

STATE AFFAIRS COMMITTEE

March 1, 1963

The meeting was called to order and the Chairman read a proposal for a committee bill concerning microfilming of records in certain departments. Mr. Fribley moved and Mr. Marshall seconded that the proposal be introduced as a committee bill and referred to the committee of the whole. Motion carried unanimously.

Mr. Griffith introduced people who were appearing in support of H.B. 93 (see attached) and Dr. Satten of the Menninger Clinic was the first to appear. He stated that he was speaking from the standpoint of his extensive experience as a Psychiatrist in the Leavenworth Prison, in ElReno, Oklahoma and at the Federal Medical Center in Springfield. He stated that it was his experience that capital punishment was not a deterrent to the criminal. (see attached)

The Rev. Gilbert Murphy of Gardner, Kansas, stated the stand of the Presbyterian Church, and his own personal feelings; that retaliation is not the answer--but education and rehabilitation.

The Rev. Cecil Findley of the Kansas Council of Churches reiterated much of Rev. Murphy's feeling, and stated that retribution and revenge did no good; that educating the community to recognize danger signals and to see that individuals had help was the answer. (see attached)

Rev. Bartel and Rev. Robinson both spoke in support of the measure and Mrs. Helen Hudson read a resolution adopted by the Synod of Kansas for the Presbyterian Church. Members of the Committee asked about amending the proposal to take care of those presently on death row, and the sponsors stated that they were afraid of the political ramifications, although they feel it is desirable. Rev. Murphy stated that they would like it all inclusive, but know it might not be practical--that something is better than nothing.

The meeting was adjourned.

STATEMENT TO THE HOUSE COMMITTEE CONSIDERING BILL NO. 97

Mr. Chairman and Members of the Committee:

The following statement, which we bring before you, has been prepared by the Reverend Forrest Robinson, Derby Methodist Church, Derby, Kansas; and the Reverend George T. Gardner, Andover Methodist Church, Andover, Kansas.

As ordained ministers of the Methodist Church we appreciate the arguments which the psychologists, criminologists, and psychiatrists present concerning the abolition of capital punishment. This is indicative of the growing moral and religious concern of American people over the issue. At the root of our Jewish and Christian heritage we have the commandment, "Thou shalt not kill." This law applies not only to the human individual but applies as well to the groups in which an individual organizes himself. By our present laws we are found in the dubious position of operating on a double standard of law; as seen in the fact that the individual may not kill but it is perfectly legal and justifiable for the state to kill. By this double standard we say that the individual is guilty if he takes another's life, but by this same argument the state is also guilty when the state takes that individual's life.

This leads us to a deeper demension of capital punishment, which expresses itself in the corporate guilt of the people. Each time the state of Kansas hangs a man on the gallows, the people of the state assume the guilt for having put this person to death. We are found like Pilate in the sense that though we have prescribed by law the justifiable death of a man, still the moral and religious law will not let us wipe away the blood that is on our hands. After all, both the individual and the state stand under the law of God that says, "Thou shalt

not kill." All of us, therefore, both criminal and citizens are called to repentance; the criminal for his heinous act and the citizen for his bland acceptance of the state's heinous retaliation. But the Lord who calls both the criminal and the citizen to repentance is the same Lord that makes us aware of the redemptive possibilities within the human soul.

Even behind prison bars a man's life can be transformed. This obviously cannot happen if the man is dead. The Methodist Church has stated this position at the General Conference in 1960 in Section 3 of our Declaration of Social Concerns, (Paragraph 2020, Statement D) entitled "Treatment of Crime":

"We stand for the application of the redemptive principle to the treatment of offenders against the law, to reform of penal and correctional methods and to criminal court procedure. For this reason, we deplore the use of capital punishment."

To reaffirm this statement in our own state of Kansas, the Central Kansas Conference of the Methodist Church, 1962, composed of clergy and lay delegates, representing approximately 450 churches, clearly and decisively adopted a resolution asking the governor and legislature of Kansas to provide for the abolishment of capital punishment within the state. This resolution can be found on page 518 of the Journal of the Central Kansas Conference, 1962.

