

January 15, 1981

LB 193-222

rules which the motion is before the desk.

SPEAKER MARVEL: Any further discussion? All those in favor of that motion vote aye, opposed vote no. Have you all voted? The motion is the Wesely motion. Have you all voted? Record the vote.

CLERK: 25 ayes, 10 nays on adoption of the permanent rules, Mr. President.

SPEAKER MARVEL: The motion is carried and the amendment is adopted. Senator Cullan wants to meet with the Public Health and Welfare Committee underneath the south balcony. Is that right, Senator Cullan? What is the next item?

CLERK: Mr. President, I have a series of matters to read in, if I may. First of all, Senator DeCamp offers a proposed rule change which will be submitted to the Rules Committee for their consideration. (See pages 180 and 181 of the Legislative Journal.)

Mr. President, new bills: LB 193 (Title read). LB 194 (Title read). LB 195 (Title read). LB 196 (Title read). LB 197 (Title read). LB 198 (Title read). LB 199 (Title read). LB 200 (Title read). LB 201 (Title read). LB 202 (Title read). LB 203 (Title read). LB 204 (Title read). LB 205 (Title read). LB 206 (Title read). LB 207 (Title read). LB 208 (Title read). LB 209 (Title read). LB 210 (Title read). LB 211 (Title read). LB 212 (Title read). LB 213 (Title read). LB 214 (Title read). LB 215 (Title read). LB 216 (Title read). LB 217 (Title read). LB 218 (Title read). LB 219 (Title read). LB 220 (Title read). LB 221 (Title read). LB 222 (Title read). (See pages 181 through 188 of the Legislative Journal.)

Mr. President, in addition your Committee on Business and Labor gives notice of public hearing for Wednesday, January 28. (See page 189 of the Legislative Journal.)

Mr. President, communication from the Chairman of the Executive Board which will be inserted in the Legislative Journal. (See page 189 of the Journal.)

Mr. President, I have an Attorney General's Opinion addressed to Senator Beutler regarding deferred compensation funds which will be inserted in the Legislative Journal. (See pages 189 through 192 of the Journal.)

SPEAKER MARVEL: May I have the attention of the members of the Legislature for just a second. I think the last few days have been tough on all of us. I think we are all

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LB 202, 425

to General File; LB 425 General File with amendments.
(Signed) Senator DeCamp. (See page 563 of the Legislative Journal.)

Mr. President, Senator Dworak would like to add his name to LB 202 as co-introducer.

SPEAKER MARVEL: No objection, so ordered.

CLERK: Mr. President, I have a hearing notice from the Ag and Environment Committee regarding certain gubernatorial appointments. (See pages 563 and 564 of the Legislative Journal.) That is all that I have.

SPEAKER MARVEL: Senator Fitzgerald, do you want to adjourn us until nine o'clock tomorrow?

SENATOR FITZGERALD: Mr. Speaker, I would like to adjourn the body until February 19th at 9:00 a.m.

SPEAKER MARVEL: 9:00 a.m. All those in favor of that motion say aye. Opposed no. The motion is carried and we are adjourned until 9:00 a.m. tomorrow morning.

Edited by

LaVera M. Benischek
LaVera M. Benischek

March 19, 1981

LB 138, 202, 205, 344, 375,
401, 466, 503, 504, 531

Mr. President, Senator DeCamp to print amendments to LB 531; Senator DeCamp to LB 138 and Senator Hoagland and Beutler to 205, all to be printed in the Journal. (See pages 1044-1048 of the Legislative Journal.)

Your committee on Judiciary whose chairman is Senator Nichol reports 202 to General File; 503 indefinitely postponed; 504 indefinitely postponed.

Mr. President, Senator Koch asks unanimous consent to add his name to LB 344, 375, 401; Senator Cullan to 466.

SPEAKER MARVEL: Hearing no objections, so ordered.

CLERK: I believe that is all that I have, Mr. President.

SPEAKER MARVEL: Senator Fowler, would you like to adjourn us until nine-thirty.

SENATOR FOWLER: I move we adjourn until Monday at nine-thirty.

SPEAKER MARVEL: All in favor of adjourning until Monday, March 23, 1981, at nine-thirty say aye, opposed no. The motion is carried. We are adjourned.

Edited by

Arleen McCrory
Arleen McCrory

January 12, 1982

LB 202, 338, 423

SPEAKER MARVEL: The motion before the House is the advancement of LB 338. All those in favor of that motion vote aye, opposed vote no. Record vote has been requested. Have you all voted? Senator Koch.

SENATOR KOCH: I rise to request a record vote, Mr. Speaker. I want it in the Journal.

SPEAKER MARVEL: Record the vote.

CLERK: (Read the record vote as found on page 246 of the Legislative Journal). 18 ayes, 26 nays, 5 excused and not voting, Mr. President.

SPEAKER MARVEL: The motion lost. The next item is 202.

CLERK: Mr. President, I have a request from Senator Chambers to pass over LB 202.

SPEAKER MARVEL: Hearing no objection, so ordered. Before we go to the next item, in the north balcony from St. Paul, Minnesota it is our pleasure to introduce 65 adults of the Cenex which is a Co-op Farm Organization, and they come from all parts of Minnesota and they are enroute from Minnesota down south where they have oil wells. It is our privilege to welcome you to the Unicameral Legislature and congratulate you on the number of times you have visited us and hope you will come back again. Let's give these people a hand. The next bill is LB 423.

CLERK: Mr. President, LB 423 offered by Senator Hoagland and Senator Sieck. (Read title). The bill was first read on January 20 of last year. At that time it was referred to the Education Committee for public hearing. The bill was advanced to General File, Mr. President. There are committee amendments pending by the Education Committee.

SPEAKER MARVEL: The Chair recognizes Senator Koch for the committee amendments. Senator Hoagland.

SENATOR HOAGLAND: Mr. Speaker and colleagues, I am speaking in favor of the committee amendments to LB 423, and let me make clear from the outset that the committee amendments completely replace LB 423 with a bill, LB 254, that was inadvertently killed in the Education Committee last year after the public hearing. And because LB 254 had been killed why I consented permitting Senator Sieck to use LB 423 as a vehicle for LB 254. So the description on the green sheet, of course, is incorrect, and that will be corrected if these committee amendments are adopted and

RECESS

SENATOR LAMB PRESIDING

SENATOR LAMB: We need ten more people before we can start the afternoon's business. Senator Kremer, would you care to register your presence. Record.

CLERK: There is a quorum present, Mr. President.

SENATOR LAMB: Do you have some things to read in, Mr. Clerk?

CLERK: No, sir, I do not.

SENATOR LAMB: The first item on the agenda is Special Order, LB 202, Senator Chambers.

CLERK: Mr. President, LB 202 (title read). The bill was first read, Mr. President, on January 15 of last year. At that time it was referred to the Judiciary Committee. Mr. President, it was advanced to General File.

SENATOR LAMB: The Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I wish that there were more of us here today but there not being more, I will go on with what we have. This is a bill that I have brought repeatedly since being in the Legislature. The purpose is to substitute a 30 year mandatory prison sentence for the death penalty. For those of you who may not have been here during any of the previous discussions of this bill, the 30 year mandatory sentence would be effective because it would prevent the granting of good time for the purposes of reducing a sentence until after 30 years have been served. The Attorney General's Office has already upheld this penalty as being valid. I think we can...we will proceed. We won't let little distractions bother us too much. The way that the law is now a person convicted of first degree murder must be given a second sentencing hearing after being convicted. That group or individual who will pronounce the sentence will be the trial judge or a panel of three judges, the trial judge and two others, or if the trial judge for any reason should be disqualified, the Chief Justice then would appoint three judges. So the process works now that you have a trial. If you are found guilty of first degree murder, then there is a second hearing for sentencing purposes. This hearing is conducted in a court with certain statutory requirements related to aggravating and mitigating circumstances. The aggravating circumstances are those which make the crime

more than merely taking another person's life. There are certain circumstances that must attend that taking before the death penalty can be imposed. There is a second group of provisions known as mitigating circumstances or those which will lessen the severity of the punishment because there are aspects of the crime that indicate that death should not be imposed. The Nebraska Supreme Court has ruled repeatedly that you do not count the number of mitigating and the number of aggravating circumstances to determine whether the penalty is imposed or not. But anyway that is the way the system works now. What this bill would do is eliminate death as a punishment for any offense. The most severe punishment would be life imprisonment. But since life has never been defined in the statutes or by any court decision as being life which means you don't breathe anymore and that ends the sentence, people have gotten out on the average after serving about 18 years in Nebraska for first degree murder, and by the way, no first degree murderer in Nebraska who has been paroled has ever repeated that murder or any crime of violence that we have been able to determine. Built into this bill, LB 202, is a provision that says even if life is the sentence the person so sentenced cannot be released in less than 30 years. I think that is excessive. I think it is inhumane, but because of what is being demanded as an alternative to a death penalty, a substantial prison term is what is included in the bill. The U. S. Supreme Court in 1972 when it abolished death penalties all over the country because they were arbitrarily imposed kept referring over and over to the deterrent effect of a prison sentence. During our hearings before the Judiciary Committee, a prison sentence was stated to be a deterrent by a former county attorney. He said the only ones deterred by the death penalty are jurors. They are unwilling to convict if they think their convicting could lead to a person being sentenced to death. That brings us to an interesting situation. Erwin Charles Simants was an individual whose name came up repeatedly during earlier discussions of a bill like this and people were saying if anybody should get the death penalty it is somebody who commits a mass murder like that. Well, because the sheriff involved in that action talked to the jury, the State Supreme Court said that that conviction had to be overturned and a new trial ordered because where a death sentence is involved you have to be far more scrupulous in the way you handle the situation than I guess in less than death cases. So Erwin Charles Simants was given a new trial. He was given a change of venue from North Platte to Lincoln. This case shows the arbitrariness of the present death penalty because a man who was found to be sane in North Platte was found to be insane in Lincoln. A law like a death penalty, if it is going to exist at all, should be statewide. You should be run as great a risk of

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it in the smallest town in western Nebraska as you would in the metropolitan or first class cities but currently on death row the only people there come from Omaha, Lincoln, and Grand Island. We are told that the people in the other part of the state are very hot behind the death penalty and want it, yet the prosecutors will not seek it, the jurors will not convict for first degree murder, or if they happen to convict or a person pleads guilty to it, a lesser charge is usually what they plead to, or if they plead guilty to first degree murder, the sentence is not death. One of the reasons the sparsely populated counties do not want to bring prosecution for first degree murder is that the state must pay for the prosecution and it must pay for the defense. The cost is prohibitive so you will not find first degree prosecutions in the smaller or less populated counties. You will find plea bargains for lesser offenses and I gave you a handout which shows that there have been literally hundreds of homicides since Nebraska reinstituted the death penalty in around 1973. Yet despite those numerous homicides, only 11 people sit on death row now and there is nothing in the circumstances of those homicides that distinguishes them very much from the many who committed homicides and are not on death row. So we have an arbitrarily imposed sentence which is not imposed on the vast majority of the people who commit the crime that supposedly carries that offense. What I am trying to do is give you an overview, if I can, then I will go into more detail should that be necessary. In this state as in every other state throughout the country, the amount of money that a person has determines the risk that that person faces with reference to the death penalty. When it can be shown that the amount of money a person has determines the amount of risk of the death penalty that person faces, either the state has an obligation to abolish all financial inequity or to abolish the death penalty. We should not be able to tolerate a set of circumstances where who you are and the money you have determines the punishment you suffer rather than the offense that you commit. So what I am asking you to do by adopting LB 202 is to substitute a 30 year mandatory sentence for the death penalty, and at this point I will acknowledge that I am aware that an amendment will be offered to this bill. So before I proceed any further, I will see what amendments are offered but I think my position on the matter is clear and I am asking that you advance this bill because the penalty now, the death penalty in Nebraska now, which has not been carried out since 1959, has been said by one of the Assistant Attorney Generals to be merely a philosophical concept in Nebraska. Courts are unwilling to make the final decision to deny a person another stay or another appeal. As a result of that, only four people have been executed

since the U. S. Supreme Court has said that death penalties can be drafted in a constitutional fashion and three of those were executed not only because they cooperated with their own executions, but they insisted on it. They refused to allow an appeal, and when one of them, his name was Jesse Bishop, was going into the gas chamber, a reporter asked him did he think the death penalty deterred? He said it didn't stop me. Steven Judy in Indiana wanted to die. Everybody knows about the fiasco involving Gary Jilmore in Utah. The only one who was executed against his will was John Spenkelink in Florida. This final thing, Mr. Chairman...

SENATOR LAMB: You have one minute, Senator.

SENATOR CHAMBERS: If the death penalty were a deterrent, the experience in Florida should not be what it is. They have more people on death row than any state in the country. They have recently executed an individual against his will. Yet despite this, having a death penalty and showing an inclination to use it, Miami, Florida has the highest per capita murder rate in the country. So the issue of deterrence cannot be decided in favor of the death penalty. We have to find a punishment which people can expect to receive. Certainty of punishment and swiftness of its imposition are what deter and that has been pointed out by the Chief Justice of this state and all thinkers on this particular subject. Even those who favor the death penalty acknowledge that because there is such a great unlikelihood of its being carried out, it has little if any deterrent value whatsoever.

SENATOR LAMB: The Chair recognizes Senator Hefner.

SENATOR HEFNER: Mr. President, members of the body, I rise to oppose LB 202 and, of course, this bill is to repeal the death penalty and I realize that it is an emotional issue. In fact, I think during the last six years it has been up three or four times and, of course, when you take a person's life, it does become emotional, very emotional, and yet when I read these headlines like young people earning their keep by working in a fast food restaurant or a convenience store or any other place, when they are leaving work, they are shot to death, or when we read the headlines "Old People Terrorized And Tortured To Death", or another headline could read "An Elderly Woman Raped and Murdered", I guess that is when I get a little concerned. Yet here today, here this afternoon, we want to deny ourselves of a major weapon that we have in this fight and in this threat to society. We need to keep the death penalty. We don't need to repeal it and I believe in the research that I have done that it is and it does serve as a deterrent to murder.

I believe that capital punishment is a necessity if we are to bring sanity back to our streets and to protect our citizens here in the great State of Nebraska. Here in our state we have a slogan, "Nebraska, The Good Life", but just talk to some of the victims' family members and they will tell you what good life do we have in Nebraska when we can't even walk the streets or be out in the open. And why? It is because we don't...we do not implement the penalty that we have now and that is the death penalty. About a month ago we heard our Chief Justice Krivosha speak to us, and if I remember correctly, he said we need justice and this justice needs to be fair and it also needs to be swift, and this is what I am talking about today. We have the death penalty. Let's implement it in a just and swift way. There has been no executions in Nebraska in the last twenty years and so I ask you here, is this justice, is this fair, and is this swift? In recent polls the pendulum is swinging back to sanity. An overwhelming, an overwhelming majority of Americans now favor the death penalty. South Dakota several years ago reinstated the death penalty. Why? Because they believe, their legislative body believed that it did serve as a deterrent. Senator Chambers talks about the death penalty as being inhumane. I submit to you...

SENATOR LAMB: One minute, Senator.

SENATOR HEFNER: ...isn't murder, isn't premeditated murder inhumane? I feel that we are at the crossroads here in Nebraska. Do we keep the death penalty or do we repeal it? I say that we should keep the death penalty. I think that we need to strike back at these vicious criminals. I say to you here today that enough innocent lives have been lost here in Nebraska. Let's keep the death penalty here in our state.

SENATOR LAMB: Senator Dworak.

SENATOR DWORAK: Senator Lamb and colleagues, I support LB 202. I think this is a bill that each of us personally have had to look at very closely and look within ourselves because when we vote on this bill we are just as much pushing the button that discharges the current execution when we push this button in front of us, whether it be green or red, even more so than the Governor, because the Governor merely follows what this body dictates. He takes an oath to enforce and administer the law but we make the laws. So if and when there is an execution in the State of Nebraska, that act in itself is only secondary to the act each of us must perform when we adjudicate this issue on this floor as

this bill goes across the Board. Senator Hefner indicated he did research that indicates the death penalty is a deterrent. I would like to be privy to that research because I don't think I could even make that claim on the other side. I don't think I could even in good conscience say that it isn't a deterrent even though I wish I had research to back that position up. Because every study and everything that I have ever read or seen on it seems to leave some real serious questions as to whether it is or is not a deterrent to crime. I don't think we can say conclusively that it is a deterrent. I don't think we can say conclusively that it isn't a deterrent. I don't think we can hang our hat on that argument. I don't think that can be an argument for or an argument against imposing the death penalty. So if that is not an argument, then I think we have to ask ourselves why the death penalty? Is it punishment, whatever punishment is? When I see a situation like the situation occurring in Utah where the person to be executed is actually asking, requesting, begging for that act, can we really say then that it is punishment? I don't think we can say that. Then, why? Certainly when we look at all the numbers of people incarcerated in the United States, certainly breaking it down to the State of Nebraska, all the people we have incarcerated in this state, the percentage of people incarcerated in there for capital crimes is so small we certainly can't use an economical argument. So then why? Why do we vote to keep or impose a death penalty?

