you know, the first child that was abducted and murdered was on September 18, 1983, was Danny Joe Eberle. And there was a widespread search of the area conducted by local law enforcement. And they finally found this body on September 21, three days later, several miles south of Bellevue, Nebraska, early in the morning. His body was covered with cuts; he was bound. There was a number of stab wounds that appeared on his body, including one on the back of his neck. There was a wound that covered the full length of his back and that of his left thigh, approximately 11 inches wide, and it appeared as if it had been cut away clear to the bone. And it was estimated when he died he felt that; it was a slow, agonizing, and painful death. And then, you know, he wasn't the only one. But let's stay on that for another second, because the perpetrator here, John Joubert, actually talked about what he did; he's talked about it. He grabbed the young boy, put his hand over his mouth and a knife to his throat, and told him to come with him and not make any sounds. And the young boy said, "Please, don't kill me," and he struggled. And Joubert stabbed him in the back. And he stabbed him again a couple times. He then sliced the back of his neck. And when he stopped moving, he cut him one more time, on his leg, to make sure he was dead. The second young man he admitted to murdering was a young boy named Christopher Walden; he was 12 years old. And his body was found by hunters during a late afternoon...he was abducted on Friday, December 2; his body was found on December 5 by hunters near Giles and Cornhusker roads in Sarpy County. His body exhibited a number of stab wounds, his throat was slashed. And we actually have what happened there; as it was described: Joubert knelt on Walden's chest, started strangling him; Walden began to struggle. According to Joubert, he looked like he was in pain; he kept struggling to get away. [LB543]

SENATOR KRIST: One minute. [LB543]

SENATOR KINTNER: Joubert took out his knife and stabbed him. Thank you...stabbed him a couple times in the back and then sliced his throat. When Joubert thought that Walden was dead, he sliced his stomach a couple more times just to make sure. Joubert then left the area, drove straight back to his barracks--he was stationed at Offutt--he threw the knife in the dumpster and went back to his room and went to sleep. This was not disputed. He admitted what he did, and, of course, he was electrocuted for it. These are things we're talking about; these are not good people. They're not people

Floor Debate
May 13, 2013

that we want around. And, you know, this is an example of why we should have a death penalty in this state. Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you. Senator Schumacher, you are recognized. [LB543]

SENATOR SCHUMACHER: Thank you, Mr. President and members of the body. If there's anything good about having a cold, it makes you not inclined to talk too much. But I would like to spend a couple minutes here looking at this issue from a technical point of view, a little bit of philosophical point of view, and then a practical point of view. From a technical point of view, on page 1 of AM1367, we strike out "life imprisonment" and substitute in "life imprisonment without possibility of parole." Presumably, this language change adds some punch to the penalty of life; I'll talk about that in just a second. Page 3, it talks in terms of "informations" filed with the "court having jurisdiction of the offense." An offense has only one information; an information can have many offenses. I think that is a minor, technical thing that in some other cases we'd be arguing about the quality of the English language. Finally, on page 4 it says that in any criminal proceeding it's the intent of the Legislature that such penalty be changed to life imprisonment without possibility of parole, that is, if they're sentenced to death now. Seems to me, to the extent life without the possibility of parole adds any punch to it, that's a penalty that did not exist at the time the offense was committed and may be possibly challenged for being ex post facto legislation. Philosophically, the reason for the death penalty...the highest reason for the death penalty and often why it's associated with treason is the preservation of the social superstructure. That's historically been espoused, for example, in the church, which closely associated throughout time with the state. Pope Leo X in 1520, in an encyclical called "Exsurge Domine," condemned Martin Luther for preaching that the burning of heretics was against the will of the Spirit, as did...on the part of the state, Joseph Stalin called, "Death solves everything," in defense of the utilization of the death penalty. That being said, we have to go to more practical considerations of why we might keep the death penalty. Criminologists have cited four. One: isolation or incapacitation of the perpetrator, keeping him from doing it again. The death penalty is not needed in that realm. Second one is rehabilitation. What are we going to rehabilitate somebody for? Do we want them to make prettier license plates, or what? Rehabilitation doesn't apply. Retribution: that social satisfaction of an eye for an eye. That ties us a bit to the past. And nobody has ever been brought back to life because of retribution, nor has any pain been alleviated. So that leaves us with the fourth and final thing, of deterrence. And in this particular thing is where my thoughts of perhaps supporting abolition of the death penalty begin to severely wane. I doubt very much that, when it comes to murder, the death penalty has much deterrence itself. It's either a cold-blooded killer or somebody whose mind-set is such that they probably are not thinking down the road very far when they do it. So let's look at when we do authorize the death penalty. We authorize the death penalty in those cases where somebody is killed purposely, with deliberate and premeditated malice, or in the perpetration or attempt to perpetrate any sexual assault in the first

Floor Debate
May 13, 2013

degree... [LB543]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: One minute. [LB543]

SENATOR SCHUMACHER: ...arson, robbery, kidnapping, highjacking of any public means of transportation, burglary--note in here it does not say "unlawful abortion"--or by administering poison. I think that many crimes in that category are committed by groups of people or people in association with other people; and to the extent the non-most-active participant, the getaway car driver, begins to have second thoughts, it's an opportunity for them and maybe an incentive for them to call the cops and abort those serious felonies. And it's that issue of deterrence that hangs me up in supporting the repeal of the death penalty. Deterrence of these associated crimes...and it doesn't take very many rapes solved or many robberies to make you think that maybe the thing still has some good. Thank you, Mr. President. [LB543]