In summary, we believe that capital punishment, being contrary to God's law, involves all people, both criminal and citizens, in corporate guilt and it prohibits the possibilities of rehabilitation and redemption of the criminal. On these grounds we stand opposed to capital punishment.

CAPITAL PUNISHMENT

(A statement of concern adopted by the 13,000 member body of the Western District Conference of Mennonites in Kansas City, Oct. of 1961. Nearly all of the churches of this district are located in Kansas.)

"The church of Christ is the body of Christ (I Cor. 12:12,13), and as such makes its testimony in His name. The church must speak submitting itself to the will of God recognizing the authority of Scripture. Being the church of Jesus Christ, Christ is recognized and honored as Lord of His church, of the Scriptures, of His creation (John 1:1-18).

"We further recognize the authority of God-given government and the duty of such government to make and enforce laws for the protection and welfare of society. (Romans 13:1-7)

"We are under obligation to submit to the authority of Scripture when it speaks to issues and we are convinced that Scripture has a clear mandate regarding the death penalty. In the Old Testament the death penalty is commanded for certain offenses including murder (Genesis 9:6; Exodus 21:12-17; Exodus 22:18-25; Leviticus 24:17). In the New Testament, we see these old laws as superseded by the expiatory death of Christ for all sinners (Romans 3:25; Hebrews 2:17; 7:27). We see, further, that by both teaching and example, our Lord dealt with evil and the evil doer by means of love (Matthew 5:38ff; John 8:1-11; John 15:12). Furthermore, there is throughout the New Testament the concern for moral and spiritual redemption of all men (John 3:17; I Timothy 2:4; Philemon). It is in the light of this that we stand in opposition to capital punishment for Christ is Lord — Lord of the Scriptures and of our lives and of nations. He came not to destroy or to condemn, but to save. We are commissioned to a similar service (I Cor. 5:16-21). We believe the state has the duty to maintain order. In the light of our Lord's life and teaching, we make our testimony. As His children, we may not participate in or support the state in the taking of life."

taken from Reports and Minutes of the Seventieth Annual Session of the Western District Conference, Oct. 21-24, 1961, page 80

I am here to represent our concern as a group of Mennonite churches in the State of Kansas for the kind of legislation that will allow for the redemption of offenders. We respect the findings of sociologists and persons in the mental health professions regarding the need for penal reform and would encourage our state legislators to move in that direction as soon and as rapidly as possible. Underlying and motivating our testimony, however, is the conviction that in a democratic form of government such as ours we must express ourselves as a group of citizens opposed, on Christian principle, to the taking of human life, even by government.

In the one place in the New Testament where there is record of Jesus speaking directly to the question of capital punishment (John 8) He places the responsibility for shedding human blood where it belongs. The Pharisees had caught a woman in adultery (an offense punishable by death according to law) and brought her before Jesus. He replied by saying that "he who is without sin, cast the first stone". Obviously, the only one who is without sin and infallible is God. He alone has the privilege of taking human life.

In ancient societies, including Old Testament Judaism, human life was offered as a ritual cleansing of the community from sin (See references in statement above). But Christ, according the Christian view, ended the need for blood sacrifice of any kind with his own death on the cross. Certainly, even the state doesn't any longer profess to offer men under the death penalty as ritual sacrifices.

We simply ask that no criminal be placed beyond the possibility of redemption by legal execution.

- Floyd G. Bartel, for the Western District Peace and Service Comm

United Presbyterian Church U. S. A.

Synod of Kansas

Recommendation:

. . . reaffirm the pronouncement of the 171st General Assembly on Capital Punishment which is as follows:

"Recognizing the responsibility of the state to protect its citizens and to promote justice and freedom in society,

"Recognizing that one of the means by which the state has sought to exercise this responsibility has been the imposition of the death penalty,

"Realizing that in Western Europe only France and Great Britain retain the death penalty and that in our country eight states have abolished it,

"Knowing that studies have shown that the retention or abolition of the death penalty has no observable effect on homicide rates, that justice sometimes miscarries because of human fallibility in the judicial process, and that enlightened penal practice seeks both to protect society and to reform and rehabilitate guilty persons, and