SENATOR LAMB: You have one minute, Senator.

SENATOR DWORAK: If it is not deterrent, if it is not punishment, if it is not facility or economy, then why do we vote for the death penalty, something this serious, something this grave, taking of a human life? There is only one other reason that I can see and I don't think that is reason enough. It is not reason enough for this person. I can't believe it would be reason enough for any person. And that would be vengeance. That is not enough of a reason to take a human life.

SENATOR LAMB: Senator Kahle.

SENATOR KAHLE: Mr. President and members, just to answer Senator Dworak's comments about pushing a button and feeling guilty about it, I guess you could feel guilty about not pushing the button that would cause the death penalty to happen, because if that deters even one crime from an innocent person, I wouldn't have any trouble doing it. We have a lot...our discussion has been low key this afternoon, no one has raised their voice, and I hope I can do the same.

I, of course, do not agree that it is not a deterrent. I agree that we have had a lousy way of delivering the death penalty in Nebraska over the last number of years and I don't think anyone is really afraid of it anymore because we haven't used it but I do think it is a deterrent. I think it would be if it was swift and just. One of the things that I object to in the 30 year mandatory sentences is the cost. Now a lot of people will say, you know it costs more to go through the process of condemning a man to the electric chair than it does for a thirty year sentence. I don't believe that and I believe that they are going to fight almost as hard to stay out of that thirty year mandatory sentence as they are the electric chair. You are going to take the best productive years out of a person's life, thirty years. Let's say you are 25 when you go in, your best years of your life are gone. You are not only going to keep that person for thirty years, you are going to keep them the rest of their life. They are not going to be able to make a living and survive in their old age if they are let out at that stage of the game. So you are really not helping them any. You are condemning them to a life of prison and a life of support from the community. Just last week we talked about the DWI offenders and I am a little surprised at Senator Chambers. He said we should not throw them in jail because we didn't have room in there, and yet here we are going to put people in there for thirty years and not turn them out. I think this alone is a problem. I don't know how you are going to keep people under control when they are in the death row, or whatever you want to call it, the thirty year row if they have no hope of ever getting a shorter sentence or getting out of there before their thirty years are up or getting any privileges, as I understand it. I doubt that these death or these thirty year prisoners are going to have the rights that you have been talking about, the conjugal visits and that sort of thing. If they are, they really are not in prison. One of the things that I have had a little trouble with, and I woke up at four o'clock this morning and reassessed my views on this issue, and I have got quite a few letters from ministers and from different Christian denominations telling me that I should not vote for the death penalty, and I guess I have a little trouble with this because we are in the season of Lent right now and we know what man's law did to Jesus, and we also know that there were two thieves or murderers on the adjacent crosses to Jesus, and one asked I believe what Jesus had told him and asked if he could be saved. And Jesus said,...

SENATOR LAMB: One minute, Senator.

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SENATOR KAHLE: .."Yes, you can be saved. You will be with me in Paradise". But he did not walk off with that cross and go back into society. I guess in my closing moments I would say I would hope that those ministers would be more interested in a man's soul than in his hide. So I think that we should vote this issue down, strengthen up our court system and hopefully it would do some good. Thank you.

SENATOR LAMB: The Chair recognizes Senator Wesely.

SENATOR WESELY: Mr. President, members of the Legislature, I think we are going to all have a chance to probably express our feelings and I want to be very brief in expressing mine and I will support LB 202. However, I support it recognizing the fact that there are instances where I definitely feel that some individuals who commit a heinous crime probably are deserving of the death penalty. The problem I have always found with the death penalty is where do you draw the line and where do you distinguish between those that are put to death and those that are not and it is that gray area that eventually has to be reached in any legislation that causes me the great concern I have in the fear that at some point the possibility is always going to exist that an innocent person or someone who is maybe poor and unable to defend themselves properly may receive the death penalty while someone else who has committed an even more heinous crime is let free. And it seems to me that our judicial system has not reached that state of perfection where we can distinguish to the minutest detail those that are deserving and those not deserving the death penalty and that has been a big concern of mine. Now Senator Hefner has talked about some of these cases we all know about where individuals have been killed and we are all angered and upset and want to do something about that and I want to give you an instance that is the instance that changed my mind about the death penalty and I hope it will mean something to you as well. When I was younger in high school, I was a paper boy and worked my way through high school and one of those on my route was a young girl who unfortunately was missing, this is maybe about ten years ago, and we didn't know what happened to her and at that time we weren't sure, maybe she just ran away, but she was missing. Pretty soon from missing we found out that it went into weeks and months and she was gone for a long period of time and then the fear was there that something terrible had happened to her, that this wasn't like her, and that something awful had probably been committed and we were all very concerned. She was a friend. We waited and anxiously to try and find her and finally one day her remains were found in a field

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outside of Lincoln and this was months after she was missing. Well, at that time I was very upset, extremely upset. There was no way I could be more angered by what had happened to a friend and I said at that time whoever did this should be put to death in the most horrible way possible for what they did to my friend. And I was concerned for weeks afterwards that they had to find this person and somehow this perpetrator of this crime had to be punished. Finally after weeks, they discovered the criminal and brought him to the jail, and what turned me around totally is the fact that this person, this person that had committed this heinous crime that I was so angry and wanted to personally do what I could do to eliminate that person happened to be another friend of mine. And it shocked me so, I didn't know how to react because here a good friend had been killed by another good friend and this second friend who had committed the crime I felt so strongly should be put to death I knew from my youth was not a person who I could not believe would do something like this and I sat there and I thought about how angry I had been and how I had wanted to see this person put to death and yet I knew that this was a person that something had snapped, that something had happened to them. They couldn't have done this without...and that something wrong, terribly wrong having occurred at that moment. And that is when I decided that because of the situation that can occur when the crimes that we are talking about are committed, and when you draw that line between those that are going to receive the death penalty and those those that are not, I just felt that sense of compassion that this person has to be punished, has to be put away, but to kill them, to kill them is a step beyond what needs to be done. And it changed my mind totally because I was totally in favor of the death penalty to that point, and because of this personal incident...

SENATOR LAMB: One minute, Senator.

SENATOR WESELY: Thank you. ...I decided that I could no longer support the death penalty and I haven't to this day. I do support a strong minimum mandatory sentence. I do support being tough with these individuals and perhaps for the rest of their lives not allowing them to be released and free. I have no problem with that but to put them to death is a question that I think we have to address today, and in discussing the question about the poor and the representation, at a neighborhood coffee I had Sunday, a supporter of the death penalty said, well, we have Legal Aid, and we have public defenders, and all the poor are now taken care of. Well, with the Reagan cutbacks, we are seeing Legal Aid being eliminated so some of those arguments

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that were so strong in favor are starting to be eliminated and those deterrent effects that we talked about are being found to be in research not to be valid. And so for the many different reasons that have been expressed and for those personal reasons that I just shared with you, I do not see a reason to support the death penalty any further. And if you think that those of us who are up for reelection that are concerned about (interruption)...

SENATOR LAMB: Your time is up, Senator.

SENATOR WESELY: ...political consequences have to do what is right at this moment and show some political courage.

SENATOR LAMB: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, there is what you might call the machinery of death that has to be put into operation and maintained by somebody. There is a judge on the U. S. Supreme Court named Rehnquist who is very strongly in favor of the death penalty but he has stated that the way the U. S. Supreme Court has dealt with these appeals when they come up, it is a virtual impossibility to execute anybody. He said the death penalty in America is an illusion. The Wall Street Journal wrote an editorial and said the death penalty has immobilized us all, that the death penalty has become trapped. People who believe in the death penalty nevertheless are not anxious to see executions because they find them abhorrent, that the court system while allowing a death penalty to be considered constitutional has to build in enough delays and appeals to make sure that an innocent person is not executed. I gave you all handouts, I don't know if you read them or not, but had death penalties been expeditiously or hastily carried out, twelve to fourteen innocent people that were documented in the handout I gave you would have been dead. But because of the delay that must be built into the system, it was found out that they were innocent and the state should not kill them. The very safety, the safety net, if you will, that is being sought in administering this penalty is the thing that makes the penalty impractical. There are three levels of appeals so that you ought to get an idea of the years, the money, that have to be expended. When you are sentenced to die in Nebraska, there is an automatic appeal. It occurs automatically. You go to the State Supreme Court. If you lose there, then you go into the federal system and you appeal that loss all the way up to the U. S. Supreme Court. If you lose there, that is the first track. You come to a second track. You go back to the court that sentenced you and seek postconviction relief. You try to get them to mitigate the sentence or whatever relief you are seeking to avoid the death penalty or to have the conviction overturned, whatever you think you can get out of the court. If you are denied that relief, then this is appealed all

the way to the State Supreme Court. If the State Supreme Court disagrees with you, you take that appeal into the federal system. You appeal that all the way up to the U. S. Supreme Court. If that fails, then you seek a habeas corpus action and you start that in the Federal District Court. You go from the Federal District Court to the Eighth Circuit, or whatever the number circuit, but to the intermediate court of appeal, then to the U. S. Supreme Court. This process takes years. There is one person on death row in Nebraska right now who has been there close to seven or eight years now but the total number of years of all the people on death row right now in Nebraska adds up to 43 and there is no certitude that the death penalty will be carried out after all these appeals have been exhausted. Simants was a case that I mentioned. Dennis Sell is one which shows that despite how upset we become about heinous crimes, as mentioned by Senator Hefner and Senator Kahle and others, you cannot control the prosecutor's discretion. He or she has absolute unreviewable discretion as to the charge that will be brought. So if you have a case of a Dennis Sell who had pleaded guilty of second degree murder in the rape and murder of a woman and a subsequent murder is charged to him, it seems that in this situation those who want the death penalty would certainly insist on it here. But again, the prosecutor allowed a plea bargain to second degree murder which meant that there was no possibility...

SENATOR LAMB: One minute, Senator.

SENATOR CHAMBERS: Thank you, Mr. Chairman. ...of a death penalty. If you go through the types of crimes that have been committed in Nebraska which were plea bargained out, you will see that much worse murders, if there is such a thing, were committed by people in other parts of the state than Omaha and Lincoln and Grand Island who were allowed to plea bargain out on a lesser offense and thereby not even face the possibility of the death penalty. So the fact that it cannot be carried out, the delays and the expense, we have a punishment which is not a punishment and which cannot deter because nobody expects to get it, and even the judges admit, they are reluctant to carry the sentence out and they will give a condemned person every opportunity to overturn the conviction, and Judge Rehnquist who is in favor of the death penalty said that the accused person is given so many bites at the apple that the odds favor some point along the line this individual finding a court that will overturn his sentence, which means that after all that time and money, the death penalty is defeated anyway. So we ought to do away...

SENATOR LAMB: Your time is up, Senator.

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SENATOR CHAMBERS: Thank you, Mr. Chairman. ...with the charade and abolish that and substitute a penalty that can be imposed and carried out.

SENATOR LAMB: Senator Burrows.

SENATOR BURROWS: Mr. Chairman, members of the Legislature, I cannot support LB 202 for several reasons. The thirty year mandatory sentence is an even more cruel and harsh punishment than the seldom used capital punishment and will deprive many prisoners of many, many years of life of freedom that do not deserve that harsh a punishment. First degree murder is a very broad charge in the State of Nebraska. It takes in some of the most heinous crimes and some of the most brutal people and also includes some people that are charged with first degree murder that come very close to justifiable homicide, that are not dangerous to society, and we have a group of people that are in for first degree murder in our penitentiary that takes in a range of people that are of no risk to society, that are of no danger to anyone else, and others that are an extreme danger. I would like to see our laws refined more so that it can be most seldom used for the most heinous crimes of the state and for people that exhibit brutal behavior because the arguments of deterrence of others I do not think hold. But capital punishment is an absolute deterrent to that person ever killing another and I think there is a place where some of the brutal murderers that we have to deal with, where they kill several people, they go into prison and then they kill a guard, another inmate, and there is a point to where the state should say, no more, and the absolute and only way we can do that is finally the point of capital punishment. I believe the deterrence arguments are overused for others but they do exist there and I think it would be a shame to put in a thirty year mandatory where we should have life imprisonment for some individuals that will be bad news if they leave the penitentiary but allow the courts yet to adjust the penalty to fit the person, the backgrounds of the crime, and the brutality of the person that is involved in it. We have quite a flexible law as it is today and to take that away with mandatory thirty years for every first degree murder would be the biggest mistake we could make. I think we should go over this law and refine it somewhat but not to vote out totally the capital punishment which does prevent that person from killing any more, but not at the sake of a thirty year mandatory sentence for all first degree. We should allow the court to make a full life sentence. Today we do not have the facilities to provide a humanely care for a person for a life sentence without the risk of that

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person killing another inmate or guard. It would be impossible to put one in solitary confinement for the rest of their life because that would be crueler than any capital offense. Thank you.

SENATOR LAMB: Mr. Clerk.

CLERK: Mr. President, I have an amendment to the bill offered by Senators DeCamp and Beutler.

SENATOR LAMB: Senator DeCamp.

SENATOR DeCAMP: Mr. President, members of the Legislature, I am going to let Senator Beutler handle the opening on this amendment and I am going to attempt the closing, kind of split our time equally between us. Let me just say that Senator Beutler and I both have a record in the past of retention of the death penalty on the bills that attempt to repeal it until the last time when I, of course, worked to get a repeal and explained why I was making that change. Senator Beutler is doing that today and I would turn it over to him to make the opening statements and I will make the closing.

SENATOR LAMB: Senator Beutler.

SENATOR BEUTLER: Beware of the Ides of March, Senator Chambers. It is kind of appropriate I guess that here in the heartland of America two thousand and twenty-six years after the premeditated murder of Julius Caesar we are all sitting here today still trying to figure out what to do with Brutus and the boys. Let me tell you briefly what this amendment does. The amendment does not eliminate entirely the death penalty but it does eliminate the death penalty except in cases of premeditated murder committed while under the jurisdiction or under the control of the State of Nebraska. So it retains the death penalty with regard to those types of premeditated murders. Secondly, it does away with the thirty year term and establishes a true life term. It is in fact a true life sentence. The only escape under the law possible from this true life sentence would be a pardon from the Board of Pardons. Now as you may or may not be aware, the Board of Pardons today has the authority to pardon all criminals and all crimes except for treason and I think one or two others. So it is not expanding the authority of the Board of Pardons. The Board of Pardons, for your information, consists of the Governor, the Attorney General, and the Secretary of State, and a decision by the Board of Pardons needs a majority vote of the Board. Any two of those three can vote to pardon or commute the sentence of a criminal. So that would

be the second point of the amendment. Now I suggest to you that the incentive to behave in prison is still there because of the fact that the possibility of the Board of Pardons might some day in the future pardon exists. Point number three and the final point of the amendment is to require that at the end of thirty years the Board of Pardons hold a hearing if there is an application from a sentenced murderer, hold a hearing as to whether the murderer should at that point in time, the convict at that point in time should be released. Let me make it very clear that the amendment does not require the Board of Pardons to release the prisoner. Absolutely no requirement that he be released, the only requirement is that a hearing be held, and it further then requires that at five year intervals additional hearings be held on that subject. So again, it does three things, narrows the death penalty so that it is applicable only to premeditated murder committed while in confinement, establishes true life sentences in place of the thirty year term, and requires the Board of Pardons to hold a hearing after so many years. For those of you who have been concerned as I have been concerned with the possibility of a mistake being made, the irremedial consequences of a death penalty, this particular amendment would for the most part solve that problem, and it would solve your problem if you have feelings that the state should not be involved in murders justified or unjustified. My main concern has been with deterrent effect. I think that a true life sentence under the conditions that we are talking about now is arguably as much a deterrent effect as capital punishment or at least in my mind the two are now so close that it would not justify demanding capital punishment if you have this alternative. The prisoner in all probability would never be released again, ever. He would certainly be adequately punished. So with that, I will leave it to your discussion and to your consideration. Thank you.

SENATOR LAMB: Senator Remmers on the amendment.

SENATOR REMMERS: Mr. Speaker, I have a question of Senator Beutler.

SENATOR LAMB: Senator Beutler, will you yield?

SENATOR REMMERS: In case that this prisoner who has been sentenced to a life sentence or a thirty year sentence, whatever it may be, he doesn't commit any murders while he is in the prison or kill an officer, but after he escapes from this, would the death penalty apply if he killed several hostages in trying to prevent being recaptured?

