

STATE AFFAIRS COMMITTEE  
February 25, 1965

The meeting was called to order by the Chairman who introduced Rep. Don Joseph to speak in opposition to H.B. 509. He stated that he believes there must be maintained in the statutes, a severe penalty to serve as a deterrent; that of course, some crimes are committed on the spur of the moment that possibly shouldn't be penalized to the maximum, but where such crimes as the Clutter episode are committed with forethought and planning, no mercy should be shown or there would be more crimes of this type. Rep. Blythe spoke briefly, stating that he endorses what Mr. Joseph has said.

Mr. Robert Hoffman, Assistant Attorney General, appeared on behalf of the Attorney General's office, stating that he was speaking on behalf of that office. He stated that it was the feeling of many people that the law was all right the way it is; that although facts and figures are almost non-existent it is felt that it does serve as a deterrent on certain kinds of crimes. He discussed the proposed non-commutable sentence and pointed out the Governor's prerogative under the Constitution; that possibly the Governor would not have to adhere to this provision. He asked the Committee to urgently consider the ramifications of such legislation. Mr. Rogers asked if the law gives sufficient protection for the presumption of innocence, and Mr. Hoffman stated that he believes the present law contains enough safeguards to prevent execution of anyone who is innocent. Mr. Sanford Logan of the KBI states that if there was no death penalty, the criminal who is to be apprehended will have no compunction about murdering the arresting officer; that it would jeopardize the position of the law enforcement people. Col. Hughes of the Highway Patrol stated that he opposed the abolishment of capital punishment; that this is based on his experience with the FBI and with the Patrol and that he feels his men would be in more danger if such penalty were abolished.

Harold D. Mueller, Sheriff of Cowley County states that he speaks for many of the Kansas Sheriffs' Association; that the people who go to the scenes of crimes are in danger and if there was no death penalty, their job would be more hazardous; that in his experience there have been times when arresting criminals that they "have had the drop on him" and he asked later why they didn't shoot him, and they told him that "they would do time but they're not going to put any rope around my neck". He states he believes the present statute is a deterrent.

Meeting was adjourned.

3. In general, the errors have been from 12.3 percent to 10 percent, where executions have taken place. p. 298
4. In general, the available data do not favor the justifications which have been given for the death penalty. p. 297

(Sutherland and Cressey)

5. Green - with envy

a. The District of Columbia vs. Everett Green.

- b. "It is in this area - the area of what persuades the mind - that the work of the Court becomes most fascinating. Nine men are presented with identical facts and arguments. They arrive at opposite conclusions. Why? Surely there is no single reason but rather a plethora of pulls and tugs and crosscurrents, a series of reactions built on heredity, environment, experience, mentality and judgment. Into this rumbling, bubbling pot is thrown the element of death. A man's life is at stake. An adverse decision rendered, and the man suffers inhuman agonies until he is finally strapped into a metal chair and convulsively jarred until his heart stops. There is no recanting then. No second thoughts or hindsight or better judgment. There is no bringing him back."

"This is the one factor that distinguishes the death case from every other. The factor of death cannot be measured, but it is there. It wears thin the judge's nerves and makes him hate the job. And in the close case, the case in which all the elements but one seem to balance out, the fact of death can be decisive." p. 88

(Prettyman, Jr., Barrett, Death and the Supreme Court, New York, Harcourt Brace and World, Inc., 1961)

6. A Little Bit of Knowledge

a. The State of California vs. John Russell Crooker, Jr.

- b. "I have been asked what it is like to wait to be put to death. On death row you never escape the thought of death.

"It is there in your mind, day after day, while you eat, while you play, while you bathe, while you walk down among the living for a visit, while you glance or stare out a window at the open sky, when you hear the sparrows chirping and see them gather around a window and fly out into the air, while you watch one after another of your fellow condemned, your fellow man, escorted by your cell, down toward the gas chamber to be put to death. You never escape the thought - until months and months later when the relieving gas rises to destroy your thought and all of you.

"You awaken from the shock of the death verdict, unless you are one of those too sick in your mind. You begin to resist death, study your legal case, listen, talk, read this thing - the law - which has ordered you to be put to death. Day after day you do this, constantly, hour after hour. You learn something about this thing - the law: that it is not a fine straight line from crime to punishment; that it is a broad, waving line, where similar or worse crimes of the same type do not lead to the same punishment; that it is also a line of several links, in which each link has the power over the preceding link - only if you, yourself, unusually poor and ignorant and friendless, can reach the next link to see to exert power, by appeal, which is the link to life.