SENATOR GLOOR: Thank you, Senator Schumacher. Senator Bloomfield, you are recognized. [LB543]

SENATOR BLOOMFIELD: Thank you, Mr. President. Good afternoon, colleagues. Those of you that were here the last time we discussed that may or may not remember me saying that this is a particularly tough issue for me. My mother told me as long as I can remember, up until her death when I was in my early 20s, that the state should not take away a life until we had the ability to give it back. That may have been good counsel. I have, as I've grown into adulthood and matured, strayed from that counsel. I'm sure Senator Chambers will tell me, "You should listen to your mama." I cannot at this point any longer listen to that. There have been too many innocent people killed by people where there is no doubt of the guilt for me to stay with that position that my mother had. I think when we have DNA that we did not have back in the Starkweather days, when we have video cameras everywhere, I rather like the idea that Senator Christensen proposed back there. I believe we maybe should look at modifying the death penalty to where there needs to be video evidence or DNA evidence before you can get the death penalty. So I cannot support LB543, nor can I support AM1367. I do, however, fully support FA77. I think it's a good idea to tell people, let people know that we value life. If we get to a vote on LB543, it will still not be an easy vote for me. But I will vote to uphold the death penalty. And if Senator Lautenbaugh would like any time, I would yield to him. [LB543]

SENATOR GLOOR: Senator Lautenbaugh, 2 minutes 33 seconds, Senator. [LB543]

SENATOR LAUTENBAUGH: Thank you, Senator Bloomfield. And I have to confess, you caught me off guard there a little, but I know there are plenty of items to touch on,

Floor Debate
May 13, 2013

on this matter, that I have not probably have not touched on and meant to. Again, you heard some cite stories that seem to establish...or studies, I should say, that seem to establish a deterrence effect. I think the most that people who deny a deterrence effect say or can say is that it can't be established. But, as some of us have cited, a few studies seemed to demonstrate that there is a deterrence effect. And we've heard anecdotal discussion of that, as well, and that may be the best we can do. But I think just relying on what you know to be true, and some of those comments that Senator Schumacher made, as well, would suggest there has to be a deterrent effect associated with this most severe of penalties. And I don't know if we can have it both ways or should try to have it both ways. Yes, it's a long process. It's a very long process between sentencing and execution. But I don't think there's anyone in a position to say that anyone that we have on death row is there erroneously or inappropriately or that we've ever, in Nebraska, executed anyone who was innocent. [LB543]

SENATOR GLOOR: One minute. [LB543]

SENATOR LAUTENBAUGH: I don't think anyone makes that case. And the history of the last few years, or few decades, certainly has seen an improvement in technology, improvement in investigative techniques, and the chances of a wrongful conviction taking place in a capital case decreasing dramatically and not being found out on appeal and overturned on appeal decreasing dramatically as well. As we move ahead with what I would call more and more certitude and examples of anybody...I don't know that you can actually point to, as one study tried to point out, the number of people that have supposedly been wrongfully sentenced to death row. Most of them were overturned on technical issues, not found to be actually innocent. [LB543]

SENATOR GLOOR: Time, Senator. [LB543]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB543]

SENATOR GLOOR: Thank you, Senator Bloomfield and Senator Lautenbaugh. Senators in the queue: McCoy, Scheer, Ashford, Nelson, Brasch, Lautenbaugh, Conrad, and others. Senator McCoy, you're recognized. [LB543]

SENATOR McCOY: Thank you, Mr. President and members. I want to respond to a few things that were said earlier today that, I feel...and I haven't had the opportunity to respond to. I think Senator Lathrop said...again, Senator Lathrop said in his first time on the microphone that the question is, is the institution of the death penalty serving the people of Nebraska? And he went on to say: These people did--speaking of those, the 11 that are on death row currently--these people did some awful things; we can stipulate that and then move on to other issues. I can't move on to other issues, and the reason for it is--we'll talk about in a later amendment as one of the divided three amendments from Senator Coash--this bill, LB543, seeks to be retroactive to those who are currently

Floor Debate
May 13, 2013

on death row. We heard Senator Kintner outline earlier some of the awful, awful actions of John Joubert. And Senator Avery said earlier, the debate today isn't about the 11 inmates who are on death row, and I respectfully disagree. It is and always will be, because it must be. You can't talk about this issue, you can't wrestle with it in your mind and in your heart without considering and weighing the crimes of these 11. And it's particularly timely talking about FA77 this afternoon. You have to weigh the actions of someone like Dr. Kermit Gosnell, Pennsylvania, Philadelphia, who was convicted this afternoon, as Senator Carlson said, of three counts of first-degree murder of defenseless babies. He's had his day in court to be found guilty. Now he'll have his day in court on a sentencing phase. The minimum that he will serve, as all of you will note, if you look at the news outlets this afternoon, is three life sentences, the minimum. And prosecutors will likely seek the death penalty because the death penalty exists in the state of Pennsylvania. I want to go back to something that I started to talk about this morning. I think it's particularly appropriate of where we are in the discussion this afternoon, and it's comments on the floor by former Senator Tom White in 2008, March 25, on the repeal--I think it was LB708 that year--repeal of the death penalty. Senator White said: My religion teaches though that killing is permitted in one circumstance, and that is to defend the life of innocent people, yourself, or others. That is the only time killing is permitted. And again, speaking about the underlying bill: I cannot support this bill because, though not frequent, there are substantial examples of inmates who simply remain too dangerous to be left alive. That the man who is in prison and has a right to find salvation and life in prison and not be afraid that he will be killed in his cell, the guard trying to keep society safe... [LB543]

