Thereupon, the bill was read the third time and passed.

Message from the House

I am directed to inform the Senate the House has passed bills of the following titles:

H. 136. An act relating to municipal water systems.

H. 169. An act relating to ratification of amendments to the Stowe charter.

In the passage of which the concurrence of the Senate is requested.

The House has considered a joint resolution originating in the Senate of the following title:

J.R.S. 16. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

Bill Rejected; Remarks Journalized

Senator Skinner, for the Committee on Judiciary, to which was referred Senate bill entitled:

S. 12. An act relating to capital offenses.

Reported that the bill ought to be rejected.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the pending question, Shall the bill be rejected? was decided in the affirmative on a roll call, Yeas 21, Nays 8.

Senator Godnick, having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: *Baker, Bongartz, Carter, Conrad, Deen, Delaney, Doyle, Finn, Gannett, Hoff, Hunter, Ketcham, Little, May, Mazza, Parker, Racine, Robillard, **Skinner, Spaulding, Webster.

Those Senators who voted in the negative were: Bloomer, Crowley, Godnick, Howrigan, ***Illuzzi, Manchester, Morse, Smith.

The Senator absent or not voting was: Welch (presiding).

*Senator Baker explained his vote thus:

"Mr. President:

"On this very volatile issue, I and my constituents differ. However, since I represent them, I must represent their voice. Therefore, I vote 'Yea'."

**During debate of the measure, Senator Skinner addressed the Chair in

delivering her report for the Committee on Judiciary, and, on motion of Senator Doyle, her remarks were ordered entered in the Journal, and are as follows:

"Mr. President:

"Over the past few weeks, the Senate Judiciary Committee's top priority has been to evaluate S. 12, a bill to reinstate the death penalty. We held hearings on January 21, January 23, February 6 and February 10. We held a well-attended public hearing on January 29. On January 21, we heard from Attorney General Jeffrey Amestoy; Defender General David Curtis; Chris Leopold, Executive Director, Vermont State's Attorneys' and Sheriffs' Association and Joseph Patrissi, Commissioner of Corrections. On January 23, the Committee heard from Jeanne Baker, Legal Counsel to the Governor and Scott Skinner from the American Civil Liberties Union. On February 6, at the request of supporters of the death penalty we heard from witnesses whose names were supplied to us by them. They were Dr. Ernest Van der Haag, Professor of Jurisprudence at Fordham University; Edward Austin, State's Attorney, Jacksonville, Florida; James Murphy, Sheriff, Orleans County; John McVickar, Esq. of Stowe; Andrew Dulian, Esq., a Canadian attorney living in Morgan, and Mike Jacobs, of Jericho.

"These witnesses, including over one hundred (100) who journeyed to Montpelier and spoke at an evening public hearing, were evenly divided on the question. In addition, the Committee received numerous letters on the death penalty, running about five to one against the death penalty. And this morning we received in Committee a petition in favor of the death penalty.

"Not surprisingly, the death penalty is a very emotional issue, one on which many have deep and strongly-held convictions. We heard from relatives of victims who say that to impose a death sentence is justice, but we also heard from the parents of a murder victim who said that the death penalty does not bring back the victim and that a second killing by the state is inconsistent with their religious belief in the value of life.

"I think it fair to say that more than most issues, this is one that each Senator must decide according to the dictates of conscience and belief.

"The Senate Judiciary Committee decided five to one to recommend against passage of S. 12. In doing so, the Committee considered oral and written submissions from many sources. The death penalty is one of the most thoroughly studied subjects in American criminology and the debate over many of its aspects is well developed.

"At the center of the debate is the argument most often cited in support of capital punishment — deterrence. If the death penalty actually deterred future murders then some might support it on the ground that it constituted a kind of self defense by society and might thereby be justified, much as we justify killing in wartime.