"You are one who never even thought of crime, much less punishment, and still less capital punishment, until after your crime. Or you are one who knew of the gas chamber and subconsciously sought its relieving gas. Or you are one who knew of the gas chamber and consciously sought this way of suicide. You are probably one of those three, because condemned men who knew of capital punishment and calculated the gas chamber as a risk of their crimes before their crimes, are relatively very, very, few.

"You relive your crime many times, or approach near to it in your thoughts and turn back away from it in horror, appalled by it. You would turn backward. You would show your remorse - as condemned men sometimes do, one to another - the remorse you hide with your fear in your heart and mind you would show to the one with the power and the given promise to understand and not to condemn you, to the one you cannot find, unless perhaps you are a person who finds him in God.

"Waiting to be put to death is like having a charge of electricity attached to your limbs - not a big charge, but a small needling at any moment of your days and nights, no matter what you are doing, even awakening you from sleep.

"It is like being immersed in water and taking an eternity to drown.

"That is what it is like to wait to be put to death - not just to me - but, I believe, it is to a large extent an unexaggerated statement of what almost all condemned men feel, whether or not they can express their feelings in so many words.

"Except among those who are too sick in their minds.

"And even those who are too sick in their minds.

"And even those who are too sick in their minds experience much of what it is like to wait to be put to death, except that they do not resist death; or they welcome death; or they run and hide from it in dreams that do not last long enough; or they blindly curse themselves or their judges or their juries or their victims or their families or their societies or their worlds; or they fly through the windows with the sparrows and are gone long before the gas takes away their breath.

"That is what it is like to wait to be put to death." pp 253-255

(Prettyman, Jr.)

## 7. Conclusion

"The fact is that a Justice of the Supreme Court will delay an execution any time he has reasonable grounds to believe that the condemned man has not received every safeguard the constitution demands. Life is precious and sacred, the state undertakes no more awesome a responsibility than when it deliberately sets about to excise the life of one of its citizens. Every protection must be accorded innocent and guilty alike, regardless of delay, lest a mistake be made for which there can be no remedy. As terrible as life imprisonment would be for an innocent man, nothing transcends the horror of a life wrongly taken - not in the heat of passion, not in a haze of alcohol, not through provocation or hatred or revenge, but coolly, deliberately, by society itself. Because of this possibility, doubts are resolved in favor of the accused. Rules are stretched. Some bad law is made. And all because there are no second chances once the penalty has been enacted." p. 301

(Prettyman, Jr.)

Mr. Justice Reed (1948); "In death cases doubts such as those presented here should be resolved in favor of the accused." p. 310

Mr. Justice Frankfurter (1952): "Even though a person be the immediate occasion of another's death, he is not a deodand to be forfeited like a thing in the medieval law." p. 310

What, then, is to be done? Of course, an obvious solution would be for the various states to eliminate the death penalty, as surely it will be eliminated in time; the inexorable trend in our country runs directly contrary to that in the Soviet Union, where the death penalty is now being broadened to encompass more and more crimes. p. 310

(Prettyman, Jr.)

#### IV. Christian Attitudes Toward Capital Punishment

It should hardly need to be argued that the whole teaching and work of Christ leads Christians to challenge the rightness of taking life under any circumstances, even where secular justice might seem to permit killing. p. 4

(Yoder, John Howard, The Christian and Capital Punishment, Newton, Kansas, Institute of Mennonite Studies Series Number 1. Faith and Life Press, 1961)

There are still forty-four jurisdictions (forty-two states, the Federal Government, and the District of Columbia, to say nothing of military courts) where capital punishment is still in the law. This question becomes even more significant for Christians when the problem comes to a matter of public concern; in 1957 abolition was obtained in Alaska and 1958 in Delaware. In 1959 a dozen states or more had attempts made, none of them successful. In Ohio the attempted abolition law had the support of the Governor; in other states it had the support of the legislative committee but insufficient support from the public (underlining mine). This means that Christians, especially Christians who at other times and places have testified to their high respect for the sacredness of human life, are letting their silence speak for them, permitting their indifference to testify that as far as they are concerned this matter is one about which the Lord they profess to represent has no opinion. p. 21