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SENATOR BEUTLER: It would be my intention and I think that the language does cover that situation because he is still under the, although he has escaped, he is still technically under the jurisdiction and control of the State of Nebraska and, therefore, the death penalty would be applicable.

SENATOR LAMB: Senator Haberman on the amendment.

SENATOR HABERMAN: (Mike not on.)

SENATOR LAMB: Senator Beutler, would you respond?

SENATOR HABERMAN: Senator Beutler, as an attorney do you feel that you could successfully defend someone and prove that it was not premeditated, a murder?

SENATOR BEUTLER: I am sorry, Senator Haberman, I didn't hear you.

SENATOR HABERMAN: Do you feel that an attorney could successfully defend a person that a murder was not premeditated?

SENATOR BEUTLER: Do I feel that I can successfully defend a person who was accused of premeditated murder?

SENATOR HABERMAN: (Mike not working.)

SENATOR LAMB: Senator Haberman, will you use Senator Carsten's mike. That one doesn't seem to be working.

SENATOR HABERMAN: Do you feel that you could as an attorney defend someone that a murder was not premeditated? On the basis (interruption).

SENATOR BEUTLER: I am sorry, Senator Haberman. I don't understand your question. I don't mean to be elusive. I just don't understand what you are getting at.

SENATOR HABERMAN: The question is this, you are saying that premeditated murder, right, you have got the words "premeditated", if it was a premeditated murder, you have that in your bill, is that correct?

SENATOR BEUTLER: Yes.

SENATOR HABERMAN: Or in your amendment.

SENATOR BEUTLER: That is not the entire phrase, Senator Haberman, but that is part of the phrase there. I want to

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be clear not to mislead you but that is the concept.

SENATOR HABERMAN: Could not an attorney successfully defend someone and prove that it was not premeditated?

SENATOR BEUTLER: Well, certainly, Senator Haberman, in any court of law if the defendant or if his attorney feels that there is a case to be made that it is not premeditated, they will certainly argue that it is not premeditated, right.

SENATOR HABERMAN: Okay, thank you. So in theory then this just blows what you are trying to do because you are saying that unless it is premeditated they are in there for life, but if somebody proves that it isn't premeditated, they can get out.

SENATOR BEUTLER: No, no.

SENATOR HABERMAN: Oh, yes.

SENATOR BEUTLER: This amendment doesn't have anything to do with nonpremeditated murder. We are leaving all that as it was. The only thing this amendment does is changes the law with regard to premeditated murder. As you are aware, that is the only...premeditated murder is the only type of murder to which we apply the death penalty currently. So I am just taking that category to which we apply the death penalty...

SENATOR LAMB: One minute, Senator Haberman.

SENATOR BEUTLER: ...and narrowing it, Senator Haberman, and substituting a true life penalty...

SENATOR HABERMAN: You are saying that any person convicted of murder in the first degree shall be guilty of either a Class I or a Class IA felony if he or she kills another person purposely and with deliberate and premeditated malice while legally confined in or under the care, custody, or control of a jail or correctional or penal institution.

SENATOR BEUTLER: Right, just in that situation.

SENATOR HABERMAN: Well, what I am trying to say is somebody could prove that it was not premeditated under any conditions.

SENATOR BEUTLER: Sure, that is always arguable (interruption).

SENATOR HABERMAN: So, therefore, when you stand up and say that by adopting your amendment you are going to put them in the pen for life, 15 years, thirty years, but you are saying for life, that possibly could not be true because they could

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be successfully defended that it was not premeditated so, therefore, I am speaking against your amendment for that reason. Thank you, Mr. President.

SENATOR LAMB: Senator DeCamp closing on his amendment.

SENATOR DeCAMP: Mr. President and members of the Legislature, when I was a soldier in Vietnam I remember one of the cruelest hoaxes that could be played upon us and was played was the promise that our outer perimeter was being defended by our allies. We relied for our very lives upon that promise or that protection and in fact so much of the time that protection didn't exist out there because they had taken a walk or done whatever. As legislators the cruelest hoax we are playing upon the people of Nebraska is the pretention that an efficient or even real death penalty exists because it does not. I have heard my good friend Senator Kahle, Senator Hefner and others saying we have got to make it sure and swift and efficient and then it would have deterrent value and they all concede that that deterrent value or whatever benefits we are to get from it do not exist now because of the way it is applied and I submit to you the cruel truth is, the cruel truth is you are not going to be able to change that because you have U. S. Supreme Court constitutional interpretations that have evolved over the years that have made it an unenforceable penalty. Now I can say I dislike that and I believe the death penalty would be a heck of a deterrent or should be the ultimate penalty but the facts of life are that for the State of Nebraska we are subject to those U. S. Supreme Court constitutional interpretations and so this penalty or deterrent that we believe exists does not exist. And so how does it function for us? What it functions for us as is as follows, because we have focused so much attention on this in the State of Nebraska and so obsessed are we to retain this alleged death penalty that we have allowed the following to develop; number one, the second highest most expensive penal system in the United States, in excess of \$15,000 per person to keep them out there, not too bad a deal if they were doing something; number two, 85 to 90% of all the prisoners out there don't do diddly-do, they read books, recreate...they have a far better life than you do in here; number three, those prisoners on death row, supposedly, those prisoners do not have to do anything ever as long as they are on death row, nothing, and they have specialized treatment at the pen. I believe a far fairer, more efficient system is to acknowledge that the thing that a lot of people would like, maybe including me, simply cannot be imposed effectively. Therefore, what is the alternative? Put them to work, put them to work for thirty years of the rest of their life, start making them really pay for the crime. As it is now, the

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only ones being punished under the existing system are me, the taxpayer. For years, for years I have stood on this floor and tried to get a system whereby we put convicts to work on the roads. Little known to me we already had a system where that was all we had working on the roads. We have a prison system that is not cost effective, a prison system that is punishing us. I suggest this amendment...

SENATOR LAMB: One minute, Senator.

SENATOR DeCAMP: ...might be a reasonable approach to retain the death penalty in places where there might be some clear-cut usage of it and to acknowledge the fact that these people are being rewarded for crime under the existing system rather than punished and that the only people being punished are the ones here and all the citizens paying for the fiasco we have going on now. If I could change it to make it an effective death penalty, I might well do that. I acknowledge the weakness and limitations of state law and submit to you instead, let's put them to work, let's get the system cost effective, let's quit playing a hoax upon the people. As legislators our job is also to lead and inform the people as to what the real situation is, to make those corrections that can be made. The amendment takes a middle-of-the-road course and I personally believe it is a reasonable approach to attempt at this time and I urge its adoption.

SENATOR LAMB: Voting on the DeCamp-Beutler amendment. Those who support vote aye, those opposing vote no.

CLERK: Senator Lamb voting no.

SENATOR LAMB: Have you all voted? Have you all voted? Record. Senator DeCamp.

SENATOR DeCAMP: Mr. President, I would ask for a Call of the House and then just take call ins.

SENATOR LAMB: A Call of the House has been requested. Voting on a Call of the House. Record.

CLERK: 29 ayes, 0 nays to go under Call, Mr. President.

SENATOR LAMB: The House is under Call. Please record your presence. All nonauthorized personnel please leave the floor. Senator Duda, Senator Burrows, Senator Hoagland, Senator Landis, Senator Pirsch, Senator Wagner. Senator Hoagland. Would the Sergeant at Arms locate Senator Hoagland? Three are excused so all the rest are here. We will begin the roll call. Roll call has been requested. Start the roll call, Mr. Clerk.

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CLERK: (Roll call vote taken. See pages 1168 and 1169, Legislative Journal.) 25 ayes, 19 nays, Mr. President, on adoption of the DeCamp-Beutler amendment.

SENATOR LAMB: The amendment is adopted. On the bill, Senator Vard Johnson.

SENATOR V. JOHNSON: Mr. Speaker, members of the body, I rise to speak on behalf of the bill as amended. I think most of us in the body can now fully appreciate the significance of the amendment, what it would do very simply is it would replace capital punishment for those who commit premeditated crimes with a life sentence which is not parolable and the pardonable aspects of the life sentence only begin at the end of thirty years. In addition, if a person is in the penitentiary or under the care of a corrections officer and then killed another with premeditation, that individual could still be executed under our capital punishment statutes. Senator DeCamp made an excellent statement a few minutes ago when he said simply that to a large extent our society is married to a mythological system of criminal justice which has prevented us as a society from really doing justice to our criminal system. So many people in our society believe in their heart that the only way to handle a violent offender, the murderer, is to kill the individual as soon as he is apprehended. However, as Senator DeCamp so ably pointed out, whether or not the violent murderer will be executed is dependent on many, many circumstances. The first circumstance is, will he be caught? The second circumstance is, what charge, what charge will the prosecutor lodge against the individual once he is apprehended? The third circumstance is, what was the nature of the individual's mind? Was it warped or was he rational? He is a killer but what was the nature of his mind? Will he be able to avoid the clutches of the law by exercising the insanity defense? The next circumstance is, what is the quality of the evidence? What is the quality of the evidence that the prosecutor has marshalled against this offender? And that is something that we really don't take into consideration very much because so many offenders are being tried on the most circumstantial of evidence and the prosecutor himself or herself recognizes that the evidence is circumstantial, the evidence of guilt, and is fearful that he or she cannot get a conviction of first degree murder. So along the way as part and parcel of our overall justice process, we will reduce, we will reduce the charge from first degree to second degree or to manslaughter and we will allow a plea bargain to be arranged not because the offender is any less guilty of killing another human being but simply because the quality of the evidence is not terribly strong to be able to assure the

prosecutor of a conviction of first degree murder. And then the question is submitted to the jury and again the jury is charged to find this individual guilty beyond a reasonable doubt, and whether or not the person will be convicted depends upon how the jurors perceive the facts and apply the law. And then finally the question goes to the judge, if there has been a finding of first degree murder, should the individual be executed or should he not be executed, and we have an array of statutes requiring the judge to take one thing into consideration in terms of executing and to look at a different thing in a different fashion in terms of not executing.

SENATOR LAMB: One minute, Senator.

SENATOR V. JOHNSON: The truth of the matter is those persons who ultimately are found guilty of a capital offense and are condemned to die have truly been tested in a lottery, in a lottery of life, a lottery dependent on their being caught, dependent on the state of mind, dependent on the quality of evidence used against them, dependent upon prosecutorial discretion, dependent upon judicial application, dependent upon juror determination, and so what we end up with is a system that is inherently, is inherently unfair. But by our continuing to struggle for and fight for this system we miss the boat in terms of those things that you and I as a society need to do to keep the violent offender off of the streets. We need to separate the violent offender from the nonviolent, put the violent offender away in our jails, keep them in our jails, work on rehabilitation programs.

SENATOR LAMB: Your time is up, Senator.

SENATOR V. JOHNSON: We must take care of this bill.

SENATOR LAMB: Senator Labeledz on the amended bill.

SENATOR LABEDZ: Thank you, Mr. President. I think that I probably more than anyone here would like to explain my reasons for the way I vote on LB 202 and the reasons I have done so in the six years that I have been here. I would like to first comment, and I am reading an article here that came out of Washington, and it says here, "We cannot foster respect for human life while giving the state the license to destroy it." And that is why Governor Carey for the fourth time in his four years vetoed a bill to reinstate capital punishment and I would like to also go over with you a case that just happened recently in Chicago. Before I do that, I would like to say that my stand on the pro-life issue, a lot of people have said to me and written

to me, and Senator Chambers including asked me the question on the floor once, why do I think it is so horrible to take a human life in abortion and then feel so strongly about retaining capital punishment. I said it then and I say it again, an unborn child has committed no crime and, therefore, is innocent. As a State Senator, as a legislator that makes laws, I feel it my responsibility after that child is born to protect that life for the rest of its life. Let me go over a case that happened in Chicago. In Chicago a jury of seven men and five women have convicted John Gacy, the worst mass murderer in the history of the United States. Gacy was judged to have been guilty of killing and sexually assaulting 33 children. 28 bodies were found in the crawl space under Gacy's house. Another body was found beneath his garage. Four more of his victims were discovered in the river. Eleven of these individuals have never been identified. Terry Sullivan, an Assistant State Attorney who prosecuted him, described Gacy as an evil, vile, and diabolical man, a sadistic animal who had snuffed out 33 lives like they were candles. Gacy grinned as Sullivan called him the worst of all murderers, a man who was truly a predator. In Oroville, California, two young white men, Marvin Dean Noor and James McCarter had been found guilty of stalking and killing a deaf black man, Jimmy Lee Campbell. When they couldn't find any other animal to shoot, Noor and McCarter, who had been drinking heavily and smoking marijuana, murdered Campbell with a 30-30 Winchester rifle. They were sentenced to 25 years. Now if Gacy were living here in the State of Nebraska for killing 33 children, he would receive a mandatory sentence of 30 years. I think not. When murder no longer forfeits the murderers life, though it will sometimes interfere and in all times interfere with his freedom, respect for life is diminished and for taking that life life becomes cheap. If life is to be valued at all and secured, it must be known that everyone who takes the life forfeits his own. And I would like to ask Senator Beutler a question on the previous amendment that we just adopted. Senator Beutler, the Board of Pardons, according to 83-127 states, exercise the pardon authority as defined in Section 83-170 for all criminal offenses except treason and cases of impeachment.

SENATOR LAMB: One minute, Senator.

SENATOR LABEDZ: Nothing there says anything about felony I or felony 1A. Nothing is said about Class 1A felony. Isn't it true then that the Board of Pardons could conceivably pardon a person convicted of a Class 1A felony and sentenced to the mandatory thirty year term before that thirty years is up?

SENATOR BEUTLER: Senator Labeledz, regardless of what we do today, whether a person is convicted of robbery or rape or whatever, whether it is a First Class misdemeanor, a low class felony or the highest class felony, regardless of anything, the power of the Board of Pardons under the Constitution allows them to pardon each and every one of those criminals should they so choose.

SENATOR LABEDZ: It does today, right, but by giving it a mandatory thirty years sentence instead of the death penalty...

SENATOR LAMB: Your time is up, Senator.

SENATOR LABEDZ: ...then they can conceivably pardon that person, right?

SENATOR BEUTLER: On a mandatory thirty year death...under Senator Chambers' mandatory thirty years, they could have pardoned there, too, Senator Labeledz.

SENATOR LABEDZ: Yes, I know that but now we have replaced the thirty year mandatory sentence with...we have replaced the death penalty with the thirty year mandatory sentence, right?

SENATOR BEUTLER: No, we have not. We have replaced the death penalty with a life sentence, true life sentence.

SENATOR LAMB: Your time is up.

SENATOR LABEDZ: But the Board of Pardons can...thank you very much.

SENATOR LAMB: Before we continue, I would like to introduce a guest of, a friend of Senator Dave Landis. It is Professor Aubrey Diamond, a British law professor, in Lincoln giving a guest lecture at the College of Law, under the North balcony. Professor Diamond, would you stand and be recognized. Thank you for attending our session. The next speaker on LB 202 is Senator Howard Peterson on the amended bill.

SENATOR HOWARD PETERSON: Mr. Chairman, members of the Legislature, those of you who voted for this amendment I believe you have been very carefully slicked to be honest about it. I think you ought to recognize that. I'd just like to review with this body some murders we have had in Grand Island, to tell you that I firmly believe that we have the death penalty in operation, and I am one who believes in the death penalty because I think it is a deterrent. We

have a young man out here on death row who killed a young man by the name of Barry who was closing up at the Ace Hardware Store in Grand Island, taking the money to the bank for the evening. Two young men waited outside at the back of a parking lot, forced Mr. Barry into the car, took him and murdered him, and I mean they...it was deliberate, premeditated murder. They had the money. They didn't have to do the murder but they did. They emptied the gun and then again and all I can say is that I believe that it is time for us to seriously consider enforcing the death penalty instead of weakening the death penalty. Another one is young Crittenden. Some of you are young enough to remember him. And we could go on. We have got the death of a coin dealer out in Grand Island. I passed that literature out and the Supreme Court, you know, said, well, we have got to have a retrial in this particular case. So we are going to...you know, we talk about spending money. We are spending money like it is going out of style on these people who murder and it seems to me that it is time for us to stand and be counted and say, look, we are going to require an eye for an eye and a tooth for a tooth and we certainly do not need to be so lenient, I mean so lenient that we say to someone, you can be on death row for the rest of your life. I am just one of those people that believe had we had the death penalty in operation, I lived through the period of Starkweather, as some of you did here, and I am convinced that after we put Starkweather to death, the number of murders in this state dropped off rather rapidly. Now we haven't done anything. They have increased. We have got 11 men out there. I would predict that if we passed this bill as we have it before us today, we will have that place full of people who are going to murder in order to get drugs, in order to do many things, and I just want to caution this Legislature that they need to take a careful look at what they are doing this afternoon.

