

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

April 27, 2005      LB 117

to criminalize conduct. The purpose of annexing a punishment to a crime, or conduct that has been criminalized, is to fit the punishment to the crime. That's all the purpose the penalty is for. It's not to serve to give drug courts leverage. It's not to serve the purpose of encouraging prosecutors to overcharge. I read not just the laws we have in the books; I read the codes of ethics that govern lawyers and judges, and all kinds of commentaries and treatises on the ethics of the law. When a prosecutor deliberately overcharges, that implicates ethical considerations. And this is the difference between having politicians make these determinations, and having people with a broader perspective on the law and its purposes. It may be very alluring to say, annex very harsh punishments to these offenses, to run people into drug court. Not everybody is going to get that opportunity. These harsh, overly harsh penalties can be applied selectively and discriminatorily. The reason the U.S. Supreme Court first overturned all death sentences in this country was because of the way they were discriminatorily imposed. The court never abolished the death penalty because the penalty itself was found to be unconstitutional, but because of the discriminatory way in which it was imposed. When you initially embark upon creating penalties, and you acknowledge that it's not to punish the crime, it's not because the Legislature thinks that this penalty fits the crime, or shows to the public how serious the crime is viewed to be, but rather as a gimmick to help drug courts, you are using an illegitimate basis to create a penalty. The Legislature can do it. But it ought not. And that's why I have to fight against so much that this Legislature does. I take seriously not just the words we put on the pages of these statute books, but how they will be applied in the real world. And I take it more seriously, obviously, than my colleagues in the Legislature. And that is indeed unfortunate, because I'm not going to be here forever. But I will fight these attempts. When Senator Flood was talking to Senator Aguilar, he was saying that it would enhance the use of drug courts, or give them leverage. And the time to really put the screws to somebody is when he or she is facing a...

SENATOR SCHIMEK PRESIDING

SENATOR SCHIMEK: One minute.