"Many of the death penalty proponents argued that a death penalty would

have a deterrent effect, although with one exception no support was offered for the conclusion. That exception was Professor Dr. Ernest Van der Haag, from Fordham University, with whom the Committee spoke by telephone, who cited a study from the seventies which he said proved the deterrent effect.

"However, other witnesses familiar with the literature testified that no valid study had ever established a deterrent effect and it was pointed out that the study claiming the contrary had been widely discredited. For example, Commissioner of Corrections Joseph Patrissi told us that he had reviewed the entire literature on deterrence in some detail and that there was no persuasive evidence that having the state kill people deters future killings. In fact he concluded the opposite based on the studies and his own observations.

"We received testimony arguing that a New York study covering 57 years showed that in months in which there was an execution, there was a net increase of two homicides in the next month. In addition, there are well-documented cases of a type of suicide-murder in which a person commits a murder in the hopes of being put to death by the state.

"There is a wealth of data about the death penalty and the lack of a deterrent effect, but much of it can be summed up in terms of common sense. We were told by Commissioner Patrissi that at least 75% of murders are irrational acts, committed by irrational people who are acting without any significant thought of consequence — some in the heat of passion. The other 25% may be aware of consequence, but ignore it because they do not expect to be caught. For these two classes of people, the death penalty is not a deterrent.

"After deterrence, the most common argument raised in support of the death penalty was one of equivalence, that a person who takes a life should lose his own and that justice requires such a result. In other words, criminals should get their just deserts.

"The committee is in agreement that murder is our most serious crime and deserves the most severe penalty in comparison with other crimes, possibly life imprisonment in some cases. But I do not think we can accept the idea that a punishment must be like the crime committed to constitute justice. If we accepted that concept we would need to burn the houses of arsonists, rape rapists, and torture torturers, things we as a society would regard as uncivilized.

"Let me pass briefly over some of the other issues raised. We heard many strong appeals on both sides based on religion, and quite appropriately, a number of the clergy participated in the debate. Opponents of the death penalty often cited the sanctity of life. Proponents of capital punishment often cited Old Testament calls for the death penalty as the literal word of God, but since that Old Testament also calls for the death penalty for such things as laboring on the Sabbath and not obeying one's parents, these arguments were not found to be compelling.

"One religious theme that was repeated however is that the death penalty institutionalizes revenge and retribution and gives a kind of official sanction to a climate of violence. Andrei Sakharov, summarized this thought when he wrote 'I regard the death penalty as a savage and immoral institution . . . a state, in the person of its functionaries . . . takes upon itself the right to the most terrible and irreversible act — the deprivation of life. Such a state cannot expect an improvement of the moral atmosphere in its country.'

"Bishop John Marshall in his January 22, 1987 letter to Catholics in Vermont in opposition to the death penalty said it in another way. He said 'The [death] penalty is inappropriate because we are never allowed to protect ourselves by using means which are more severe than necessary; to do so would be to exact vengeance. Capital punishment is also inappropriate in a culture so violent as our own because, rather than serve as a deterrent, it can very well escalate violence to higher levels.'

"We also heard considerable testimony that the death penalty is almost exclusively a privilege of the poor and that nationally it is disproportionately applied on the basis of race. The death penalty would also quite clearly deprive a person of the benefit of new evidence of innocence and studies were cited that document miscarriages of justice where persons were executed and later found to be innocent.

"While some proponents made an economic argument that the death penalty would be a cheaper alternative to life imprisonment, this argument was thoroughly refuted by extensive studies showing the enormous extra cost to the judicial system posed by the death penalty, costs which would have a potentially dislocating effect on our own small judicial system.

"Finally, it should be noted that virtually every other country with whom we share social, legal and moral values has abolished capital punishment. If we vote to restore the death penalty here today we will be parting company with these countries and instead join those states which still execute their citizens. The leading death penalty countries in the world are the Soviet Union, China, South Africa and Iran.