SENATOR LAMB: Before we proceed, I would like to introduce guests of Senator Chronister. It is Martin Shultz of Schuyler and Harold Augustine of Lincoln under the South balcony. Welcome to the Legislature. Senator Higgins on the amended bill.

SENATOR HIGGINS: Mr. President, colleagues, I don't know how many of you noticed when you voted on the amendment, Senator Higgins was the only one that passed. Maybe you thought that I just didn't have the strength of my convictions. I haven't got a conviction yet one way or the other on this bill but I would like to say this. In reading over this amendment, and I ask you all to pick up the

amendment again and read the part on line 13 where it says "with deliberate and premeditated malice while legally confined in or under the care, custody, or control of a jail, or correctional, or penal institution". In the first place, an Omaha police officer bringing a man to the State Penitentiary in Lincoln, he is not a jail, or a correctional institution, or a penal institution. A U. S. Marshal taking a man from Lincoln to Leavenworth Penitentiary is not a jail, or a correctional, or a penal institution. Therefore, in transporting someone who has been convicted of murder and given thirty years or the death penalty, whichever is decided, those persons would not be covered under this amendment. That is one reason why I passed on the amendment. I did not get a chance to ask a question on it before we voted on it. The second thing I would like to point out in this amendment, and I am sure the attorneys here will have an answer for it, but again it is my explanation of why I did not vote. On line 13 where it says "with deliberate and premeditated malice", it is common knowledge that in every prison across the United States, whether it is state or federal, there is an unlimited supply of drugs and inmates make alcohol every day. I know that because my husband will have 20 years this August working at the federal penitentiary in Leavenworth, and because of the rights of the inmates where they no longer open all of their mail and packages, much of this is smuggled in on a daily basis. Now I ask you, if I am doing time in a penitentiary and I get all hopped up on hashish or whatever it is they take, and while I am in that state of mind and I murder someone, be it another inmate or a correctional officer, is that deliberate? Is that with malice, if I am out of my mind at the time, and may I not argue very plainly to a jury had I not been drunk, your honor, I wouldn't have done it. Had I not been hopped up on dope, your honor, I wouldn't have done it. Therefore, there is no malice. Therefore, it wasn't deliberate. And this is why I passed on this amendment. I read it very carefully after it was handed out. I am still reading the bill. Thank you, Senators.

SENATOR LAMB: Senator Chambers on the amended version of the bill.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, this is an issue on which I am showing restraint this afternoon. I feel very deeply about it and I have for years and I will continue to feel the way that I feel on this type of issue. I think some of the concerns expressed by Senator Higgins are not really practical because the cases that she mentioned have not happened,

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and when you talk about burdens of proof in order to determine the class of homicide that is to be charged, that has nothing whatsoever to do with the bill in its original form or in its amended form. The only time the death penalty can be imposed is when there is malice aforethought, deliberate premeditated, whatever term in your mind carries to you the notion that the law requires, which is that a person deliberately and in a fashion not allowed by the law took another person's life. Those things are not touched by the amendment. You still have to prove first degree murder, all elements of it, and that burden is on the state, will continue to be on the state. The Legislature and nobody else can shift that burden constitutionally but there was an editorial in the Catholic Voice which appeared February 5th of this year and the editor is suggesting that the readers of this newspaper support LB 202 in its unamended form which is to abolish the death penalty. And there is some interesting language here. "As one who several years ago buried a nephew policeman murdered during a jewelry store robbery, your editor urges you to read the letter on page 10, study the bishop's statement, come to an honest opinion on this subject, and then contact your State Senator and urge him or her to vote for LB 202. This is not an issue to be settled in a Gallup poll. Our viewpoint is determined not by a revenge filled society but rather by the gospel message. Here is our opportunity to follow our bishops and stand with them as prophetic leaders. If we have strayed so far that we can no longer see the diety in everyone, then little else remains for us except despair." The final paragraph. "A decision to oppose the death penalty would not entail a watering down of our convictions. Neither would it encourage criminality but it would include all persons even those on death row in Lincoln as being equally with us, the brothers and sisters of Christ, entitled to human life until God calls them home." Sometimes those words have meaning to people and sometimes they don't but it seems to me that if a profession is made of a certain philosophical or religious position, the time to vindicate that belief is when the pressure is on, when a live issue is before us. One reason it is not difficult for me to show a restraint is because I have talked to some of you and I am convinced that a lot more of you have thought about the issue very seriously, that it is not an easy matter to make your mind up on. You are not as settled in your conviction as I have been for a lot of years. That being the case, respect must be given to those who are undergoing a moral internal struggle, and I hope that when your struggling is completed, you come down on the side of the principle that the state ought never kill its citizens, that the state ought not in the law sanctify the principle that killing is the proper action

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for civilized people to use to solve any problem. Everybody, as has been stated, has a little fur clad stone age creature down inside his or her heart dangling the club, seeking blood and revenge. Senator Wesely pointed out how this little creature asserted himself when Senator Wesely's friend died, but when Senator Wesely found out that the hand of the perpetrator was also a friend, then the mixed emotions began to come into play and the moral struggle ensued. His better lights asserted themselves...

SENATOR LAMB: One minute, Senator.

SENATOR CHAMBERS: ...and he knew that if he couldn't stand to see his friend killed by the state, then nobody should be killed by the state, and what we want for those who are dear to us is what we should want for everybody and it seems to me this would be the hallmark of any true religion. If I remember correctly what I read, Senator Howard Peterson, Christ didn't say take the blood of those who are shedding my blood. He didn't say take a spear and run it in their side as a spear has been run into mine. He didn't say plant a crown of thorns and press it on their brow until the blood flows. He didn't say scourge them until their back is lacerated. Senator Howard Peterson, I think he said, "Forgive them, for they know not what they do." They knew they were executing a man. They knew they were extinguishing a human life, but on a deeper level, there was not a total awareness of what was being done and what in fact was being snuffed out. I hope the Legislature will go...

SENATOR LAMB: Time is up, Senator.

SENATOR CHAMBERS: ..to a deeper level and truly understand what we are dealing with here today.

SENATOR LAMB: Senator DeCamp on the amended version of the bill.

SENATOR DeCAMP: Mr. President and members of the Legislature, Senator Labeledz, Senator Howard Peterson, and some others have very graphically described the problem and the problem is serious. The problem is people out there kill other people and I can describe it in as much gore, with as much violence, as anybody. Senator Peterson, Senator Labeledz, Senator Venditte when he was here before, and the others have never yet offered the solution to the problem. They have never yet said how you make the death penalty more efficient, more swift, more certain. They have never yet said how you bypass Supreme Court decisions. They have never

shown us how to change one thing in the state, in the United States, that has the toughest death penalty of all. But as I suggested a couple of years ago, Senator Don Wesely was in diapers the last time the death penalty was used in the State of Nebraska and there have been thousands of murders since that day and multitudes of people officially sentenced to death, and do you know what? Senator Bill Nichol, and Senator John DeCamp, and Senator Bernice Labedz, and all the taxpayers of the State of Nebraska have financed the appeals, the new appeals, the special appeals, the special lawyers, the special courts, the special procedures that are involved whenever the death penalty comes into play and they finance both sides. And during the time these were being financed by Senator Howard Peterson on one side, let's say, and Bernice on the other to the tune of hundreds of thousands and ultimately millions, the person involved who killed people in a gory fashion or whatever was not obligated to do one second of work or any other thing that paid society back for his offense and that is the system we hold in effect and that is the hoax I suggest exists. Now it has been suggested by some people in here they would support the bill if it had a death penalty for killing of a police officer. I guess I have no objections to that because I think the issue of the death penalty is where we are really at, the general application. So if somebody wants to offer that, or I will offer that if somebody wants, if that would elicit support to get the criminal justice system in the state generally functioning in a somewhat efficient manner. I repeat again, you have not only a team that claims to be number one in football every year, but you have a certitude by documentation in national studies of the second or third most expensive criminal justice system in terms of incarceration in the United States and you aren't having those people work out there. Not one of the people on death row is ever going to have to do an ounce of work and 85 to 90% of all the other prisoners by letters I have got from the prisoners themselves aren't working. Let's start looking at the overall system instead of this obsession we have with trying to apply the death penalty. If we could apply it, I would do it. Believe me, there is nobody would like to take some people that have done hijacking or killed children or done these other horrid things,...

SENATOR LAMB: You have one minute, Senator.

SENATOR DeCAMP: ...line them up, and so to speak blow their brains out but it isn't about to happen, and while you are fixed on that, you are deluding the people that it is going to happen and you are not putting them to work.

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You are not really incarcerating them when they have all their special privileges the way it is now. You are punishing us instead of them. So I would urge you to probably put another amendment on dealing with the police officers and support advancement of the bill and start educating the individuals in your district as to the true facts of the death penalty the way it exists.

SENATOR LAMB: The Chair recognizes Senator Kahle.

SENATOR KAHLE: Mr. President, members, I spoke once before and I swore that was the only time I was going to speak but I am back. I guess my question to Senator DeCamp would be, how are you going to make them work, and we had chain gangs back many years ago when they used a blacksnake whip on them. Is that what we are going to have to do? You can't make a person work if he doesn't want to.

SENATOR DeCAMP: Okay, Senator Kahle, you have raised one of the best questions. I believe there are methods to make it so unhappy not working and the incentives for working great enough that you can get people working and starting to pay for their own keep, so on and so forth. It has been experimented on and tested. It has worked in other places. We are doing nothing here really, but if we are hung up on one thing instead of addressing that, we are not going to get it done.

SENATOR KAHLE: I don't think you can make people work, but the other thing that bothers me about the amendment, and I guess I am through with you, John, I believe Senator Higgins or somebody read a bit ago about they have to be legally confined and under the care and custody or control of a jail, or correctional, or penal institution. What about if they escape and kill ten people? Are they still going to get thirty years? That is a question, I guess, John.

SENATOR DeCAMP: No. In answer to your question and I want to address this to Marge, too, because I know Senator Beutler was asked a question, they are under the jurisdiction of the state. Legally they are assigned in a confinement situation. The fact that they sneaked out or broke out doesn't change that. If there is any doubt, we would be happy to alter and clarify that language but I think it is abundantly clear. It is a legal situation, legal control or jurisdiction and just escaping doesn't change that or being transported but we would be happy to clarify that portion if there is any doubt.

SENATOR KAHLE: Well, it is certainly not legal custody when they are out running around so I think something should be done. But the other thing that bothers me a great deal, this is the fact that you are putting in the statutes the fact that you need to kill twice in order to suffer the penalty. You need to kill the first time...you are put in a prison for thirty years...

SENATOR DeCAMP: No, that is a different amendment. That is not the Beutler-DeCamp amendment.

SENATOR KAHLE: Well, that is what it says.

SENATOR DeCAMP: Oh, I see, you are saying the person has to be in prison in the first place and then, okay...excuse me. Okay, I thought you were looking at another amendment.

SENATOR KAHLE: Yes, I guess I shouldn't have used the term "thirty years", I should have used "life", but they have to kill twice in order to get the death penalty then.

SENATOR DeCAMP: Well, I don't think that is correct but let me check it out superquick.

SENATOR KAHLE: They wouldn't be in there if they hadn't killed.

SENATOR DeCAMP: No, that is not true. There is all kinds... there is a thousand people out there in prison now that didn't kill somebody.

SENATOR KAHLE: Well, are you saying that anybody that kills a police officer or a guard is going to get the chair?

SENATOR DeCAMP: Pardon?

SENATOR KAHLE: Are you saying that anybody that kills a guard is going to get the chair? The way I read it it is just those that have already been sentenced for murder for thirty years.

SENATOR DeCAMP: Okay, Senator Beutler drafted the amendment. It is my intention that anybody, anybody under the jurisdiction of the state, is that correct, Senator Beutler? If that is not clear, Senator Beutler would make whatever clarifications are necessary. So I think that was his intention and my intention and that is clearly what was intended. If it doesn't read that way, Senator Beutler is a master draftsman. I know that from the number of amendments he drafts on bills of mine.

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SENATOR KAHLE: Well, I think that Senator Peterson was right. We have been snookered. Thank you.

SENATOR LAMB: Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, I am not going to take a lot of time. I wanted to say this that I had a letter from a lady several days ago. She said I think that you ought to reconsider your position on the death penalty. I believe that anyone who commits murder should be executed within a period of twenty days. Now I don't know what she expected me to offer that kind of an amendment or not but that would fit the description of justice, swift, sure, and certain, provided the person were really guilty, I guess. Now if you found out on the 21st day the person were not guilty, I guess that would call for a different sort of rationalization. I made the point here before on this floor that if the death penalty were in fact enforced uniformly and across the board and you executed the thousands of people who took a life that it might deter the penalty...it might deter the commission of the crime. The facts are that it is not applied uniformly. It is not applied without regard for the individual who committed the crime and at the present time perhaps the safest place in the State of Nebraska is on death row at the Nebraska State Penitentiary. It is the only place that I can guarantee no one has died in the last twenty-two years, and if you take the situation as it exists today and continue the present system of the death penalty, I am almost certain that you can convince the people that no one will die there in the next twenty-two years. As Senator DeCamp has said, the death penalty is a myth. It has not been enforced. Now some of you who are aware of the other laws that are ignored, I ask you what would be the situation on our highways today if we did not enforce the speed limit? Do you really believe that anyone would pay any attention to it? I can tell you from my own personal experience, I am not proud of the fact that I have a number of points, but the facts are that if it was not for the enforcement of that law I would exceed that speed limit and I would do so morning after morning after morning, and in the evening also. The point I want to make is this and I want to make it once more, that we do not at this time have a death penalty but it gives those of us in this position the best of two worlds. We can look at the 90% of the people or the 80% of the people who clamor for a death penalty and we can go back home and say that is right, we are going to execute those bums, when each and everyone of us know it is not going to happen. Now if you can find some way to make it happen beyond the control

of this body, then I will take a look at it. But the facts are you can't do it, and as Senator DeCamp and others have pointed out here, so long as the system is in the position that it is you are going to find a contempt for the law that is far worse than what would happen if the penalty were known to be swift and certain, severe, impartial, and immediately implemented. I think that you have to recognize, and I said this before, that no one fools around the airports any more because if you even mention the word "gun" or say "boom", it doesn't make any difference if you are a politician or a pauper, bank president or laborer, you are immediately and unceremoniously hauled off to the local slammer and you are lucky if you proceed with your trip in more than a few days.

SENATOR LAMB: You have one minute, Senator.

SENATOR SCHMIT: And you will pay a substantial fine, and as a result of that, all of the emotionally disturbed people that like to raise hell do so someplace other than in an airport. But we don't do that with the death penalty, and so long as you don't enforce the penalty, it is no penalty and we ought to have enough courage to admit that we have been hiding behind a penalty which does not exist. So at this time I am going to support LB 202 and I know it is not the popular thing to do but I believe it is the responsible thing to do.

SENATOR LAMB: Senator Sieck.

SENATOR SIECK: Mr. President, members of the body, I listened to this conversation all afternoon and I felt like many of you did three years ago when the same issue was brought up. I felt that the death penalty was a deterrent, but after being on the Judiciary Committee and understanding this problem these last three years, I have a strong feeling that it is not a deterrent and it is a farce and we have got to find some way better and we need to get these people working and I think we can but we have to find ways and means. And our head of the present correctional institution, Mr. Benson, would be pleased and encourage us to find ways and means to do this because he sees a lot of need in this area. I cannot support the death penalty at this time because it is not doing any good even though I have people within my district who want me to support it. But I have a lot of them, religious people, people with a lot of feeling, and I have a lot of feeling and I feel that I have to support 202 and I am pleased that Senator Beutler and Senator DeCamp put this amendment on because it does give the prison system some more protection and

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they need this. But as it stands now as far as our citizens are concerned, I don't think it does a bit of good with what we have today. I encourage you to vote for 202.

SENATOR LAMB: An amendment on the desk.

CLERK: Mr. President, Senators Beutler and DeCamp would move to amend the Beutler-DeCamp amendment previously adopted by adding the following language: After the word "of" found on page 1, line 14, "any officer of the law or".

SENATOR LAMB: Senator Lamb.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I want to be very cautious in approaching the problem that Senator Higgins suggested. The problem that she suggested was that perhaps in transferring a prisoner when the prisoner was in the custody of a police officer that in that instance they were not under the care, custody, or control of the jail, or correctional, or penal institution. Well, I think that they would be interpreted to be under the custody of whatever jail had custody of them at that particular point in time because that police officer would be essentially employed by that jail, but I, myself, feel the same way that Senator Higgins does that I do not...I certainly do not want that situation to be not covered. So what this amendment does is adds the words "any officer of the law", so that if you are under the care, custody, or control of any officer of the law or under the care, custody, or control of any jail, or correctional, or penal institution, either way, it is covered for sure so that the situation that Senator Higgins brought up is covered by both interpretations. Thank you.