SENATOR GLOOR: One minute. [LB543]

SENATOR McCOY: ...not be worried that a murderer who will never get out can murder and murder again without any additional consequence, that the justice system, as imperfect as it may be, cannot be corrupted by people committing murders from prison to avoid punishment. Given that in my experiences, I cannot vote for this. But I remain committed that, should Senator Chambers or anyone else ever propose that the death penalty be reserved for only those for people who, after conviction, are sentenced by a jury which finds specifically that, despite life imprisonment, they remain too dangerous to be left alive, in those circumstances, I do support the death penalty. This isn't a partisan issue. This is a gut issue for every one of us. Thank you, Mr. President. [LB543]

SENATOR GLOOR: Thank you, Senator McCoy. Senator Scheer, you are recognized. [LB543]

SENATOR SCHEER: Thank you, Mr. President. I rise just so speak to FA77 and my support of such amendment. I would make note that I am not supportive of LB543, Senator Chambers' bill. But I do recall Senator Chambers on more than one occasion

Floor Debate
May 13, 2013

on the floor this year making the comments that, even if it's a bad bill, if something makes it better, that you need to learn to support that. And I don't know that LB543 won't pass. And so, if it might pass, certainly not with my support; but if it does, I hope to make it a better bill. And by doing so I am supporting Senator Carlson's amendment, FA77. I think it does bring to light those things that are important to not only Senator Carlson or myself, but to a great deal of those in the state. It also troubles me, and I guess I would state that because it takes so long to get in. Senator Lautenbaugh was cut off on his time, and so I might have a few seconds left at the end if he would care to have it. But it does disturb me, as well, that we have an important issue in front of us and reminds me so much of our discussion on the state aid. This is a very important issue. And when I look in front of me and when I look in back, I see maybe 15 or 20 percent of the senators here listening. And, yes, I know we all have a camera, a TV in our offices that we can be listening. But, you know, that's sort of like Skyping. I Skype with my grandkids about once a week or every ten days and, believe me, Skyping is not like being there. We're called to do this. I think we should be here and we should be listening intently. And having said that, I will offer the rest of the time to Senator Lautenbaugh. [LB543]

SENATOR GLOOR: Senator Lautenbaugh, 2:55. [LB543]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. You would think the number of times that I could be surprised with time at the mike would start to dwindle as I was just at the mike and just professed to be surprised and I remain surprised yet again as I was having a discussion about something else. So, I'm hoping Senator Scheer did not end his comments with a question and then "and I will yield my time to Senator Lautenbaugh to provide an answer" because I don't know what the question was. Last time at the mike, and I've been on a couple of times this afternoon, I think last time when I was on I was talking about the nature, I guess, of some of the, well, activities and crimes involved here and how it really does set them apart and make them unique from even what you would call regular murder, if you will. We're talking about capital murder here for which capital punishment is available. And there is a very narrow range of possible crimes that would get...that carry the possible sentence of death. So it's important to understand that it matters what those parameters are as to who may or may not be charged with certain things. And so we get into the process of comparing, well, okay, who was charged with a capital crime and who wasn't charged with a capital crime, well, it might depend on whether or not one of the elements of the capital crime is present. [LB543]

SENATOR KRIST PRESIDING

SENATOR KRIST: One minute. [LB543]

SENATOR LAUTENBAUGH: Last year we had the debate on this, and there was a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
May 13, 2013

comparison of cases, I think Senator Council provided, and said, and why wasn't this pursued in this way in this case. And I had to respond with, well, I honestly don't know why in that case. There might have been a witness who was, you know, squishy in some way; there might have been some sort of possible defect where the prosecution saw that it was proper to take a deal rather than pursue the maximum charge available. So you go...you hazard a lot of inaccuracy when you try to compare one case to another and say, why isn't this outcome exactly like this outcome, because no case is exactly like this case, whether we're talking about civil trials or criminal trials. I don't know anything, really, about criminal trials in my professional practice, but civil trials I know; they're all different. They sound the same, but there are so many variables the outcomes can be widely divergent with...on cases that you could describe very cursorily with similar descriptions. [LB543]

SENATOR KRIST: Time, Senator. [LB543]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Lautenbaugh. The Chair recognizes Senator Ashford. The question has been called. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Have all those voted that wish to? Senator Ashford, for what reason do you rise? [LB543]

SENATOR ASHFORD: I'm going to ask for a call of the house and take call-in votes. [LB543]

SENATOR KRIST: There's been a request for a call of the house. The question is, shall the house go under call? All those in favor vote aye; opposed, nay. Please record, Mr. Clerk. [LB543]

CLERK: 35 ayes, 0 nays to place the house under call. [LB543]

SENATOR KRIST: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Mello, Senator Janssen, Senator Kintner, Senator Avery, and Senator Murante, please return to the Chamber. Senator Kintner, please return to the Chamber. Do you want to proceed, Senator Ashford? And you wanted call-ins? Mr. Clerk. [LB543]