"The death penalty is clearly a topic of widespread public interest in Vermont and it is appropriate that we consider it. In fact, I urge the Senate to have a vote on the death penalty today, without amendment or substitution. The people of Vermont want a vote on the death penalty. And I believe they are entitled to it.

"But while the death penalty enjoys considerable popular support, I think some of that support is really support for the death penalty as a symbol for taking strong action against violent crime. That is a laudable goal but, based on the evidence, the death penalty is not the answer so fervently sought. In fact, focusing so much attention on the death penalty may even tend to obscure many of the less dramatic but more promising ideas about fighting crime that need our attention.

"The Senate Judiciary Committee will not back away from its continuing evaluation of other alternatives to the death penalty and its exploration of promising ideas to fight crime. For example, yesterday I signed out legislation calling for the option of a life sentence without parole for first degree murder! This proposal will assist and focus the committee's continuing work in this area of concern to so many Vermonters.

"In conclusion, most Vermonters deeply deplore violent crime in our state. I think we should rightly condemn those who take the life of another because in doing so they have transgressed against the value of human life, a value which our society holds sacred. But by the same token, we must reject a policy of state killings because it too transgresses against the sanctity of an individual life.

"One hundred and fifty years ago, Lafayette said, 'I shall ask for the abolition of the punishment of death until I have the infallibility of human judgment demonstrated to me'. I do not think we have reached that point and I urge you to reject the bill.

***During debate of the measure, Senator Illuzzi addressed the Chair, and, on motion of Senator Baker, his remarks were ordered entered in the Journal, and are as follows:

"Mr. President:

"I want to begin my remarks by thanking the Senate Judiciary Committee for bringing this very important issue up for a vote, despite the adverse recommendation by its members. I also want to make clear that I respect the position of each Senator on this issue. I feel uncomfortable supporting this legislation as much as those who oppose it feel uncomfortable.

"For those of us who have never felt the tragedy of violence and murder, it is easy to say, 'I'm against the death penalty'.

"It is very simple in a civilized society to be opposed to such a violent act in and by itself. If your daughter is safe in day care today, or your son is home with your spouse with the flu, or your kids are in science class at school, this issue never hits home.

"It was very easy for the paid lobbyist or the chief public defender to come in and say, 'I am against the death penalty,' and then go home to their spouses and children. But it wasn't the paid lobbyist or the chief public defender that influenced me not only to introduce this legislation, but also to support it.

"I was influenced to introduce and support this bill by the families of those who have lost a spouse, a child, a father or other close relative. The same ones who testified at the public hearing last week. And I was also influenced by the 30,000 signatures collected last year as a result of a young man's life in St. Albans being taken away from him during his prime years. And I was influenced by another 8,000 names submitted to the Judiciary Committee today, together with about 100 names that were called into the Sergeant-at-Arms' office today as a result of a casual comment made on a radio talk show that supporters of this bill get in touch with me to express their support.

"But forget for a moment the way the public feels about this issue. We all know that a recent Associated Press poll reported that only 86 percent of Americans support the option of having a death penalty on the books for first-degree murder.

"Since the reporter of the bill did not actually explain what offenses are covered by this legislation, let me take a moment to do so. This is the most limited bill of its kind that has, based on my research, been introduced anywhere in the country. Its applications are very limited and the judicial safeguards are substantial. The death penalty would be available as an option to a court only in cases where there was a first-degree murder committed during the commission of a rape, arson, armed robbery, assault and robbery, kidnapping, and it could also be applied when there was a first-degree murder committed by a person hired to kill another person, or a first-degree murder of a law enforcement officer on duty.

"I want you to pause for a moment while I paint a picture for you of a person who is now part of our history. Imagine a seven-year-old girl who is in the second grade, who likes dolls, is learning to play the piano, has a dog, likes to swim, has a horse, but doesn't like asparagus. That girl died 45 years ago in Germany. She and millions of her brothers and sisters and neighbors and friends were tortured, starved, burned, and gassed to death.