"Believing that capital punishment cannot be condoned by an interpretation of the Bible based upon the revelation of God's love in Jesus Christ, that as Christians we must seek the redemption of evildoers and not their death, and that the use of the death penalty tends to brutalize the society that condones it,

"The 171st General Assembly

Declares its opposition to capital punishment,

Calls upon the judicatories and members of The United Presbyterian Church in the United State of America to work for the abolition of the death penalty in their respective states,

Urges the judicatories to seek the improvement of our various penal institutions and systems to the end that society may be protected and persons convicted of crime be rehabilitated, and

Encourages the Department of Social Education and Action to continue its study of other aspects of crime prevention and correction."

Adopted by the Synod of Kansas, October 10, 1962 at the 99th Stated Meeting, meeting in Overland Park.

DIVISION OF SOCIAL RELATIONS
KANSAS COUNCIL OF CHURCHES

A PRONOUNCEMENT ON "CAPITAL PUNISHMENT AND PENAL REFORM"

We believe the revelation of Jesus Christ portrays the nature of God to be the One who actively offers a new beginning to all men. To those who have fallen prey to temptations and environments contrary to the moral law and the welfare of society, we see God extending the arm of love which convicts and yet helps chart a new life path. In the forgiveness of God, we see hope that persons can respond and experience change. We see our Lord, by teaching and example, dealing with evil by means of a refining and healing love.

We believe Christian faith also bids us to be concerned for the safety and protection of law-abiding citizens. Our lives have been placed in relations to other people. We live in a social order which requires safeguards and protection for persons and society as a whole.

In the light of this understanding of Christian faith, we 1) state our opposition to capital punishment and 2) affirm our wholehearted support of a penal system in Kansas reorganized around the philosophy of rehabilitation. We are persuaded that this faith gives impetus to a society and its correctional institutions to seek all means of restoring violators of the law to responsible citizenship and whole personhood. We accept a responsibility as churches to become involved in the implementation of these views.

CAPITAL PUNISHMENT

In addition to reasons stemming from our faith, we note evidence from research supporting our view that capital punishment be removed from the Kansas penal code. Sociological studies point out that capital punishment can no longer be interpreted as a deterrent to crime. Its use or threat of use has no observable effect on the homicide rate.

We recognize the responsibility of the State to insure the peace and prosperity of her citizens. Yet, we believe that in place of capital punishment there are other and more beneficial ways of dealing with perpetrators of severe crimes. We believe social controls and law enforcement in our society no longer demands the imposition of the death sentence. The function of criminal law is to protect the law abiding and not to fulfill the lust for revenge.

Knowing the fallibility of human juries, witnesses and judges, the certainty of guilt or the recognition of all factors may not be ascertained in a trial. Further, when execution is carried out, there is no possibility of retrial based on new evidence. The justice of the death sentence is further called into question when studies reveal that people of means most frequently escape capital punishment regardless of the crimes committed, and people of minority groups and little means are more likely to receive the maximum sentence.

Looking beyond our borders, it is noted that only two nations in Western Europe retain the death penalty. On our continent, eight states, Mexico and most of South America have abolished it. Strong effort is being expended in Canada to abolish capital punishment.

We see the death penalty as tending to spiritually demoralize and accent the brutal elements in the society which uses it. We further seriously question the right of the State to make it unlawful for one person to take the life of another citizen and as a State be immune from such a principle of law.

PENAL REFORM

We are aware that offenders of the law and those whose acts threaten the well being of our society become this way due to a variety of influences and factors. By heredity, some have limited skills which lead to frustrated antisocial behavior. Others have experienced unhealthy family and social relationships which have stunted personal development and couched their lives in fear and hate. Still others have chosen the path temptations have opened to them.

In view of the known causes of criminal behavior and in recognition of the basic dignity God has bestowed upon persons, we believe that punishment should basically involve treatment and rehabilitation.

We wish to commend the Governor, the Office of the Director of Penal Institutions and the 1961 Legislature for the far-sighted moves inaugurating a treatment and rehabilitation program in the Kansas penal system. The new Kansas Diagnostic and Reception Center, the reorganized Board of Probation and Parole are such evidence.