CLERK: Sorry, Senator Murante voting...that's yes, isn't it, Senator? Senator, yes. Yes, thank you. Senator Murante voting yes. [LB543]

SENATOR KRIST: Please record. [LB543]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
May 13, 2013

CLERK: (Roll call vote taken, Legislative Journal pages 1337-1338.) 25 ayes, 3 nays to cease debate, Mr. President. [LB543]

SENATOR KRIST: Debate has ceased. Senator Carlson to close. [LB543]

SENATOR CARLSON: Thank you, Mr. President. FA77 inserts "life is the most valuable possession of a human being. The State of Nebraska should exercise utmost care to protect its resident's lives, born and unborn, from homicide, accident, and arbitrary taking by the state." And I had said early on the microphone, and we...most of us, I think, realize now that Kermit Gosnell was convicted of three counts of first-degree murder for what he did in Philadelphia. In 1973, the U.S. Supreme Court ruled that the constitutional right to privacy extends to the decision of a woman, in consultation with her physician, to terminate a pregnancy. But the court also determined, however, that this right is not absolute and it must be balanced against the state's legitimate interest in protecting both the health of the pregnant woman and the developing human life. Therefore, there is a state interest in protecting potential life. I think had the state of Pennsylvania and Philadelphia understood and pursued this, perhaps the outcome would have been different on why this man was tried. So I think that this, as I've said before, is not a hostile amendment. I think it brings out that we do have a concern for the born and the unborn and protecting them in Nebraska. And I know that it's my amendment that I put on Senator Chambers' bill and he was on the list and did not have an opportunity to respond and I'll yield the balance of my time to Senator Chambers. [LB543]

SENATOR KRIST: Senator Chambers, 3 minutes. [LB543]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, the language of the amendment is not appropriate. Even if they're going to talk about unborn persons, that unborn, whatever it is, is not a resident of the state. Secondly, if you're talking about abortion, there is no arbitrary taking of this fetus' life by the state. The state does not perform abortions. The people who are opposed to abortions sometimes go beyond what they ought to. Nobody on this floor, in my opinion, would say that the state performs abortion. This language says, and it ties all these words together by the conjunction "and," "the State of Nebraska should exercise utmost care to protect its resident's lives, born and unborn, from homicide, accident, and arbitrary taking by the state." Abortion has nothing to do with the state taking. Now if you were that strongly opposed to abortion, you'll adopt this amendment because you want anything that you can put into the statute that would express opposition to abortion. The amendment is not properly crafted or drafted. First of all, an unborn fetus, and that could be redundant, is not a resident of the state. And the state does not perform abortions. Thank you, Senator Carlson, for giving me this opportunity. Thank you, Mr. President. [LB543]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
May 13, 2013

SENATOR KRIST: Thank you, Senator Chambers. You've heard the closing to FA77. All those in favor vote aye; all those opposed vote nay. Have all those voted that wish to? Senator Carlson, for what reason do you rise? [LB543]

SENATOR CARLSON: I would ask for a roll call vote in reverse order. [LB543]

SENATOR KRIST: There has been a request for roll call in reverse order. Mr. Clerk. [LB543]

CLERK: (Roll call vote taken, Legislative Journal page 1338.) 26 ayes, 6 nays, Mr. President, on the amendment to the amendment. [LB543]

SENATOR KRIST: The amendment is adopted. Mr. Clerk. You'll raise the call. [LB543]

CLERK: Mr. President, Senator Chambers offers a priority motion, he moved to reconsider the vote just taken. [LB543]

SENATOR KRIST: Senator Chambers, you're recognized. [LB543]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, there are two reasons why people can vote for that amendment. First, they don't like the bill. They can try to burden it down by putting some of their feelings about abortion into it. I am for a woman's right to make the choice as to whether or not she will carry a pregnancy to term. It's nobody's business except the woman and her doctor. That having been said, I'm going to go back to the language of this amendment. If this were, supposedly, an antiabortion bill, they would not have added language such as this. Those who voted for that amendment are suggesting that the state performs abortions from the language of the amendment. Getting right down to that part, "the State of Nebraska should exercise utmost care to protect its resident's lives, born and unborn, from arbitrary taking by the state." Who has ever alleged that the state performs abortions that are illegal? Who has ever argued that the state performs abortions that are illegal? Who has ever argued that the state performs abortions anyway? There is no way the state is going to take the life of a fetus at all. So this is when we're getting into the silliness, in my opinion. It's my bill. I believe in abolishing the death penalty. But if you don't do it this year, I'll be back next year. I will not let this issue go. And you know that if you voted for this, you want to burden and weight the bill down. But you're not going to vote for the bill anyway. Now when other bills come up the rest of the session, because I see how the game is going to be played, if I lost the bill, I lose the bill. But this is utterly preposterous. I could get the vote if I wanted and ask different people who voted for this amendment, do they know of any time the state performed an abortion? Never. Is the state in the abortion performing business? No. This is a simpleminded, vindictive amendment. I don't think Senator Carlson meant to be vindictive when he