"Who in this chamber could look this girl's parent in the eye and say that individuals like Adolf Eichmann and Adolf Hitler didn't deserve the death penalty?

"So the question today is: How do we respond to violence and where do we draw the line? Do we say if you murder two million children, like Adolf Eichmann did, society deserves the right to have the death penalty as an option?

"Should it be an option if 100,000 children are murdered?

"Well, I'll tell you where I draw the line. When the life of one little seven-year-old girl who liked dolls but didn't like asparagus has her life taken in a most heinous and egregious way; that's where I draw the line.

"It has been too easy for too long for too many people who haven't paid the price or felt the effects of a violent murder to say, 'We forgive you'.

"Shakespeare once said, the quality of our mercy cannot be strained. But the quality of our mercy has become far too strained in Vermont.

"Is this limited death penalty a deterrence to further violent criminal behavior that results in the taking of another person's life? My answer is, 'Yes'.

"Does the public want us to adopt this type of legislation? The answer I've heard overwhelmingly is 'Yes'. Earlier this morning, we took final action on a

so-called 'white collar crime' bill. I have received hundreds of letters, both for and against the death penalty, but I have not received one letter or one telephone call in connection with the so-called 'white collar crime' bill.

"Let's not kid ourselves. Vermonters want us to get down to business and pass legislation to deter violent crimes and particularly homicides. Vermonters want our bail laws changed so persons convicted of serious crimes do not continue to themselves 'hold court' on our streets and in our homes.

"In conclusion, this bill is a warning to the violent. Capital punishment represents society's strongest statement against the taking of a life. This bill says that life is held so precious that the individual who willfully and maliciously takes the life of another must be willing to stand the chance of forfeiting his own.

"That's not retribution or revenge. It's justice and self-protection."

Appointment Confirmed

The nomination of

JUDITH S. DICKSON

of Burlington, as a Member of the Board of Libraries, for a term from and including June 9, 1986, to June 30, 1988.

Was confirmed by the Senate.

Bills Referred

House bills of the following titles were severally read the first time and referred:

H. 136. An act relating to municipal water systems.

To the Committee on Government Operations.

H. 169. An act relating to ratification of amendments to the Stowe charter.

To the Committee on Government Operations.

Adjournment

On motion of Senator Welch, the Senate adjourned, to reconvene again on Tuesday, February 17, 1987, at ten o'clock in the forenoon pursuant to J.R.S. 16.

TUESDAY, FEBRUARY 17, 1987

The Senate was called to order by the President.

Devotional exercises were conducted by the Reverend Ruth Powell of

Bills Introduced

Senate bills of the following titles were severally introduced, read the first time and referred:

By Senators Crowley, Godnick, Howrigan, Mazza and Morse,

S. 84. An act relating to public transit systems.

To the Committee on Transportation.

By Senators Finn, Delaney, Doyle, Smith and Spaulding,

S. 85. An act relating to unemployment compensation and good cause.

To the Committee on General Affairs.

By Senators Conrad, Hoff, Little, Racine, Skinner and Spaulding,

S. 86. An act relating to staffing of the medical practice board.

To the Committee on Government Operations.

By Senators Hoff and Welch,

S. 87. An act relating to uniform transfers to minors.

To the Committee on Judiciary.

By Senator Parker,

S. 88. An act relating to mobile home parks.

To the Committee on Natural Resources and Energy.

By Senators Conrad, Baker, Racine and Welch,

S. 89. An act relating to medicaid eligibility.

To the Committee on Health and Welfare.

By Senators Ketcham, Baker, Bloomer, Carter, Deen, Finn, Hoff, Hunter, Illuzzi, May, Robillard, Skinner, Smith and Welch,

S. 90. An act relating to the insurance information act of 1987.

To the Committee on Finance.

By Senator Illuzzi,

S. 91. An act relating to mandatory life for aggravated murder.

To the Committee on Judiciary.

By Senators Hunter and Baker,