We believe that further steps need to be taken in the direction of a change from a "custodial" view of penology to a view of rehabilitation. A minimum security prison, relief for overcrowded Lansing Penitentiary and the introduction of expanded opportunities for therapy, basic education and vocational training are urgent steps needed ahead.

We believe that Christian faith informs this humanitarian emphasis and makes it incumbent upon the churches to support permanent and experimental rehabilitation in our penal system.

RECOMMENDATIONS TO OUR STATE GOVERNMENT

1. We recommend that the Kansas Legislature abolish the death penalty at the earliest possible moment.
2. We recommend that all those convicted of what would now be classed capital crimes be given the "life sentence", with a minimum of years (i.e. twenty) before the prisoner be released, and then only when an evaluation indicates the person reasonably rehabilitated.
3. We further encourage the Kansas legislature to enact legislation fostering rehabilitation in our penal system along the following lines:
 - a. We recommend that minimum security facilities be established. These facilities should embody procedures for physical, vocational and social rehabilitation.
 - b. We encourage enactment of the "indeterminate sentence", thereby replacing minimum and maximum sentencing. This would grant the Probation and Parole Board, together with the Diagnostic and Reception Center, opportunity to release a prisoner at the time he has evidenced to them readiness to be returned to society under supervision.
 - c. We recommend an increase in sufficient number and quality of probation and parole officer staff over the State to insure a follow through in the emerging treatment and rehabilitation re-organization of our penal system.

RECOMMENDATIONS TO THE CHURCHES

1. We recommend that member denominational units comprising the Kansas Council of Churches - and their local churches - give thorough study to the issues of abolishing capital punishment and an ongoing program of penal reform.
2. We urge churches and individual clergy and laity to support efforts to abolish capital punishment.
3. We urge our constituents to support those specific legislative and administrative proposals for permanent and experimental programs designed to re-organize our penal system in the direction of restoring persons to constructive citizenship and meaningful life.

The General Assembly vote on adoption of this pronouncement was: Yes-45; No-0;
Abstentions-0.

STATEMENT ON CAPITAL PUNISHMENT

Given by Dr. Joseph Satten, Director,
Department of Social and Preventive Psychiatry, The Menninger Foundation
at the hearing of the State Affairs Committee on Friday, March 1 at 1:00 p.m.

Any discussion of capital punishment must be seen in its relationship to the total problem of crime and criminals; otherwise it tends to get magnified out of all proportion to its importance. In Kansas, as in other jurisdictions, capital cases represent a very small minority of total crimes. From the point of view of the psychiatrist, what happens to two or three cases each year is much less important than what happens to the thousand other cases-- to use the figures for our state. The issue of capital punishment is of no practical consequence other than the extent to which it influences the real issues, namely, the administration of the criminal law and the disposition of offenders.

In this context, it should be known that correctional systems throughout the country are changing but that this change is not really fully understood by the community. While judges continue to sentence men to "hard labor" and the community has an image of prisons and penitentiaries being "tough" places, the fact is that prisons are slowly shifting into rehabilitation centers with facilities often approaching and occasionally surpassing those of some good state hospitals. In this change, the theoretical ideas of the behavioral scientists and the practical experience of the penologists are coming closer and closer together, without the public having unequivocally given up the idea of the old retributive system of justice.

But with capital crimes, since the retributive law is still on the books, we come face to face each time with the issue of retribution versus rehabilitation, but in the context of the case which is unusual and frightening. To shift away from the concept of retribution and toward the concept of rehabilitation, even for capital offenders, is a relatively small shift for those working in the field, but for the community at large, it is apparently a gigantic step. The reluctance of the community at large, however, to take this step conveys to the workers in the field the idea that the community is not really committed to the concept of rehabilitation for the offender. In my opinion, that is the most important aspect of the problem.