Floor Debate
May 13, 2013

brought it. And I'm not characterizing Senator Carlson, I'm characterizing the amendment. It's a nonsensical amendment. It has no application in reality. So you may as well add other amendments. Why don't you offer an amendment that, since the state is concerned about equal protection of the law and freedom, anybody who is of age should be able to ride a motorcycle without a helmet? Why don't you put that amendment on and just turn the bill into utter nonsense? And that could probably be adopted also. And if it's not adopted, it shows that you recognize that this that you just did was foolish. All that you have around you today, when you make this foolish vote, are members of the Legislature. There are other people who will watch what we do and see the utter ridiculousness, foolishness, silliness, of this language. Nobody will stand on this floor, including Senator Lautenbaugh, and say that the state has or will arbitrarily take the life of the unborn. Then why did you adopt the amendment? Is it because you are foolish? Is it because you are silly? And you think that because I am so eager to abolish the death penalty I will sit mute. You know why I haven't said much today? First of all, you can't get to the mike because there are so many people speaking. Secondly, what is being said is not that consequential. Thirdly, it's one of those issues where nobody is going to change his or her mind, so we're just marking time to the point where enough hours have elapsed for a cloture motion to be made. Now if it was a bill that I intended to try to kill, I would be putting motions on it and I would be speaking at length and you would know my intentions. I think there is a certain integrity, an ethical rectitude involved in making clear what you're doing and there is nothing noble or ethical about pretending to be one thing when you're not, pretending you have a certain motivation when you don't. And it is so obvious that people on this floor are being disingenuous when that is the case. But they do it anyway. So it means they have no integrity when it comes to those issues. And it's not just the issues that I'm concerned about. I've seen other bills that certain people with an agenda will oppose and pretend that they're concerned about the public and other things. Now I don't believe there is anybody on this floor whose life and action will bespeak a greater concern for children than mine. Then I hear these people standing on the floor going into detail about the horrendous way a child was killed. You think that doesn't bother me? I don't like to see people kill spiders and bats and snakes or any animal or hurt any living thing unnecessarily. And you think I don't care about children? My votes show what I care about children. Your votes show you're a hypocrite. You talk up here about how many times a child was cut, when you're running for Governor, and you want a sound bite like Senator Janssen. And then you vote against a bill that will allow medical care for those children that you say you care about. How about the mother who cannot provide care for her child and she's crying those tears? I wish there were some way I could take my child to the doctor. What about that child? The child who is here now? Senator Carlson is worried about the unborn. Is he worried about the children who are here now and the ones who cannot get medical care? Look at those who voted for that amendment, then see how they vote on the matters when we're talking about giving medical care for children. Running for office, getting the sound bites, pretending you care about children, and you don't care that much. You know it, I know it, and your votes show it. This is what we ought to be talking

Floor Debate
May 13, 2013

about. The reason I didn't talk like this on the bill earlier: because the bill itself doesn't mean to me what this question about how we're going to treat children means to me. The unborn, so the green lights jump up there. The living children among us now...there's a popular song, which I wouldn't try to sing, but it talks about the little children with not enough to eat... [LB543]

SENATOR KRIST: One minute. [LB543]

SENATOR CHAMBERS: ...the hungry children with no shoes upon their feet, homeless people living in the street. Those songs are sung by those you all probably look down your nose at because they are these hippy types, or whatever they would be called now, but we have the power and the opportunity to vote in a way that will help these children. Forget about the murderers that you hate on death row, hate them, but what about the children? Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Chambers. Continuing debate, Senator Brasch, you're recognized. [LB543]

SENATOR BRASCH: Thank you, Mr. President, and thank you, colleagues. I do support FA77 to AM1367 and do not reconsider the vote. This is a very important amendment here that we are talking all day, all evening, if necessary, about the death penalty and the execution for a death penalty versus life in prison without parole. I was reading through AM1367 here and through the bill and the amendments to LB543. And when we remove the Class I felony of death and Class IA felony life imprisonment, and add that just into a group of punishment, it doesn't seem like it's right, that there should be just punishment for cold-blooded murders. Murderers who have the most horrific, most violent acts, they are brutal, they are with torture, painful, unthinkable circumstances, unspeakable, and beyond most of our imaginations, I would believe that these are people who the punishment does fit the crime, jurisprudence, law and punishment. What is justice? You know, today on the floor we've heard so many things about victims, real crimes, true acts that since 1973 have been convictions that have not been falsely convicted; that since that date there have been no known innocent convictions. We've heard on the floor about so many flaws and talk of corruption, corruption in law enforcement, which is disturbing. So let's fix the corrupt law enforcement if it exists and where it exists. And it appears that, from the conversations, justice is not blind; that our system may be picking winners and losers. If that's the case, then let's fix the system and ensure that justice is blind and that if there are innocent that are being sentenced for crimes they did not commit, then we should fix that. Let's fix the court of appeals, the appeals process. If it's too costly, let's address those costs. Justice must be carried out. Colleagues, you were saying that it's not carried out swiftly enough, then let's fix that. But the punishment of death for murder, as the statutes are described, is just. There are no hypocrites here. There are men and women here who want to ensure that justice is served, that it is delivered. I would like to ask that we do

Floor Debate
May 13, 2013

not reconsider, but we move forward. Thank you, colleagues. [LB543]

SENATOR KRIST: Thank you, Senator Brasch. Senator Conrad, Christensen, Smith, Chambers, Wallman, and Murante, and others in the queue. Senator Conrad, you're recognized. [LB543]