SENATOR LAMB: We have several lights on now but several of those were on before the amendment. Senator Pirsch, did you wish to address the amendment?

SENATOR PIRSCH: Thank you, Senator Lamb, members of the body. As you know I have had other legislation introduced which protected officers of the law, assaults behind correctional walls, but I do not support this amendment. I think that our citizens, our elderly in our communities, our young, the victims of the murderers that we are debating the futures of today ought to be as covered as our law enforcement officers and as our correctional officers. Senator Beutler, I have a question for you if you would yield. Does this cover...

SENATOR LAMB: Senator Beutler.

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SENATOR PIRSCH: Does this cover our Department of Public Institutions? Does this cover murder in the Regional Centers? Your amendment.

SENATOR BEUTLER: No, it does not cover the Regional Center.

SENATOR PIRSCH: Okay, thank you. It appears to me that we are trying to say, yes, because you kill a law officer, because someone commits murder behind correctional walls or simply in a correctional institution makes them that... that ultimate murderer. Well, I disagree and I think we are kidding ourselves when we think that the life imprisonment is not going to be appealed as often as the death penalty itself. What kind of a punishment is a life imprisonment? I still believe that the society which holds human life, and that is all human life, not law enforcement or not life behind the correctional wall, but any human life that we consider sacred, then we should be willing to fight and exact that final punishment to that individual who willfully and with malice aforethought murders in cold blood. And you are talking because you don't think it is a deterrent because it is not being carried out. We have some drunk driving laws which the public is screaming about having enforced. We have tough drunk driving laws on our books right now. Are we talking about throwing out our drunk driving laws because they are not being carried out as we think they should? No. We are talking about getting stronger laws, mandating them, making sure they are carried out. Now why are we not doing this with capital punishment? I can't understand. I only know that from childhood on swift, sure punishment is a deterrent. Maybe these people who are not deterred by that and commit murders have not had that...those deterrents through their lifetime, through their childhood, but the problem with the present administration of the death penalty is that it is neither swift nor sure...

SENATOR LAMB: One minute, Senator.

SENATOR PIRSCH: ...and we all agree with that. So now we are talking about doing away with it entirely. We could apply that to all of our laws in the State of Nebraska and I am opposed to this amendment and to LB 202.

SENATOR LAMB: Senator Chambers on the Beutler amendment.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I was not going to speak on this amendment because I felt that it reflected a concern that some of the Senators expressed, but in view of Senator Pirsch's remarks, I want

to read something that a judge on the U. S. Supreme Court stated so that you all will understand that we are talking about something other than drunk driving laws. This has to do with presentence investigative material which had to be shown to a defendant who had been sentenced to death. Stevens said the court's new rules regarding data in presentence reports were necessary because "death is a different kind of punishment than any other. It is of vital importance to the defendant and the community that any decisions to impose the death sentence be and appear to be based on reason rather than caprice." We are talking about something which is absolutely irreversible and I was hoping that the death penalty issue would not be mixed up with some of the other things that we talk about. The death penalty has been declared even by those who favor it to be an enormous penalty, one different from every other penalty. That is what the State of Nebraska Supreme Court declared during a case where it was upholding a death sentence. So we are not talking about drunk driving laws and to do that is to muddy the water. As for the other comments that Senator Pirsch made about a law enforcement officer's life having more than anybody elses, from my understanding of what those who offered that amendment said was not that the life is worth more or less, there was no comparison about the value of lives. The idea was to build in some kind of mechanism of control that those who offered the amendment felt would be necessary in these penal facilities. So it is not weighing the comparative value of life but rather building in what they think is a necessary control. As one who is opposed to the death penalty under all circumstances, it is difficult for me to be still and hold my tongue on any of these amendments because I don't think that the death penalty does anything except reek vengeance and give a temporary satisfaction to people who equate punishment with some kind of deep need within themselves to expiate some type of sinfulness on their own part, and by using the philosophy of the scapegoat, they punish somebody else, not for what that somebody else did, but for the guilt that they themselves carry around with them. It has been found that the people who are most compassionate and humane are the ones who least want to do terrible things to other people and that is what those terms mean but they find out that the ones who are most compassionate and humane are often the ones who suffer the greatest. They are the ones who tend to be forgiving, but the ones who are hard and cold and demanding of punishment can be found in other aspects of their life to be lacking in compassion, a depth of understanding or consideration of all issues when you are talking about a complex subject. It happens now that we are talking about the taking of the life

of a citizen. Senator Beutler and Senator DeCamp or Senator Beutler alone is offering an amendment to take care of concerns that were expressed by the members. Now if his offering this amendment, Senator Howard Peterson, is rejected, then it seems like other people are playing snooker, not Senator Beutler and Senator DeCamp and I certainly am not playing. I think what we are dealing with here is the idea that some people cannot face this issue head on and deal with it as we know it should be dealt with. So we are all temporizing. I am temporizing today. I am not opposing these amendments. I am backing off of a position that I have traditionally held on this issue and that is to say that I am in favor of abolishing the death penalty in all cases, period. There should be no vestige of it on the law books of the state but that during these times is unrealistic. A bite of the apple has to be taken when the entire apple cannot be swallowed. So Senator Beutler's amendment I think will just about have to be accepted. It is not to say that a law enforcement officer's life is...

SENATOR LAMB: One minute, Senator.

SENATOR CHAMBERS: ...worth more than anybody else's. They are talking, Senator Pirsch, about this idea of control and maintenance of control in these situations where because of the operation of the law one person has been placed under the custody and direction of another.

SENATOR LAMB: Senator Pirsch, did you wish to speak on the amendment? Senator Labedz.

SENATOR LABEDZ: Thank you, Mr. President. Yes, I will speak on this amendment and the amendment we just adopted because I ran out of time in the last time I was up in speaking. I would like to agree and do wholeheartedly with Senator Pirsch. My husband was a policeman for forty years and his life, of course, was very, very valuable, very precious to me, to my family, and even to the community, but when we just adopted this amendment a short time ago and this amendment to the amendment, we are saying that his life, the officer in prison or any correctional facility or a penal institution is very important and, therefore, if anyone terminates that life while in prison, then they receive capital punishment. But I think the person on the street, my next door neighbor, or the child going to school in the morning, their lives are just as important to me as that of my husband when he was a policeman for forty years. I think we have covered in the amendment or they have covered, I did not vote for the amendment, while legally confined in a prison and convicted of a Class 1 or a Class 1A felony, but how about the law enforcement officer if we are going to

protect him when he is on duty and he is trying to arrest or take into custody a person that has just committed a violent crime? That person that committed the violent crime could very well turn on the police officers and kill both of them and that has happened many and many a time. So I am saying if we are really going to protect a law enforcement officer, we are certainly not doing it while he is performing his duty before a person is convicted of a crime, and I have to say it again because I am wondering if you quite understood what I said before, and I will repeat, pardon authority is defined in 83-170 as the power to remit fines and forfeitures and to grant respites, reprieves, pardons or commutations. In other words, the Pardon Board can reduce or can postpone any sentence and the Board of Pardons according to 83-127 shall exercise the pardon authority as defined in Section 83-170 for all criminal sentences except treason and cases of impeachment. Nothing is said in that section about Class 1A felonies. The Board of Pardons could conceivably pardon the person convicted of a Class 1A felony and sentenced to the mandatory thirty year term before that thirty year term is up. I urge you to not only reject this amendment but to reject the bill in itself. Thank you very much.

SENATOR LAMB: Senator Nichol on the amendment.

SENATOR NICHOL: Thank you, Mr. Chairman, members of the Legislature. Senator Beutler, may I ask you a question please. This is the officer amendment that has been run through several times, right?

SENATOR BEUTLER: Yes, sir.

SENATOR NICHOL: And if an officer is transporting a prisoner and the officer gets shot while doing that, the person shooting the officer could be guilty of murder and be sent to the electric chair, right?

SENATOR BEUTLER: If the person is the prisoner, yes, sir.

SENATOR NICHOL: Okay, but how about if my friend, Rex, has been doing something and he shouldn't be doing again and a law enforcement officer picks him and I see my friend being towed away and I knowing that my friend Rex has no gun I shoot the officer so that my friend can be freed. Simply because I shoot the officer means that I don't get the death penalty but if my friend Rex should shoot him, he gets the death penalty, right? The result is the same but one person doing it gets off, the other one doesn't, is that correct?

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SENATOR BEUTLER: Well, in one sense that is true, Senator Nichol. There is not complete logic to the amendment. That is absolutely true. The only logic is in the need in a confinement situation to have, in my opinion, the death penalty as opposed to a term of years since obviously additional years mean nothing more. To the person who is not already in prison, the life term is going to mean much more than to someone who is already in prison. So I think there is a logical distinction, Senator Nichol, in terms of the (interruption).

SENATOR NICHOL: Okay, let's take this situation. If a person is in prison for murder and he is being transported and he murders a policeman, he is eligible for the electric chair, right?

SENATOR BEUTLER: That is right.

SENATOR NICHOL: If he has not been convicted of murder and has been transported and he kills the officer, he does not get the electric chair, is that correct?

SENATOR BEUTLER: It is the intent of this amendment that he also would be subject to the electric chair, yes.

SENATOR NICHOL: All right, thank you, Senator Beutler. I think it is a bad amendment and we should kill the amendment at least. Thank you.

SENATOR LAMB: Senator Howard Peterson on the amendment.

SENATOR H. PETERSON: Mr. Chairman, it would appear to me that what we are going to do is to give more protection to the police officer and more protection to people inside of the penitentiary than we are to the people on the outside. It just don't make sense to me.

SENATOR LAMB: Senator Beutler, did you want to speak on the amendment?

SENATOR BEUTLER: Just as I am closing, Mr. Speaker.

SENATOR LAMB: Well, Senator DeCamp has indicated he wants to close.

SENATOR BEUTLER: That is fine. Let Senator DeCamp close.

SENATOR LAMB: Senator DeCamp closing on the amendment.

SENATOR DeCAMP: Mr. President, members of the Legislature,

I think the amendment addresses some of the issues raised regarding police officers and I think you can say reasonably they are a distinct class under distinct circumstances, and if you are going to justify the death penalty under any circumstances, these would probably be the most reasonable, if you want to use rational basis. But I would like to address specifically the question raised by Senator Pirsch. Senator Pirsch said the death penalty is not working. It is not being enforced and it is not swift and certain, and everyone of the opponents have stood up today and in one form or another said that. But then Senator Pirsch said something else, if you were listening. She said so what we should be doing in here, what we should be doing in here she said was passing laws to make the death penalty work and I agree. Except I don't think there is a law that can be passed by us as a state that is going to supercede all the various Supreme Court decisions interpretations, various special things that have been developed, and so I say, okay, I can't do that, Carol. I can't make it "swift and certain" like you want nor can you nor can anybody else so let's quit deluding people out there and say we are going to pass that kind of a law. But I say, on the other hand, Carol, since I can't do that, and I acknowledge it, nor can you, nor can the Governor, nor can anybody in this state, let us do the next best thing. Let us admit, like you have and others have, that the system isn't working and come up with an alternate system, something that will cause something to happen, something that will cause punishment and deterrence, something that is swift and certain, and the experience shows that if you will use definite term of years, you eliminate overwhelmingly the number of appeals, the court's attitude of giving special preference because the death penalty is involved, the ability of us out at our prison to make people start doing something instead of being treated like kings, and so I am doing precisely what Senator Pirsch suggests. She says let's make it work. I am saying we can't make that specific penalty work but we can make a punishment system work. This is the punishment system we are suggesting. So I urge you to adopt the amendment, and in light of the facts, advance the bill.

SENATOR LAMB: Senator DeCamp was closing on the Beutler-DeCamp amendment. All those in favor vote aye, those opposed vote no.

CLERK: Senator Lamb voting no.

SENATOR LAMB: Have you all voted? Have you all voted? Record the vote. Senator DeCamp.

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SENATOR DeCAMP: This requires 25, doesn't it?

SENATOR LAMB: Yes.

SENATOR DeCAMP: I would ask for a Call of the House.

SENATOR LAMB: A Call of the House has been requested. Please record your vote. Record.

CLERK: 19 ayes, 0 nays to go under Call, Mr. President.

SENATOR LAMB: For what purpose do you rise, Senator Peterson?

SENATOR H. PETERSON: Mr. Chairman, I would not only ask for a Call of the House but a roll call vote.

SENATOR LAMB: A roll call vote has been requested. Please record your presence. Senator DeCamp, would you record your presence. Senator Haberman, Senator Newell, Senator Fenger, Senator Wagner, Senator Dworak, Senator Schmit. Senator Newell. Everyone is here except Senator Schmit. Senator Dworak is in the phone booth. Please begin the roll call, Mr. Clerk.

CLERK: (Roll call vote taken. See pages 1169 and 1170, Legislative Journal.) 24 ayes, 21 nays, Mr. President, on adoption of the amendment.

SENATOR LAMB: Motion fails. Motion on the desk.

CLERK: Mr. President, Senators Beutler and DeCamp would move to amend the bill. To amend the Beutler-DeCamp amendment by changing the word "any" to the word...

SENATOR LAMB: The Call is raised.

CLERK: Mr. President, I have two kill motions. The first that was filed was offered by Senator Marsh and that would lay the bill over unless the introducers agree to take it up at this time.

SENATOR LAMB: Senator Chambers.

SENATOR CHAMBERS: Let it lay over. We are almost through anyway.

SENATOR LAMB: LB 202 is laid over. The Clerk has some items to read into the record. If it pleases the body, we will proceed until about four-thirty.

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LR 249, 250
LB 378A, 890A, 202

CLERK: Mr. President, some items to read in very quickly. New resolutions, LR 249 (read); LR 250 (read). (See pages 1171 and 1172, Legislative Journal.)

Mr. President, I have an Attorney General's opinion addressed to Senator Goodrich regarding LB 202. That will be put in the Journal.

And, Mr. President, Senator Lamb announces Special Order item for Thursday, March 18th.

SENATOR LAMB: Next will be #7, General File, LB 378A, Senator Cullan.

CLERK: Mr. President, LB 378A offered by Senator Cullan. (Read title).

SENATOR CLARK PRESIDING

SENATOR CLARK: Senator Cullan.

SENATOR CULLAN: Mr. President, members of the Legislature, I move the advancement of LB 378A. This is the A bill to carry out the appropriation of cash funds from the \$500 application fee, application fee which we adopted in the original bill. It involves absolutely no general funds, only those fees collected. I ask for advancement of LB 378A.

SENATOR CLARK: Any discussion on the advancement of the bill? If not, all those in favor vote aye, opposed vote nay. Have you all voted?

CLERK: Senator Clark voting yes.

SENATOR CLARK: Have you all voted on the advancement of the bill? Record the vote.

CLERK: 25 ayes, 0 nays on the motion to advance the bill, Mr. President.

SENATOR CLARK: The bill is advanced. LB 890A.

CLERK: Mr. President, 378A, I have a unanimous consent request from Senator Cullan to expedite that bill.

SENATOR CLARK: No objection. So ordered. 890A.

CLERK: Mr. President, LB 890A (read title).

SENATOR CLARK: Senator Koch...Senator Vickers.

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opportunity to meet to decide what shape we would like to see the bill take on Select File. We would be happy to include you and any member of the Revenue Committee in any meetings that we have to determine what further we should do with this bill if anything.

SENATOR NEWELL: I would hope you wouldn't do much further with the bill. We like the bill the way it is and that is the condition or was the condition of whether you could get it or not. I will stop talking now and let you move the bill and I probably will regret it.

SENATOR CLARK: Your time is up. You can judge yourself accordingly. We have about five and a half minutes on the bill. Senator Vickers.

SENATOR VICKERS: The question.

SENATOR CLARK: You want to call the question. The question before the House is shall debate now cease? All those in favor vote aye, opposed vote nay after I see five hands.

CLERK: Senator Clark voting yes.

SENATOR CLARK: We are voting on ceasing debate. Have you all voted on ceasing debate? Record the vote.

CLERK: 25 ayes, 4 nays to cease debate, Mr. President.

SENATOR CLARK: Debate has ceased. Senator Hoagland, do you wish to close?

SENATOR HOAGLAND: We will waive closing, Mr. President.

SENATOR CLARK: All right, the question before the House is the advancement of the bill. All those in favor will vote aye, opposed vote nay.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Record the vote.