But, to get to the specific issue of capital punishment let me analyze a few of the issues in terms of the scientific knowledge that is now available. The first and most often propounded argument for the continuation of capital punishment is the idea that it has a uniquely deterrent effect on those people considering capital crimes. This idea is based on the concept, long discarded by those of us who are in the business of helping people change, that man is entirely rational in his behavior and always weighs the consequences of his acts. In my personal examination of forty or fifty murderers, I was able to confirm the finding that most of them never seriously considered the possibility of the death penalty, something that was originally pointed out by many of the wardens who have had to supervise executions, like Warden Lewis E. Lawes of New York and Warden Clinton Duffy of California.

To understand this phenomenon, we need to know something about the psychology of deterrence. For the large majority of people, those of us who are "normal", the motive to obey the law stems mainly from a wish to retain one's self-respect, the love and respect of one's family, friends, and associates, not so much from a fear of what the penalty for violating the law might be. For example, how many in this room would be willing to steal a purse containing \$50, \$100, or even \$1000, if I could assure him that he would get a suspended sentence and the only penalty would be the fact that his friends and associates would know him as a thief? Very few, I suspect. But there is a small group of people to whom such a proposition would appeal, and these people do carefully weigh the consequences of their behavior. But for such people, the deterring value of punishment relates to the certainty of being caught, rather than the severity of punishment. Most members of such a group would be willing to take a risk of 1 in 500 or 1 in 1000 to gain certain ends, and that risk represents the proportion of times in which the death penalty is applied in capital cases. There is a third group, however, for whom neither the respect of the community nor the certainty or severity of punishment makes much difference in their behavior when they become overwhelmed and are driven to act. As psychiatrists, we know from hundreds of years of experience that the threat of punishment, even death, doesn't prevent such people from acting; but we also know that it is possible very often to predict their behavior in advance from evidences of their disorganization.

Even if we were to assume for the sake of argument that the death penalty has some special deterrent value, which I doubt, this value I think is lost by our usual practice of executing offenders in the middle of the night in almost complete secrecy. On this point alone, one could perhaps make a good case for having extensive radio and television coverage of executions.

A final point with regard to the question of deterrence is the strange illusion that many people have that imprisonment for life is not a very severe penalty and therefore has no significant deterrent value. This, I submit, is a distortion of reality.

A second major issue is the question of the protection of the community. Here we are dealing with a tragic myth. The community is not protected by capital punishment. The people who commit capital offenses in the great majority of cases are not those who have committed capital offenses before and gone free. Rather, a large number of them have never committed any offenses before, or they have been involved in lesser offenses. In almost all instances where we have carefully examined killers and spoken with the people who have known them before the offense, we have found that there have been warning signs and signals that could have been picked up by family or friends or even by correctional officials when these men were in custody. It seems to be a poor way to protect the community to do nothing about people we know are going to kill and then execute them after they do what we know they are going to do.

A final point is the question whether killers are "rehabilitatable", for it is often said that since they are "not rehabilitatable" we might just as well execute them. The fact is that techniques already exist for the

rehabilitation of a significant number of murderers. For some, of course, we don't yet have methods of treatment that would guarantee their rehabilitation, and it may well be that they would have to be confined for life in view of our failure to rehabilitate them. But as a physician, I would like to see continued research on methods of treatment for those whom we don't yet know how to rehabilitate rather than having these most difficult cases whisked away to the hangman and then buried.

As a physician and a scientist, the issue to me is the following. We already have some ways of understanding and identifying disturbances in behavior that lead to homicide; of course, we need to improve this knowledge, but we need to devise ways to make positive use of the knowledge we have before people kill rather than respond angrily after they do. More and more we are finding that the "crime" in murder is the fact that the offense could have been prevented and was not. In a sense this is a public health problem. These are deaths that could be prevented, but only if we abandon the philosophy of locking the barn door "after the horse is stolen".

Do
You
Wish to
Speak

<u>NAME</u>	<u>ADDRESS</u>	
Harold B. Tatter	Topeka	No
Floyd D. Bartel	Topeka	Yes
Gilbert C. Murphy	Gardner, Ks.	Yes
W. Cecil Findley	Manhattan, Ks.	Yes
Forest J. Robinson	Derby, Kansas	Yes
Mr. Forrest J. Robinson	"	No
Junius Robinson	"	No
Helen A. Hudson	Topeka, Kan	Yes
Joseph Jellen, M.D.	" "	Yes