SENATOR CONRAD: Thank you, Mr. President. And at the outset, colleagues, I do rise in support of the reconsideration motion and against the underlying amendment. I think my position on these issues, again, over seven years has been crystal clear. I had a lovely conversation with my friend, Senator Carlson, about his motives and intent in bringing forward this legislation. And as you can imagine, they were straightforward and very clear...crystal clear as well. And so I commend him for his forthright engagement in the legislative process. However, I think that when it comes to the language, there's a couple issues here. One, I tend to agree with Senator Chambers; I'm not sure if it is drafted in the manner that clearly states the introducer's position and may need some tweaking. I do think that there is a hypocrisy that's at play as well. When you look at the folks who went ahead and voted for FA77, in some instances you also saw many of the same people who in trying to prove how pro-life they are voted against prenatal care for our most vulnerable citizens in the last legislative session. So I think that that is something that I would be remiss if I did not note. I don't think the language itself is fatal to the bill in one shape or fashion. Our statute book is littered with intent language related to the sanctity of life and similar language and with that I'll leave my comments there on FA77 and the reconsideration motion. I did want to reiterate though two points in the underlying debate that I think that are important. The first is about issues related to racial discrimination and application. And, friends, this issue was specifically studied in Nebraska by the foremost expert on this topic, David Baldus, in 2001, and did demonstrate disparities related to socioeconomic status and then also examined race. However, I do want to note that this study, this comprehensive study has not been updated to reflect the changes of our charging and sentencing structure that followed the passage of LB1. And since the passage of LB1, of the 33 potential capital defendants, there have been 16 Hispanic or Latinos; 7 African-Americans; 7 Caucasians; and 3 Native American, all male. Thus, the post-LB1 rate of charging minorities with capital murder has jumped from 33 percent to 78.8 percent and the rate of death being imposed on minorities has jumped from 24 percent to 87.5 percent. Those are sobering statistics. The other point that I wanted to visit about was in regard to the finality issue that some have brought forward. Nebraska's current lethal injection protocol and statutory framework are subject to extensive litigation. And the entire issue involving sodium thiopental obtained from DCS and an unlicensed foreign supplier is actually on hold pending a D.C. Circuit Court decision in Beatty v. FDA. That case was just argued March 25, 2013, and it can be several months before a decision is even issued in that regard and will undoubtedly be appealed by one or several parties to the United States Supreme Court. The Nebraska lethal injection protocol requires the use of this drug as the first drug used in the lethal cocktail and currently has an amount

Floor Debate
May 13, 2013

available but is quickly, quickly moving towards an expiration date later this year. And the reason I know that is because as part of my work in supportive abolition, a few years ago, I wrote an extensive Freedom of Information Act request to the Department of Corrections to try and get more information about how these drugs were obtained and whether or not all legal and statutory provisions had been carried out. I updated that request in April of this year. I received a response. And I'm going to read from some of these documents that were produced by the Department of Corrections to show you that it's just not as easy as, oh, gosh, well, somebody e-mailed in and said use a different drug in your lethal injection cocktail. That's not how the protocol is drafted; that's not appropriate... [LB543]

SENATOR KRIST: Time, Senator. [LB543]

SENATOR CONRAD: Thank you, Mr. President. [LB543]

SENATOR KRIST: And sorry, I missed your one-minute call. Senator Christensen, you're next. [LB543]

SENATOR CHRISTENSEN: Thank you, Mr. President. I support FA77 and I'm opposed to the reconsideration because the state sets up the laws for abortion; the state sets up the laws for death penalty; state sets up all the rules and statutes for the state to be run by. Similar to the comment to the state sets the law on helmets. There's one that I oppose, but it is still the law of the land. This is intent language. It's not a binding thing. I wished it was, because I'd like to take care of abortion. I don't think there's a more gruesome killing, but...but, you know, whether you look at killing a baby is wrong, the killing of innocent people is wrong. The killing of those that have killed others is justified. And I sit here and I look at justice, some people talked about this morning is a way of revenge, the death penalty is revenge. I do not believe death penalty is revenge. In this state it's extremely rare, it's used very carefully and people don't take it lightly. That's why we haven't had a lot of cases, why we don't see the wrong convictions you've seen in other states. But for those that say it is better to put people in prison for life without parole and that we can handle the situation and manage them, I ask you, where was the justice for the people like David Dunster who have killed, I believe, it's three additional people while on death row. Where is the justice to the families of them three that lost their family members because somebody wasn't executed? I don't know, is the state liable? Should they be liable because they didn't live up to it? There's many ways to look at this debate. Unfortunately, I agree with what probably every...almost everyone said here, you're not going to change anybody's mind. The votes are going to fall where they are, but we have to go through this debate just like we do on any other bill to give it the full discussion that it deserves. I just don't believe that where the closure for people is if someone is still in jail can actually reach out and kill someone, as we've seen, for the family members because that brings it up to that family again. If you lose a family member yourself, and then they kill somebody else in jail, just the reporting of that will

Floor Debate
May 13, 2013

bring it up again and it doesn't give it closure, because people say you can give it the same closure just by life imprisonment. But that's not been true. It still comes up every time there's an appeal to lower that; there is still...comes up to haunt people in that family whether they're on death row and appealing or whether they're not on death row and appealing or whether they reach out and kill someone else there is not closure... [LB543]

SENATOR KRIST: One minute. [LB543]