CLERK: 29 ayes, 0 nays, Mr. President, on the motion to advance the bill.

SENATOR CLARK: The bill is advanced. Take up LB 835.

CLERK: Mr. President, a couple of items before that if I may. Senator DeCamp would like to print amendments to LB 202.

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SENATOR CLARK: We will now go to General File, LB 202

CLERK: Mr. President, LB 202 was a bill introduced by Senators Dworak and Chambers. (Read title.) The bill was read last year on January 15. It was referred to Judiciary Committee, Mr. President. The bill was advanced to General File. The Legislature considered the bill Monday of this week. At that time there was an amendment from Senators Beutler and DeCamp that was adopted. Senator Marsh had made a motion to indefinitely postpone the bill, Mr. President. That laid the bill over. I understand, Senator Marsh, that you now wish to withdraw that motion. Is that true?

SENATOR MARSH: Yes, sir.

CLERK: In that event, Mr. President, I have a motion from Senators Haberman, Hefner and Labedz to indefinitely postpone LB 202.

SENATOR LAMB PRESIDING

SENATOR LAMB: Before we start on the bill, I would just like to point out to the body that we have had a report made which divides the number of minutes by the number of bills left in this session, and it does not look good, and there is a very real possibility that all of the priority bills will not be handled this session. So we have first on our agenda now, we have two bills which could use up a lot of time. There has already been a considerable time expended on these two bills, so I would just hope that everyone would cooperate without interfering with the legislative process and we could vote before too much time is elapsed. Senator Labedz on the kill motion.

SENATOR LABEDZ: Well, there is three of us on the kill motion so I am not going to say too much other than I am sure that Senator Beutler and Senator Chambers are going to stand and say that they do have an amendment to their amendment or possibly come up with another amendment. But I would like to say to the body of this Legislature that you are either for or against capital punishment. We said enough yesterday and I think that as Senator Lamb suggested that we either vote on the kill motion or try going on further with Senator Chambers' amendment or Senator Beutler's yesterday. I have a lot of material I could probably give you over the microphone but it does take a lot of time and I think a long time ago that we made up our mind, and as I said yesterday, life becomes

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cheap when we eliminate capital punishment. Thank you.

SENATOR LAMB: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I think that a courageous vote was taken the other day with the adoption of the DeCamp-Beutler amendment. It is not the type of bill which I would seek to have and were I to have my way, capital punishment would be completely abolished. But that is not likely to occur. So the amendment that had been adopted...that has been adopted, brings both parties some distance from their original position and closer to each other. I will repeat again what I said the other day that I know for some of you even the version of the bill that exists now was not an easy vote for you to cast, but having cast that vote, I hope you will stick. Others who did not vote for that amendment, I hope will do so. In order to show you what happens with reference to homicides in this state, there is a bill that I got the Legislature to pass in 1978 which dealt with recording by county attorneys of all of the homicides of a criminal nature that were committed in their county, they were to send these reports to the Court Administrator's office. Included on the report would be such information as the original charge filed, whether there was a reduction, if it was the result of a plea bargain and the outcome of the trial or the ultimate disposition of the case. This morning I got copies of the reports that have been filed since 1978. Now from 1978 alone until today, there have been 112 criminal homicides in Nebraska. That is not all the way from 1973 when the death penalty was reinstituted in the state, it would be several times that 112. But of that 112, 39 were plea bargained for the purpose of reaching a lower charge; 15 had juries where the jurors chose not to convict the person of the charge filed by the prosecutor. It was an indication of what a former county attorney told us that jurors are not that anxious to convict if they feel the penalty is unduly harsh. So in 15 of those cases the individual charged was found guilty of a lesser offense than the murder which was charged, 4 or 5 were let off because of insanity. Now my calculations are not scientific, but I can tell you this, I counted every page that I have. I looked to see if there had been a plea bargain and if there was a reduction of the charge as a result of the plea bargain, so those figures that I gave you are correct. Anybody who would like to see this material can see it. If you would like a copy of it, you can get it either from me or the Court Administrator's office. But the

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point I am trying to get across to you today is this. We have a multitude...several hundreds of homicides in this state. There is not much likelihood of a death penalty being imposed and carried out. In the history of the State of Nebraska since records were kept on executions, only 20 people have been executed and I use the word "only" in relationship to the total number of homicides that have been committed. Now we have more than half that number on death row today, in this year of 1982. Nebraska's history is not that of a killer state thus far. There is something unsavory about a number of southern states which are known for having large numbers of people on death row even though the courts will not allow them to execute these people. I would hate for Nebraska to join that group of states. So what I am hoping you would do this morning is defeat the kill motion and if there is additional material which needs to be discussed or brought to your attention, that is readily available. But there are three points that I want to mention to you. Judge Krivosha as well as others have pointed out, and it has been generally accepted by the members of the body that the certainty and swiftness of punishment is what provides a deterrent if any is to be provided at all. For those who are concerned about a 30-year sentence being unduly long, and I am one of them, such sentences....

SENATOR LAMB: One minute, Senator.

SENATOR CHAMBERS:are imposed right now. For those people who wonder what you will do with murderers as far as confining them in the Penitentiary, remember hundreds of murderers are being confined there right now with not any particular problem in dealing with them, in fact, they are the less difficult prisoners. The split decisions that are coming down in all capital punishment cases indicates an ambivalence on the part of judges, and the handout I gave you this morning dealt with two Nebraska cases, one was in this morning's paper where a plea was allowed to a lesser offense. The other dealt with a case of a man convicted of first degree murder in Lancaster County but the County Attorney is not certain that he will seek the death penalty. In the Florida case, the Florida Supreme Court and a federal judge refused to stay a man's execution which was to occur in a few days but an additional federal court did intervene to stay the execution. This bears out what U.S. Supreme Court Justice Rehnquist indicated, the accused has so many bites at the apple; he is likely to find some court which will vacate his death sentence. So in order

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that Nebraska can have a rational system of sentencing of certitude in the punishment, a predictability in the outcome of these first degree murder cases, I hope you will defeat the kill motion and allow us to proceed with the amended bill.

SENATOR LAMB: Your time is up, Senator.

SENATOR CHAMBERS: Thank you.

SENATOR LAMB: Senator Hefner. On the kill motion.

SENATOR HEFNER: Mr. President and members of the body, I cosponsored this kill motion. I think that we have debated this bill long enough, but right now as this bill has been amended, or is amended, we say that if you commit two murders, well then you are eligible for the death penalty, and I don't think this is quite fair. Also, we say that particular person has to be a policeman or a sheriff or some law enforcement person. I think that citizen lives are important too. I think they are just as important as any law enforcement officer's life. It was brought up in the debate the other day that the death penalty isn't working. Another colleague said, it's a farce. Well, certainly it is the way we are implementing it today, but I feel that when we implement the death penalty, we need to ensure that it is carried out as an honest and an open and a serious expression of the judgment of the state. I think we need to limit the amount of appeals. I think the justice needs to be swift and sure and certain, then it will serve as a deterrent. Another colleague mentioned that Starkweather was executed when Senator Wesely was in diapers. I submit here to you today that if Starkweather wasn't executed, well Senator Wesely may not be here today because he probably would have went on another rampage. I heard on the radio last night that this station...this radio station in Omaha had a call-in program, 21 out of 22 callers said that they favored keeping the death penalty. I think that tells it pretty plainly that they still want to keep that death penalty. They did not...and I repeat again, they did not favor a mandatory or substituting a mandatory 30-year sentence. And out of the polls in Nebraska, the people overwhelmingly support the death penalty. I think if we repeal the death penalty, I think then the people are going to petition themselves and call for the death penalty. I urge you to indefinitely postpone this bill.

SENATOR LAMB: Senator Howard Peterson.

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SENATOR H. PETERSON: Mr. Chairman, I likewise would rise to support the kill motion for two reasons. Number one, I think as the bill has been amended it is unconstitutional because we have a classification of people that we are going to protect. It seems to me that would very likely be unconstitutional. Number two, I don't think there is any question but what the people in this state wish to retain the death penalty. When I ran for this office, I put out a questionnaire and one of the questions I asked was, should the death penalty be retained? Eighty-two percent of the people said, yes, in Grand Island, and I believe that that pretty well reflects what the people in this state really believe on this particular subject, and it just seems to me that if we were going to do anything, we ought to try to stiffen the penalty, the swiftness of the method by which we use this, and I know that the Supreme Court has moved on it, but I would say to you that the Supreme Court has changed since that time. I would think it would be kind of interesting to have the new Supreme Court take a look at the issue.

SENATOR LAMB: Senator DeCamp.

SENATOR DeCAMP: Mr. President, I was not going to speak but several points have been made that I do think need to be corrected. Number one, the bill as it exists now and I have checked with the bill drafter and two or three different attorneys, it is not dual murder as has been alleged. It is anyone incarcerated. So if there is person A guilty of rape or whatever and person B guilty of murder, and each of them kill a prison guard or kill somebody else, they are in prison, it applies uniformly to them. Because it is unclear to some members and could be argued that it could be read both ways, the amendment being offered next, assuming it survives, does clear this up. But I repeat, the bill drafter and the lawyers I have had look at it, once they analyzed it, say, yes, it is clear. Second, people have talked about swift and sure, and I have said you can't do it. Now let me tell you the rest of the story, as Paul Harvey says. In 1976, if you will go back and check, I offered a swift and sure...Senator Chambers remembers, and mandatory death penalty proposal, and it was copied almost word for word from the California proposal that was in existence at that time. Our Attorney General indicated it would be constitutional, and if Senator Howard Peterson and Senator Hefner, Senator Pirsch and some others, wanted something, I have got the amendment, I will give it to you. You can offer it. That gives your swiftness, your sureness and

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all that. I would caution you one small problem developed on the amendment. Shortly after I offered it the U. S. Supreme Court struck down the California proposal as being unconstitutional, also saying you couldn't make it mandatory. And so once again you were thrown back. Now if you want to take the risk, I would be happy to take it with you. In other words, you change our death penalty to that mandatory proposal with the swiftness and sureness and certainty, it is there, got it all ready for you if you want to use it, and do what Senator Peterson says, try the new U. S. Supreme Court, the risk. If you win, you have got finally a death penalty that is effective. If you lose, you have eliminated the death penalty. That is about the only way I see you can accomplish what you claim you want the death penalty to be. I dare you to take the chance. I dare you to put a swift and certain and sure death penalty in effect. I will vote to put it on if anybody wants to try it, and as I say, I have got the amendment all ready from 1976, and as Senator Howard Peterson says, you have got a new U. S. Supreme Court....

SENATOR LAMB: One minute, Senator.

SENATOR DeCAMP:but you are running a high risk. Finally, about public polls, 90 percent of the people in my district I am sure favor the death penalty, but I don't think they have been informed as to how it works. Let me tell you about another poll, a Gallup Poll. Jimmy Carter's famous energy program, 82 percent of the American people supported it. Jimmy Carter's energy program. 85 percent, however, when asked, do you support an increase in gasoline taxes to 50 cents or whatever the numbers were, 85 percent opposed that. That just happened to be what Jimmy Carter's energy program was. So they support the concept of the death penalty but when given the details....

SENATOR LAMB: Your time is up, Senator.

SENATOR DeCAMP:I think you would have a different situation.

SENATOR LAMB: Senator Wiitala.

SENATOR WIITALA: Thank you, Mr. Speaker. Mr. Speaker and members of the Legislature, I rise in opposition of Senator Hefner's motion to indefinitely postpone this issue, largely because I feel that this issue has not been debated long and hard enough. My distinguished colleague, Senator Labeledz, mentioned that all of us are hard and fast on our views on this topic, but for me as a member of the

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freshman class of Senators, this is the first time that I have heard this issue. Now Senator Chambers could have brought LB 202 up during the last session had he wanted to, and we have only had one day really of good discussion on it, discussion that is leading us towards making the compromises that are necessary to pass a good piece of legislation. Traditionally, I have been against capital punishment, but four or five years ago I had a change in heart largely due to the fact that my family has suffered through two homicides. Not that I am recommending that any of the people that were guilty of those deaths deserved capital punishment but it certainly did bring the issue closer to home and made me empathize not only with the victims but those that were the survivors, the relatives and the friends. I am in a position of transition on this issue, and to a certain degree I well understand as a State Senator what is at stake. What is at stake really is my private conscience and representing my district, and sometimes those two are at odds. It is a lucky Senator indeed that finds himself supporting not only his district interests but also his own conscience and that the two coincide. I feel on this issue I am going to represent my district and I am sure that a lot of you will look at it purely in those terms, but I am not so sure if I have a second chance to vote on this issue, but I also understand what that indicates. It indicates a stand of being somewhat similar to Pontius Pilate. Pontius Pilate could have made a decision but he yielded to the masses and we all know what happened, and even though he washed his hands, history has still maintained that his hands were bloody in that affair. Now, colleagues, I understand the public's feelings on this issue very well, and I will tell you the thing that they are most angry about is not so much the capital punishment issue, is that people who have been convicted of serious crimes have been able to have those sentences reduced either by early pardon, things like pre-trial diversions, plea bargainings, using high powered attorneys. Such a case is in today's paper dealing with a man by the name of Von Bulow, I recommend you looking at it on page 26 of the Omaha World Herald, who injected insulin into his wife on two occasions and killed her on the second occasion. Now he was convicted on two counts of murder, but if he serves those sentences concurrently, he will be eligible for parole in seven and a half years. This is what gets people up-tight and angry. Now Senator Chambers' bill, LB 202, for me, if I am going to be angry over the deaths that occurred in my family, metes out justice equally. There is no plea bargaining. There is no reduction in sentences. There is no early parole.

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It is straight across the board at 30 years. As a person who was close to death once on a tennis court, I want to tell you, dying is no punishment and it's very seldom any pain, and if you want to exercise retribution by killing someone, executing them, believe me, you are not causing that person very much punishment. In conclusion, I would just like to say as things stand I am going to vote where I have been the last four years on this issue, but I am certainly going to think over carefully all the arguments that are being made on this floor as far as how I will vote next. The next vote will be certainly one of conscience. Thank you.

SENATOR LAMB: Senator Landis.

SENATOR LANDIS: I call the question on the kill motion.

SENATOR LAMB: Do I see five hands? I do. The motion is to cease debate. Those in support vote aye. Those opposed vote no.

CLERK: Senator Lamb voting yes.

SENATOR LAMB: Record.

CLERK: 25 ayes, 2 nays, to cease debate, Mr. President.

SENATOR LAMB: Debate is ceased. Who will close on the kill motion? Senator Labeledz. Senator Haberman, do you close, or....waive closing. The motion is to indefinitely postpone the bill. Those in favor of the motion vote aye, those opposed vote no.

CLERK: Senator Lamb voting yes.

SENATOR LAMB: Simple majority. Have you all voted? Have you all voted? Record. Senator Chambers.

SENATOR CHAMBERS: I would like a Call of the House and a roll call vote.

SENATOR LAMB: Roll call vote has been requested. Those in favor vote aye. Those opposed vote no. Record.

CLERK: 25 ayes, 0 nays to go under Call.

SENATOR LAMB: The House is under Call. All unauthorized personnel leave the floor. All Senators record your presence. Senator Vard Johnson, Senator DeCamp, Senator Sieck, Senator Labeledz, Senator Higgins, Senator Landis.

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LB 202, 953, 761, 208, 720, 591,
796

We have six excused. Will the Clerk please call the roll.

CLERK: (Read the roll call vote as found on page 1225 of the Legislative Journal.)

SENATOR CHAMBERS: (Microphone not activated)....changing to not voting.

CLERK: Senator Chambers changing from no to not voting. 25....do you want to change, Senator? Senator Newell changing from no to yes. 26 ayes, 16 nays, Mr. President, on the motion to indefinitely postpone the bill.

SENATOR LAMB: The motion prevails. LB 202 is indefinitely postponed. The Clerk has some items to read in.

CLERK: Mr. President, Senator Vickers would like to print amendments to LB 953, Senator Fowler to 761. Your Committee on E & R respectfully reports that they have carefully examined and engrossed LB 208 and find the same correctly engrossed, 720 correctly engrossed, 796 correctly engrossed, all signed by Senator Kilgarin.

Again, Mr. President a reminder, the Revenue Committee will hold an Executive Session at noon today in Room 1517. That is offered by Senator Carsten, Chair.

SENATOR LAMB: LB 591

CLERK: Mr. President, LB 591 offered by Senator Landis, (read title). The bill was read on January 6th, referred to Revenue, Mr. President. The bill was considered yesterday by the Legislature. At that time there was an amendment from Senator Howard Peterson that was adopted to the bill. I now have pending Mr. President, an amendment offered by Senator Vickers. I think Senator Vickers wants to withdraw the amendment he had yesterday. Temporarily withdraw it, Mr. President.