SENATOR CHRISTENSEN: ...thank you, Mr. President...until that person is dealt with, with justice. The Bible is very clear how it is, but the Bible talks about not immediate justice, but reasonable justice, forget the term, I didn't bring it over in front of me. But the fact is, the way we have our system set up allows it to take too long, harms the deterrence that should be there. People don't want to die, that's why they appeal and appeal and appeal. And so that's what we've got to evaluate in all of this, where we want to end up on this debate. Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Christensen. Senator Smith, you're recognized. [LB543]

SENATOR SMITH: Thank you, Mr. President, and good afternoon, colleagues. I'm going to be fairly brief because at the end of my remarks I'm going to yield the remainder of my time to Senator Chambers. While I agree with Senator Carlson's intent on his FA77, and I did vote in support of that floor amendment, I tend to agree with Senator Chambers on his recommit motion, so I think it's the appropriate thing to do. I want to go back to the underlying bill, LB543. There's been numerous reasons given for supporting and opposing LB543. A couple of them I want to just point out my opinions of. One is the application of a price tag to the issue of capital punishment. I just feel that it is inappropriate. I believe the appeals process is so complex that one cannot reasonably compare the cost of life and the death penalty and so I just disagree with the basis for using that argument to make a decision. I do oppose LB543 because I believe it is...that capital punishment is a deterrent. And that some crimes are just so heinous that...as to justify the use of the death penalty, that's my belief. I believe the death penalty honors human dignity by treating the defendant as a free moral actor, one able to control his destiny for good or for ill and I believe it does not treat him as an animal with no moral sense. That's my basis, colleagues, for opposing the underlying bill, LB543. But once again, I do agree with Senator Chambers in his reconsideration motion. If Senator Chambers would yield, he may have the remainder of my time. [LB543]

SENATOR KRIST: Senator Chambers, 2:50. [LB543]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Smith.

Floor Debate
May 13, 2013

Members of the Legislature, I'm focusing on Senator Carlson's amendment. There is plenty of time to talk about the bill, to ramble, to vent, to misstate, and do anything that you want to do. I'm focusing on the language of this amendment that you adopted. And for the record I'm going to say it again, this is the language of the amendment you adopted, "the State of Nebraska should exercise utmost care to protect its resident's lives, born and unborn, from homicide, accident, and arbitrary taking by the state." So, it's saying the state should take utmost care to protect its residents who are unborn from their life being arbitrarily taken by the state. A fetus is not a resident of the state. But forget that. This language says that the state is involved in abortions. It may not make any of you all any difference. I heard Senator Schumacher analyzing some aspects of LB543 and said at another time there would be concern about the language, the English language. [LB543]

SENATOR KRIST: One minute. [LB543]

SENATOR CHAMBERS: The whole discussion on LB543 is different from what has occurred on other bills. Nobody is concerned to any great extent about the language in the bill because most people have not read it. All they know is that they're for the death penalty and that's it. I could say that there are things in the bill which are not and I wouldn't be challenged. But this little piece can be focused on. It's not needed. And I'm not even talking about it hurting the bill; it's surplusage and it means nothing. But what it says is inaccurate. The state is not involved in abortion. You all know it. And I'm hoping that you can look past certain agendas and see the language which was adopted and understand it's not appropriate. Thank you, Mr. President. [LB543]

SENATOR KRIST: Senator Chambers, you're now on your own time. [LB543]

SENATOR CHAMBERS: Thank you. Mr. President, I don't even think I will take the full five minutes. All I will do is repeat. And I don't know that repetition is going to make that much difference because the principle articulated once should be sufficient to carry its own weight and persuade those who are concerned about the language that is put in the statute books that this language ought not be there. This is not an abortion bill. It has nothing to do whatsoever with abortion. But if it means so much to people, then all those who are against abortion ought to be for LB543, but they're not. So, let those two issues remain separate. And if you want to bring an antiabortion bill, bring it because you can do that. But this bill is not the appropriate place and no other bill would be appropriate for language of this kind. So I'm asking that we vote to reconsider and then you will see what the introducer of the amendment may be prepared to do. So, Mr. President, that's all that I will say at this point. Thank you. [LB543]

SENATOR KRIST: Thank you, Senator Chambers. Senator Wallman, you're recognized. [LB543]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
May 13, 2013

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I would hope the state is not involved in these things, but if we don't feed our young mothers and our young children, that's pretty much of a torture thing. So, I have to agree with Senator Chambers on this and I would urge you to reconsider. Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Wallman. Senator Ashford, you are recognized. Do I see five hands? I do see five hands. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Senator Ashford, why do you rise? [LB543]

SENATOR ASHFORD: Just could I get a call of the house and take call-in. [LB543]

SENATOR KRIST: Record, Mr. Clerk. [LB543]

CLERK: 25 ayes, 9 nays to cease debate, Mr. President. [LB543]

SENATOR KRIST: Debate ceases. Senator Chambers to close on your motion. [LB543]

SENATOR CHAMBERS: Mr. President, I will be very brief, just to remind you what this is that I'm trying to do. The language as written would indicate that the state is involved in abortions. And the state is not. It is not providing abortions arbitrarily or any other way. All of these words in this amendment are connected by the conjunction "and." The state is not arbitrarily taking the life of a fetus. So I'm asking that you vote to reconsider this proposition and now I will ask for a call of the house, Mr. President. [LB543]