Mr. President, Senator Vickers would now move to amend the bill by striking the Peterson amendment adopted yesterday.

SENATOR LAMB: Senator Vickers.

SENATOR VICKERS: Mr. President, members, the Peterson amendment adopted yesterday expanded the one-half percent additional sales tax to all first class cities in this state. As you know, the amendment that I just got through laying back until after this one would expand that to all

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LR 243
LB 202, 267, 449, 579, 606, 628, 630,
654, 662, 692, 702-703, 717-719,
728-729, 778, 801, 829, 852

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: Prayer by LeRoy Hofker, Treasurer of Gideons International, the bible distribution society, from Lincoln, Nebraska.

LeROY HOFKER: (Prayer offered).

PRESIDENT: Roll call. Have you all registered your presence so we can get underway? Senators Wagner and Fowler, if you would go over there to the desk and push that button, we could get underway. Senator Higgins, if you will push that button, I will show you are here. Okay, have you all registered your presence? Record the presence, Mr. Clerk.

CLERK: There is a quorum present, Mr. President.

PRESIDENT: A quorum being present, are there any corrections to the Journal?

CLERK: I have no corrections this morning, Mr. President.

PRESIDENT: The Journal will stand as published. Any messages, reports or announcements?

CLERK: Mr. President, LBs 267, 702, 717, 449, 579, 662, 718, 719, 728, 729, 778, 606, 630, 801, 703, 692, 654, and 829 are ready for your signature; as is LR 243.

PRESIDENT: While the Legislature is in session and capable of doing business, I propose to sign and I do sign LB 267, 702, 449, 579, 662, 718, 719, 728, 729, 778, 606, 630, 654, 692, 703, 801, and 829.

CLERK: Mr. President, Senator Wagner would like to print amendments to LB...I am sorry, Senator Wesely, to print amendments to LB 852.

And Senator Chambers would move to reconsider the vote to indefinitely postpone LB 202. That will be laid over.

PRESIDENT: Okay, so ordered. We are ready then for Final Reading. The Sergeant at Arms will secure the Chamber, all members will return to your desks, and all other people will leave the floor of the Legislature. We are ready for Final Reading. All right, Mr. Clerk, I guess we are all in place so let's proceed with the reading of LR 628 on Final Reading.

CLERK: (Reading of LB 628 on Final Reading.)

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PRESIDENT: We are ready for agenda item #5, motions. A 15 minute limit has been placed on this. LB 202, Mr. Clerk. Do you want to read the motion?

CLERK: Mr. President, Senator Chambers has made a motion to reconsider the vote to indefinitely postpone LB 202. Senator Chambers' motion is on page 1249 of the Legislative Journal.

PRESIDENT: The Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, this can be what you call dreaming the impossible dream. To be frank with you, deep down inside I know why I do what I do, but at a more superficial level I really don't know why. I go through the trouble to compile information, to gather statistics, to share with you the findings of various studies on the issue of the death penalty. I have researched the statistics given by the FBI which indicate that after executions occur homicide rates skyrocket. After I gave these statistics, some of the people who had been telling me about the deterrent argument and saw that this destroyed it, said, well, statistics don't mean anything. Yet we use statistics when we make projections for a budget in the Legislature. Insurance companies use statistics and must use them. They are used for every purpose. The death penalty is such a difficult subject to argue because we do not argue it in legislative assemblies on the basis of the facts that swirl around the issue itself. So those people who are in the position that I find myself in trying to salvage something not just of the murderer who has been convicted and sentenced to die but salvage something of the conscience of the society that has decided it should kill its own citizens to show that killing is undesirable. We, who seek the abolition of the death penalty, are forced to continuously give argument after argument based on new findings to deal with the same nonrational arguments of those who are for the death penalty. All the side favoring the death penalty has to do is say, remember the victim, which we all do, say it's a deterrent although the facts show that it clearly is not. So where do we find ourselves? Like the person trying to break down the proverbial open door. You cannot do that. I have given you a handout this morning which is filled with cases of people sentenced to die who insist on having that penalty carried out. That establishes for them the death penalty is not only not a deterrent but it has been an invitation to murder. They acknowledge that they went to various states to kill somebody

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in order to have the death penalty inflicted. You will see once case where two men charged with murder threatened the jurors with reprisals if the jury did not inflict the death penalty. One man who went to Alabama and killed a twelve year old girl to get the death penalty was frustrated in his desire to be clutched in the icy bosom of death because he received a life sentence. Another individual, I believe it was Alabama, but it is recounted in this handout, insisted on receiving the death penalty for his crime. Ironically, his was one of the cases that went to the U. S. Supreme Court to test the validity of the death penalty law, and his conviction was thrown out. Death penalties cannot be carried out. The article I gave you the other day quoted many prosecutors and others whose job it is to make the machinery of death work, make it work by killing citizens. They expressed their frustration at being unable to carry out the dictates of the laws under which they operate. They admitted and acknowledged and to some extent condemned the idea that the federal judiciary is the level which makes the carrying out of the death penalty impossible. States cannot control the federal judiciary, so we come back to the situation that has been discussed several times of the hoax nature of capital punishment. You will find a single sheet hand-out that I have just had distributed pointing out that even law enforcement professionals...I am talking about chiefs of police, sheriffs and others who not only arrest criminals but have to try to prevent crimes from being committed by showing that the penalty of the law will be carried out, these people have organized to tell the public that the death penalty is a hoax and their organization is designed to lobby against the death penalty. You will see other information in this handout which points out that when punishments are very severe and the society is not willing to have these punishments carried out, you will find a leniency creeping in where criminals who ordinarily would be convicted and sentenced to some kind of punishment will get off scot-free because the punishment available is felt to be too severe. Many of the offenses in England which carry the death penalty such as forging a bank note or doing other crimes against merchants, those offenses were removed from the list of crimes carrying a death penalty because the merchants who were supposed to be protected submitted petitions to Parliament saying this: The penalty is so severe, we can't get any conviction so as a result these crimes are committed with impunity. The people committing them know that they will not be executed. When the penalty of death was imposed for a person stealing five pounds, if a person were brought to the jury with such a charge, they

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would find the person guilty of stealing four pounds, nineteen schillings so that the death penalty could not be imposed. When the death penalty was imposed for stealing a cow, the jury would find the person guilty of stealing a heifer on the theory that a cow is an animal which has given birth to a calf. A heifer, not having given such birth, cannot be a cow. Therefore, the jury made a factual determination whether it was true or not that this animal that was stolen had not given birth, therefore it was a heifer, not a cow, and though a theft had occurred a death penalty could not be imposed. This shows the tortuous trail that society's effort to kill its own citizens has passed through. What I am asking you to do this morning is to give me a chance to discuss this bill again during the session, or if you don't want to do that, if you don't want to hear it discussed, your best opportunity to accomplish that would be now to vote to reconsider. I don't feel the bill has been adequately discussed. I think that the other day there was probably a determination made in advance that less than 20 minutes would be given for a discussion and the bill would be summarily killed. The reason I have a difficult time with that is because the death penalty is one of the most serious issues that will be discussed during any session of the Legislature. You would not find any other bill of this magnitude dispatched in that fashion.

a Banking bill up for consideration and a kill motion placed on it, there would not be less than 20 minutes of discussion, the question called, debate cut off and the bill killed. As far as voting to reconsider this bill, there is precedent for that in other sessions, but activity already this session indicates that there is not an objection to reconsidering issues. A drunk driving bill that had been killed was resurrected despite the fact that a similar bill was already on Select File and could have been amended with the provisions in the bill that had been killed. Senator VonMinden had an ADC bill, or an anti-ADC bill pulled from committee. Senator Bernice Labedz had a bill against studded....or to bring back studded snow tires pulled from committee. So these things are done. If this bill ..if you vote to reconsider this bill, I don't know whether there will be a chance to get it on the agenda or not in the few days remaining, but I will be frank with you about what I am trying to do. I am trying to buy time. I don't want there to be a situation where the Legislature closed and there was not a bill pending to abolish the death penalty. If it is reconsidered and the Legislature runs out of time, the bill naturally would languish and die as every other bill not acted on

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would do. But if this morning the bill is handled in a summary fashion again, I have already done some research and found bills on Select File and others on General File dealing with crimes and punishments that will allow me to offer a death penalty repealer to them as an amendment. There is no way to avoid giving me time to discuss it. The drunk driving bill deals with the very section imposing penalties that my death penalty deals with. So there is no question of germaneness. This morning if I don't have enough time, I can fail to vote.

PRESIDENT: About a half a minute, Senator Chambers.

SENATOR CHAMBERS: If I fail to vote, I am in a position to move to reconsider this vote. But for those of you who don't know the rules, one reconsideration motion is all that is allowed. A second reconsideration is not allowed by the rules. But I would make the motion anyway. If I am ruled out of order as the Chair will have no choice about doing, I will move to overrule the Chair which is a debatable motion, then if the Chair is upheld, I will vote on the prevailing side and make a motion to reconsider that vote on the overruling of the Chair. All I am trying to show is that there is a way to compel discussion of the issue. So what I hope you will do is consider the possibility of voting to reconsider this bill.

PRESIDENT: Time, Senator Chambers. The Chair recognizes Senator Hefner.

SENATOR HEFNER: Mr. President, colleagues, I would like to talk just a little bit about this reconsideration. Senator Chambers has presented no new evidence, no new information. I told you the other day that an Omaha radio station conducted a call-in on the repeal of the death penalty. Twenty-one...twenty-one out of twenty-two callers feel that we should keep the death penalty. When we read the polls in the newspapers, or if we take them ourselves, we find that these people favor keeping the death penalty. Several years back when I did a poll in my district, I believe it came back 84 percent...84 percent in favor of keeping the death penalty. And if you read other polls, it is overwhelmingly that the people favor keeping the death penalty. I feel that when we implement the death penalty, we need to ensure that it is carried out as an honest and open and serious expression of the judgment of the state, and, of course, in our case this is the State of Nebraska. We need to work to limit

the amount of appeals and when we do this then I am sure it is a deterrent. If we repeal the death penalty, citizens, I feel, will sign a petition and put it up to the voters to reinstate it. If we repeal the death penalty, I feel that we deny ourselves a major weapon in the fight against this threat to society. Also, this legislative session is drawing to a close. I do not feel that we have time to discuss and debate this anymore. And I would like to yield a minute or two of my time to Senator Labedz who co-sponsored the kill motion the other day.

PRESIDENT: The Chair recognizes Senator Labedz.

SENATOR LABEDZ: Thank you, Mr. President. Senator Chambers passed out a peach colored handout and on page 3 he says that capital punishment has an article there and a gruesome picture and I admit it is gruesome, from the Des Moines Register where they claim that capital punishment is cruel and unusual punishment. Yes it is cruel, but the legal execution is much more merciful than a death inflicted upon a victim and I think we should all remember that. Unusual is defined as uncommon and the truth is that society has executed capital offenders since the beginning of time. Those who commit horrendous crimes, in my opinion, as determined by the courts, of course, have earned a similar punishment. And I would like to say here that God gave to each and everyone of us his most precious gift which is life. He also laid down the following law to be carried out by all descendants of Noah. "He who sheds man's blood shall have his blood shed by man, for in the image of God was man made." I don't want to take up any more time because I am sure there are other speakers that would like to at least get in a few minutes of their version of why we should immediately again not allow Senator Chambers to bring back LB 202. Thank you.

PRESIDENT: The Chair recognizes Senator Wiitala. There is about a minute left, Senator Wiitala, on this matter today.

SENATOR WIITALA: Well, in that case, Mr. Chairman, I am going to fail to say anything on the issue, outside of the fact that in rebuttal to Senator Hefner's remarks that the public is overwhelmingly against...or in favor of capital punishment. When I take a look at my bill folder on this issue, I find 28 letters against capital punishment, 3 for. The three that are written for capital punishment were short letters that probably represented about a paragraph or two. The 28 letters that

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were written for eliminating capital punishment were letters that were two or three pages in length. It is my feelings that anybody who seriously studies this issue, all the facts that are available....

PRESIDENT: About 20 seconds left.

SENATOR WIITALA: Okay. That they will come to an understanding that there is a twilight zone here that is really hard to effect a definite judgement, what is right in a situation. For this reason, I support Senator Chambers' motion to reconsider for the purpose of debate although traditionally over the last five years I have supported capital punishment. Thank you.

PRESIDENT: Senator Chambers, the time is about up. Do you want to just....

SENATOR CHAMBERS: Mr. Chairman, I will read....

PRESIDENT: If you want to vote on it, why.....

SENATOR CHAMBERS: I will just read one comment from an editorial in the Catholic Voice. It says, this is not an issue to be settled in a Gallup Poll, and I think we know that, and Senator Hefner's argument proved what I said initially, they don't have to give facts. Senator Labeledz gave no facts. It is an emotional appeal, but if you do not give the opportunity to debate the bill in this legitimate fashion on the merits of the bill itself, I will use other methods. If you vote to reconsider now, you may be through with it for the rest of the session.

PRESIDENT: All right, the question then is Senator Chambers' motion to reconsider the indefinite postponement. This requires 25 votes. All those in favor vote aye, opposed nay. Senator Chambers, there are 4 excused, so you know what we have got. For those just coming in, we are voting on Senator Chambers' motion to reconsider the indefinite postponement of LB 202. The board is still open. Three are excused now, Senator Chambers. Senator Chambers, what do you wish to do?

SENATOR CHAMBERS: I will ask for a Call of the House, Mr. Chairman.

PRESIDENT: All right.....(Microphone not activated).... what's on the board, and the motion then is, shall the House go under Call? All those in favor vote aye, opposed nay. Record the vote.

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CLERK: 25 ayes, 0 nays to go under Call, Mr. President.

PRESIDENT: The motion carries. The House is under Call. Sergeant at Arms will secure the Chamber, bring all... make sure that all members are at their desks and all members will please register your presence at this time. The House is under Call. And, Senator Chambers, do you wish to either take roll call at that time or do you wish to have call-ins?

SENATOR CHAMBERS: Let us see if there are any call-in votes first.

PRESIDENT: All right, we will first see if there are any call-ins and then you will reserve the right. If the front row here would all register your presence. Senator Lowell Johnson, Senator Howard Peterson, Senator DeCamp, Senator Newell, Senator Cope, Senator Haberman, Senator Warner, Senator Nichol. Senator Clark, Senator Nichol, Senator Haberman. There is Senator Haberman. Senator Clark and Senator Nichol. Here comes Senator Clark, so we are....the only one is Senator Nichol then, Senator Chambers. Senator Chambers has indicated if anyone wants to call in their vote at this time that they can be received. For those of you coming in, we are voting on Senator Chambers' motion to reconsider the indefinite postponement of LB 202. Senator Chambers. Pardon?

SENATOR CHAMBERS: I will take a roll call vote now.

PRESIDENT: All right, any roll call votes....roll call vote, he will have a roll call vote, Mr.....are you ready to go then right now, or do you want to wait for Senator Nichol?

SENATOR CHAMBERS: (mike not activated). . let me give him another minute.

PRESIDENT: Sergeant at Arms, have they found Senator Nichol? You want to wait for him to come Senator Chambers?

SENATOR CHAMBERS: (mike not activated) . .coming?

PRESIDENT: They have located him so . . . The Legislature will be at ease until Senator Nichol arrives and then we will have a roll call vote. While we are waiting, the Chair would like to introduce five Seniors from Odell, Nebraska, guests of Senator Burrows. They are in the north balcony with Rich Wallinger, their teacher. Where are they? Are they still up there? There you are. Welcome

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to your Unicameral Legislature, Odell. Welcome to your Legislature, Senator Nichol. It's always nice to be recognized. Okay, you know what we are voting on, Senator Nichol? All right. If everybody will come back to order, we will have the roll call on Senator Chambers' motion. Mr. Clerk, proceed with the roll call.

CLERK: (Read the roll call vote as found on page 1397 of the Legislative Journal.) 22 ayes, 23 nays on the motion to reconsider, Mr. President.

PRESIDENT: Motion fails. Read the motion.

CLERK: Mr. President, I have a motion on the desk. Senator Chambers would move to reconsider the vote on the reconsideration vote to LB 202.

PRESIDENT: Senator Chambers, I am going to rule that since time was up on this and the acting Speaker will have to put it back on the agenda, but at that time the decision can be made. We won't make a decision as to whether or not your motion can be honored at this time, but at that time. So it will have to be put back on the agenda, but you will have your day to argue the motion and to do what you....to go through the scenario you set up.

SENATOR CHAMBERS: But, Mr. Chairman, I have to object to your ruling because our rules say that a motion to reconsider takes priority over every other thing.

PRESIDENT: I know, but it is not before that....it is not going to be before us until the Speaker puts it on the agenda just like we had right here. The motion to reconsider had to be on the agenda and it is not on the agenda, so I am not going to....unless the Speaker wants to put it on right now. Senator Lamb, do you want to put it on?

SENATOR CHAMBERS: But, Mr. Chairman, regardless of what Senator Lamb says, a motion is on the desk to reconsider. That motion takes priority. Now if the person agrees to let time elapse, that is one thing, but either the rule means what it says or it doesn't. And if the ruling of the Chair is that the motion cannot be taken up now....

PRESIDENT: That is right.

SENATOR CHAMBERS: Is that the Chair's ruling?

PRESIDENT: I am not even going to rule on the motion until

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the motion is on the desk and when it comes up before me, I don't recognize it as before me, that is what I am saying. The motion is on the desk and I will say that when the Speaker puts it on the agenda then it can be ruled on. I don't have it before me to rule on. That is what I am saying.

SENATOR CHAMBERS: Mr. Chairman.....

PRESIDENT: You have five days to bring this up.

SENATOR CHAMBERS: Mr. Chairman, a motion to reconsider will be filed the day of the action in question....

PRESIDENT: That's right.

SENATOR CHAMBERS:or the following day.

PRESIDENT: That is correct.

SENATOR CHAMBERS: I have filed it the day in question.

PRESIDENT: And it is filed.

SENATOR CHAMBERS: I have complied with the rule and that motion takes priority over every other thing. That is what the rule says.

PRESIDENT: The motion is filed, that's all.

SENATOR CHAMBERS: So then you are going to disregard the rule.

PRESIDENT: I am not going to rule on it until it comes before me for a ruling. I may not even be here.

SENATOR CHAMBERS: Then I challenge the Chair's failure to rule. That in itself is a ruling, and I think the Chair must make a ruling since my mot' n is offered pursuant to the rule.

PRESIDENT: Well....

SENATOR CHAMBERS: I think the arbitrariness here is something of seriousness. It is my motion today which people probably are opposed to. But what we are looking at now is the integrity of the rule procedure of the Legislature. Either the rules apply for me like they do everybody else, or you are saying that one individual.....

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PRESIDENT: Senator Chambers, there is nothing...you have filed your motion as everybody else has a chance to file your motion. The motion will be heard when it comes before this body. I am saying that we have an orderly procedure for the way these motions are to be brought up. I am not...I just merely let the Clerk read it in. It isn't before this body. You have nothing...there is nothing before this body at this time.

SENATOR CHAMBERS: Mr. Chairman, may I ask a question of the Chair for my clarification and edification?

PRESIDENT: Yes, you may.

SENATOR CHAMBERS: Do the rules determine how this Legislature functions?

PRESIDENT: Yes. Obviously.

SENATOR CHAMBERS: Now if the rules allow a motion for reconsideration to be filed, is that motion filed by placing it on the Clerk's desk?

PRESIDENT: The motion is going to be brought before this body by the Speaker at due time. Yes, there will be a motion.

SENATOR CHAMBERS: Here is what I am asking, is the motion filed when it is placed on the Clerk's desk, or is it not filed until....

PRESIDENT: Yes.

SENATOR CHAMBERS:the Speaker decides to put it on the agenda?

PRESIDENT: But we have rules also that allow the Speaker to set the agenda for an orderly consideration of business, and if we don't give some deference to the Speaker's order we would never get anything done in this body because people could keep filing motions and disrupting this body and the Speaker's order, we would never get anything done so my ruling is that we will....

SENATOR CHAMBERS: But, Mr. Chairman....

PRESIDENT:follow the Speaker's order rather than....

SENATOR CHAMBERS: Than the rules?

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LB 202, 488

PRESIDENT: The rules are being followed and will be followed and you will get a decision on your motion by whoever is presiding when that matter comes before this body.

SENATOR CHAMBERS: Then, Mr. Chairman, if I am to be torpedoed in this fashion, I am not going to holler if you turn off the mike, but I am going to do what the rules now allow me to do, I am going to be judged in a way contrary to the rules so I am going to use the rules for the rest of the session.

PRESIDENT: Fine.

SENATOR CHAMBERS: I feel this is totally wrong....

PRESIDENT: Fine.

SENATOR CHAMBERS:it is arbitrary, and were I a different individual, I think the body would insist whether they like me or not that the rules be followed and not an arbitrary decision by the Chair, but to show...to show that I can graciously be dealt as discriminatorily on the floor of this Legislature as I am out there in the street, I will accept it.

PRESIDENT: Thank you.

SENATOR CHAMBERS: On the street if somebody came to me with fists, they would get fists. If they use the rules to discriminate, I will use the rules to fight. That is what I intend to do.

PRESIDENT: Senator Chambers, you are well aware of the rules, and you use them very well. All right, and so the body will use them and you will get your chance on this one when it comes up. The next matter for business is General File agenda item #6, and I guess we start with 761, Mr. Clerk.

CLERK: Mr. President, if I may right before that.

PRESIDENT: Yes, go ahead.

CLERK: Senator Goodrich would like to print amendments to LB 488 in the Legislative Journal. (See page 1397 of the Legislative Journal.)

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LB 626, 202
LR 285-290

Senator Hefner would report favorably upon confirmation hearing of Mr. William Fitzgerald to the Nebraska Arts Council. (See page 1557 of the Legislative Journal).

Your Enrolling Clerk presented to the Governor for his approval LB 626 at 5:20 p.m. yesterday.

Mr. President, new resolutions. LR 285 (Read Title). LR 286 (Read Title). LR 287 (Read Title). LR 288 (Read Title). LR 289 and 290 (Titles Read). All those study resolutions will be referred to the Executive Board.

SENATOR LAMB: The next item is number four, motions.

CLERK: Mr. President, the first motion I have pertains to LB 202. Senator Chambers we had that motion filed previously, it was in the Journal. I understand you want to withdraw that and substitute the motion we talked about yesterday, is that right? Mr. President, in that event Senator Chambers would move to suspend Rule 7, Section 7 and reconsider the indefinite postponement of LB 202.

SENATOR LAMB: There will be a strict 15 minute limit on this and it will be voted up or down at that point. Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I will not even require 15 minutes for what I want to discuss with you this morning. It is impossible in that short amount of time to get into the merits of LB 202, which is a bill as amended by Senator Beutler to restrict the imposition of the death penalty to first degree murders committed by those incarcerated. Since that can not be the issue during these 15 minutes I have to make another proposal to you and I think it is very modest. I had stated the other day when this bill was voted on for reconsideration and the reconsideration motion failed, I had stated what my intention was. I'm going to restate. I don't want the Legislature to adjourn without having a bill pending for dealing with the death penalty. If this motion to reconsider is voted up, that would end the discussion of LB 202 this session. If the bill...if the reconsideration motion is not approved, then I will be forced to continue a discussion of the issue for the balance of the session so that there will be consideration of it before us. So you will be aware of how I intend to do this, if you look at the Journal, you will find 15 pages of amendments on page 1427 through 1441. That group of amendments constitutes four different propositions for

some form of abolition of the death penalty except for one. One would be a mandatory death penalty. These amendments have been attached to LB 568, the drunk bill, on Select File. So if this motion is voted down and that is why I don't have to take much time on it, there is a good chance we will discuss the death penalty for a good while this afternoon anyway. I also have the amendments attached to LB 946 which is on General File about six or seven positions down and it is a priority bill. In both cases the bill in question deals with the same chapter of statute that LB 202 would deal with. So to clarify and summarize what I have said, if you agree to suspend the rules and allow the reconsideration I will have obtained, realistically all that I can expect this session, which is to have a bill pending. When the session terminates that bill with every other one would automatically be sent to the bone yard of unacted on bills. That is all that I have to offer you and I may take a brief moment to close just to reiterate or to answer any questions any of you may have. But if you do have questions about what I have said and what my intentions are I am prepared to answer those.

SENATOR LAMB: Senator Hefner.

SENATOR HEFNER: Mr. President and members of the Legislature I rise to oppose the reconsideration motion. We gave Senator Chambers a fair chance the other day, or I think it was several weeks ago, I was cosponsor of the kill motion along with several other senators and we killed LB 202. We only needed a simple majority but we got 26 votes. I think that proves that this body does not want to repeal the death penalty. Then last week Senator Chambers lost the motion on the reconsideration. But, he still keeps coming back to this body. I have asked for some new information or some new evidence and he has presented none at this time. Senator Chambers is not only doing it on this bill but he did the same thing on the bill that related to the north freeway in Omaha. I think that Senator Chambers has had his turn at the water trough. I think now it is time for some of the rest of us to have our turn. Senator Chambers in some of his remarks said that the death penalty is inhumane. I submit to you here today isn't murder inhumane, isn't premeditated murder inhumane. I feel that we are at the crossroads here in Nebraska. That crossroads is do we keep the death penalty or do we repeal it. I say that we want to keep the death penalty and an overwhelming majority of Nebraskans say that they want to keep the death penalty. I think that we need to strike back at these vicious criminals and show them that we do mean business. I feel that enough innocent lives have been lost. I want to say

to you again that we need to keep the death penalty instead of repealing it. I feel that it does serve as a deterrent to murder. I believe that capital punishment is a necessity if we are to bring sanity back to our streets and to protect our citizens here in Nebraska. I urge you to vote against the suspension of the rules this morning.

SENATOR LAMB: We have four more lights on up here. So I hope that you will keep it brief. Senator DeCamp.

SENAOR DeCAMP: Mr. President, I'll try to be real brief. I won't talk so much about the death penalty. You know we are in the last days. The Unicameral is kind of a unique thing, unless all 49 ponies are all kind of moving in generally the same direction just about any pony can bring the whole system to a halt. Senator Chambers has been around quite awhile. Sometimes he asks for a lot, sometimes he is kind of halfway reasonable and I guess he is kind of halfway reasonable this time, he wants the bill alive. I'd even go further and suggest that that isn't such a terrible idea if it will keep peace in the family here. But above and beyond that Senator Howard Peterson said, DeCamp, doggone it, you get us a mandatory death penalty and I will help you, well she is laying up there in the desk, but we don't have time to deal with it this year. Somebody else said you get a penalty that applies in certain cases, we got that up there. Why don't you revive the bill and then because it has been changed already and Senator Lamb is up there in the Speaker's chair he would have the authority to refer it back to committee for hearing with these various concepts, mandatory death penalties so on and so forth. Now obviously we all know that it can't be processed this year, I mean this session, but maybe in the next couple of weeks afterwards they could process the concept of mandatory death penalties and look at this from a whole different perspective. The bill would be the vehicle and as I say I think it might keep peace in the family and make the next seven days slightly more pleasant. So, I would urge you to reconsider or suspend the rules and revive the rules and then I would suggest that nobody would really cry if Senator Lamb referred the bill to committee, the Judiciary Committee for additional hearings on this. That just seems to me to be a reasonable way out of this whole thing.

SENATOR LAMB: Chair recognizes Senator Pirsch.

SENATOR PIRSCH: Thank you Senator Lamb. Colleagues, members of the body, I wonder what Senator Chambers has told you for your vote to reconsider LB 202. Has he promised you that he

wouldn't harass your bill, has he promised you that he wouldn't put endless amendment after amendment on it? That is what he did me. I call that not only harassment, I call that blackmail. I don't approve of blackmail and I don't think this body ought to be coerced by these threats. Now what is he accomplishing by raising LB 202 when it has no possibility of being passed this year. Well you can imagine there are some people on death row, is this to give a false impression that the Legislature of Nebraska says, well yeah, maybe we really don't want the death penalty, we are leaning every way. I think, I would like to know that this body does not bend to threats and blackmail. I oppose the reconsideration.

SENATOR LAMB: Senator Marsh.

SENATOR MARSH: Thank you very much Senator Lamb. How many of you read in last night's paper, Death Penalty Playing God, in the Lincoln Journal? I did. I would like to tell you that I think Senator Chambers was being very honest with this body. Senator Chambers knows the rules of the Legislature and he makes them work for him. Some of the rest of us do not know them as well as we should, for they work for anyone that knows the rules. There is an option to put LB 202 back on General File. Is that where it is? There is the option to go on and discuss other pieces of legislation. Some of those other pieces of legislation have my interest. Some of those pieces of legislation have the interest of your constituents. This body knows that I have been supporting LB 202, but even if I had not, at this time with seven remaining days I would consider that the option not to discuss this, for you will hear it unless you leave the chamber, from now until the end of the session, if it continues to be indefinitely postponed. Senator Hefner used the phrase "the bill was killed". The bill is an idea and it is never killed. It can be indefinitely postponed for the moment but it is not killed. It is still a topic that we will hear, that we will discuss. If you chose not to discuss it further this year you have the option by voting this morning. If you make the decision not to reconsider this bill, you will continue to have our joint time eaten up. Right now I would like to be discussing something else. As important as this idea is, this idea will not go away and this body ought to know that Senator Chambers means what he has said. He gave us fair knowledge ahead of time. So you make your vote with that knowledge. I'm going to send a copy of this article around to every member of the Legislature, if you have not read it, you might be willing to read it and see if there may be a new idea for you. Thank you very much Senator Lamb and thank you members of the Legislature, some

of you even appeared to be listening.

SENATOR LAMB: Senator Chambers, you have about one and three-fourths minute left.

SENATOR CHAMBERS: Mr. Chairman, however Senator Pirsch characterizes what I am doing is of no moment to me. As I am saying to you the rules allow me to add amendments to bills, I have done that and I intend to do it and those amendments in turn can be amended. The body can characterize, I say again, in any way it chooses. But, I have seen other propositions where other members had an interest and they have done similar things. So you can look realistically at the issue as I have propounded it to you and you can vote in any way you choose. I would just as soon have the opportunity this afternoon and other days in the session to discuss the death penalty and I assure you that that is precisely what I will do. I have not presented many bills to you this year. It just seems that way because I am persistent on the things that mean a great deal to me. So that is what I have offered. You can vote it up or down and when I say it this time I really mean it it makes no difference to me which way you go.

SENATOR LAMB: The motion is the suspension of the rules. It takes 30 votes. Those in support vote aye, those opposed vote no.

CLERK: Senator Lamb voting no.

SENATOR LAMB: Have you all voted? Senator Chambers.

SENATOR CHAMBERS: I hate to do . . . I'll Call the House and get a roll call and then it will be done one way or the other.

SENATOR LAMB: Call of the House has been requested. Those in support vote yes, opposed vote no. Record.

CLERK: 14 ayes, 0 nays, to go under Call, Mr. President.

SENATOR LAMB: House is under Call. All unauthorized personnel will please leave the floor. All senators record your presence. Please record your presence. Please call the roll.

CLERK: Roll call vote begins.

SENATOR LAMB: Will all the senators please return to their seats. We are going to have roll call. Senator Nichol, Senator Haberman, we need everyone in your seats so we can have roll call. Please continue with the roll call.

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LB 202, 952

CLERK: Continues roll call vote. 23 ayes, 23 nays, 3 excused and not voting. Vote appears on pages 1561-62 of the Legislative Journal.

SENATOR LAMB: Motion fails. The next on the agenda is the motion to reconsider LB 952.

CLERK: Mr. President, Senators Beyer, Sieck and Cullan would move to reconsider the vote on Final Reading of LB 952.

SENATOR LAMB: Senator Beyer.

SENATOR BEYER: Mr. Speaker and colleagues, I was on some business yesterday morning, was late in coming in and this is a bill that would be beneficial to a hospital in my area so for this reason I ask that we reconsider.

SENATOR LAMB: Raise the Call, the Call is raised. Senator Wesely.

SENATOR WESELY: Mr. President, members of the Legislature, I appreciate the fact that Senator Beyer feels that this bill would benefit a hospital in his area but I think we need to look at the total impact of this legislation on the state and also take a perspective beyond the State of Nebraska. I think we were wise yesterday in voting against the final enactment of LB 952. A handout at that time that I passed out indicated a recent study by the congressional budget offices found that this whole area of hospital taxes and bonds is a real sore spot in terms of high health care cost and it is that way for a number of different reasons. I think it is clear from the handout that I gave that they have concluded to further the goal of reducing hospital costs by eliminating tax subsidies for private hospital construction would be a good step to take. That is a federal level, a national level action that has to be taken but nevertheless there is no reason for us at this time when they are looking at that option to expand what we now provide in terms of hospital authority bond issuance. I think we really ought to look at the idea of keeping the bill where it is at right now and that is indefinitely postponed. Those who would support the bill are going to need 30 votes to reconsider. I would ask that you oppose this motion to reconsider. Again I think one of the key points you have to make is the hidden subsidy question that has always been present with a different bond bills that we have had before this legislature. As you know we have been sort of bond happy this session. Passing all kinds of different bond issuance legislation, expanding