SENATOR KRIST: There's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; opposed, nay. Record, Mr. Clerk. [LB543]

CLERK: 32 ayes, 0 nays to place the house under call, Mr. President. [LB543]

SENATOR KRIST: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Kintner, Senator Avery, Senator Lautenbaugh. Senator Lautenbaugh, please return to the Chamber. [LB543]

SENATOR CHAMBERS: I'll take a machine vote. [LB543]

SENATOR KRIST: There's been a request for a machine vote, Mr. Clerk. The question is, shall we...shall we reconsider the adoption of the amendment? All those in favor vote aye; opposed, nay. Have all those voted that wish to? Please record, Mr. Clerk. [LB543]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
May 13, 2013

CLERK: 29 ayes, 5 nays to reconsider the adoption...the vote on the adoption of FA77. [LB543]

SENATOR KRIST: Motion passes. Raise the call, please. [LB543]

CLERK: Senator Carlson, then I have FA77 pending. [LB543]

SENATOR CARLSON: Yes. Mr. President, I'd like to make some comments on this. If I can't, by the rules, Senator Lathrop is going to yield me time. [LB543]

SENATOR KRIST: The amendment is back before us as though we never took the vote. So we are back to debate and, Senator Lathrop, you are recognized. [LB543]

SENATOR LATHROP: Thank you, Mr. President, and I'll yield my time to Senator Carlson. [LB543]

SENATOR KRIST: Senator Carlson, you are yielded 4:50. [LB543]

SENATOR CARLSON: Thank you, Mr. President, and thank you, Senator Lathrop. I introduced this amendment after looking at the way Senator Chambers had worded what he put into the green copy of the bill. And I do have a real problem with the time and the effort that we spend on trying to protect the lives of really the worst of the worst in our society and I don't think we take seriously enough what we don't do as far as the unborn are concerned. And I saw this as an opportunity to put that wording in. I didn't...I said that I didn't intend to ravage the bill with what I did. Senator Chambers has explained to me what his intent was in this language and I can see that my amendment did not fit that. So I told him that if he wins the reconsideration, after I can make a few comments, I will ask to pull the amendment. And we have had good discussion. Appreciate those that have been involved in it. And I think it has served its purpose and I would ask that the amendment be withdrawn. [LB543]

SENATOR KRIST: So ordered. So we return to debate on AM1367. Senator Karpisek, Senator McCoy, Carlson, Schumacher, Brasch, and Christensen are still in the queue. Senator Karpisek, you are recognized. [LB543]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. I really had my light in to speak on Senator Carlson's amendment, but since we are passed that now, I just want to rise again and talk about why I can't support the underlying bill. We've talked about people being in jail for the rest of their lives, throw away the key and forget about them. Well, that just isn't the case. We won't just forget about them. We still have to house them, feed them, clothe them, do all those sorts of things. Now, I know there is the argument that it's cheaper than the death penalty. I don't think that it needs

Floor Debate
May 13, 2013

to be. I don't think it should be that way. But as Senator Conrad has talked about that pesky constitution, well, maybe it's time to try to change the constitution on these matters. I guess I've never thought about that until she brought that up that that's why we can't just do away with some of the...the ways that go back to court on the death penalty, but maybe...maybe we should look at that. But that, of course, doesn't get us to where Senator Chambers wants to be or anyone who wants to repeal the death penalty, but it would take away that argument of the money. I'm kind of glad today that we've kind of gotten away from that argument because in my opinion some things are worth spending money on. I also don't think that it has to go through all of the appeals. I could be wrong on that. But the appeal after appeal after appeal I don't think needs to be done. Obviously, I'm not the lawyer to...a lawyer to say that. And I don't want to bring that up again because I know what will be said. But there's some people that I don't think deserve to walk the face of this earth anymore. Senator Price talked about consequences. I agree. And I can't see that the cruel and unusual punishment for the types of things that some of these people have done. Some of the things are just hard to even fathom what they have done. What makes people do that? I don't know. But I don't think that they need to be a part of our society anymore. Again, I understand and appreciate anyone who feels the other way. And again, I have thought about it quite a few times and I keep coming down on the same side. I remember a few years ago, maybe one of our first two years, I remember sitting up front and I said, I think everyone in my life knows that if somebody murders me... [LB543]

SENATOR KRIST: One minute. [LB543]

SENATOR KARPISEK: ...I want them dead. (Laugh) I'm not one of the family members that will say, oh, no, it's okay. No. And if something happens to one of my kids, there won't be this sort of discussion about it. I just think we have to have something in place to deal with these sort of people. And if the system is flawed, then we should look at the system and make changes and make people make changes and hold them accountable, because I don't agree that it should be racially based either. Thank you, Mr. President. [LB543]

SENATOR KRIST: Thank you, Senator Karpisek. Mr. Clerk. [LB543]

CLERK: Some items, Mr. President. New A bill, LB556A by Senator McGill, (Read LB556A by title for the first time). I have an amendment to be printed to LB543 by Senator Ashford. Senator Conrad would like to add her name to LB505 as a cointroducer. (Legislative Journal page 1339.) [LB556A LB543 LB505]

And the Speaker would move to adjourn the body until Tuesday morning at 9:00 a.m.

SENATOR KRIST: You have heard the motion. All those in favor, aye. Opposed, nay. Ayes have it. We are adjourned until 9:00 tomorrow morning.