Is this silent testimony of conformity the one we want to give? It is the conviction of this writer that such testimony is one for which we cannot conscientiously take the responsibility before our Lord. If we confess His Lordship over every knee and every tongue, we must believe; and if we believe it, we must proclaim that the killing of criminals is not God's will even for a sub-Christian society. We must make this testimony real to the men who make and who execute the laws, not leaving it to an occasional request for mercy as in the Peters or the Chessman case. p. 21

(Yoder)

What should Christians do? First of all, we should become informed. Our convictions on the matter should be as well thought through as those concerning military service. We should contribute to the awakening of public opinion by speaking to our neighbors and writing to newspapers. We should witness to legislators, especially if and when abolition legislation is being considered. We should assure our church leadership, locally and on a state-wide denomination-wide level of our support in any approaches they might make to legislative committees, through conference resolutions, or any other channels of testimony. Underlying all of this effort, justifying it, and enabling it, we should remind ourselves that when we are instructed to "pray for kings and all who are in high places) it is concrete things like this which we are to have in mind. "That we may lead a quiet and peaceful life" does not mean that Christians are to be interested primarily in their own tranquility; it means that the purpose of government is to keep all violence within society at a minimum. In our land and in our day one of the best ways to testify to this divine imperative is to proclaim to the state the inviolability of human life. p. 23

(Yoder)

#### V. Attitudes on Capital Punishment

"The weight of professional opinion is overwhelmingly against capital punishment but there seems to be considerable popular support for it in Kansas. Most discussions are simply a logomachy of sentiments with precious little evidence." p. 2

(Professor Marston McCluggage, Department of Sociology, University of Kansas. Letter to the Author)

## I. The Decline in Capital Punishment

- A. A list of countries that had abolished capital punishment and of those that had restored it as of 1939 was prepared by Laves.
1. Those countries that have abolished capital punishment in Europe are Belgium (1863), Denmark (1933), Holland (1870), Lithuania (1922), Norway (1905), Portugal (1867), Spain (1932), Sweden (1921) and Switzerland (15 cantons, 1874).
  2. The countries of Central and South America that have abolished capital punishment include Argentina (1922), Brazil (1891), Colombia (1910), Ecuador (1895), Peru (1926), Uruguay (1926), Venezuela (1926), Costa Rica (1926) and Mexico (1929).
  3. Countries that have restored capital punishment include Italy (1928), Austria (1934), and Roumania (1939). p. 599
- B. Currently there are nine states in the United States in which capital punishment is prohibited.
1. They are Michigan, Rhode Island, Wisconsin, Maine, Minnesota, North Dakota, Delaware, Alaska and Hawaii. Ten other states abolished capital punishment at one time but restored it at a later date. p. 600
  2. Kansas abolished capital punishment in 1887 and restored it in 1936. p. 600
- C. It should be noted, however, that although 41 states of the United States, the District of Columbia, and the Government of the United States retain capital punishment for one or more crimes, the actual use of it is being surmounted by many devices, including unwillingness of juries to convict, substitution of long sentences when the death penalty is permissive and not mandatory, pardon by governors, and commutation of death sentence to life imprisonment by governors. p. 601
- D. The trend is toward privacy in executions. p. 602

(Reckless, Walter C., The Crime Problem, Third Edition, New York, Appleton-Century-Crofts, Inc., 1961)

## II. Methods of Capital Punishment

The methods used in the United States in carrying out the sentence of capital punishment are hanging, gas, the electric chair and the firing squad. There is no such thing as a humane way to put a person to death. Kansas hangs him!

(Paul C. Kochan)

III. Arguments for Capital Punishment and Answers to Them

A. The death penalty as a deterrent

1. Methods of testing this assumption

- a. In the United States the usual method of testing the deterrent effect of the death penalty is to compare the homicide rate in states which have abolished the death penalty with states which retain it. p. 292
- b. Such comparisons show that in abolition states the homicide rate is only about one-third to one-half as high as it is in other states. p. 292
- c. However, this comparison is somewhat biased because the death penalty is authorized in all of the southern states, and the southern states have the highest homicide rate.
- d. A more justifiable comparison is between states in a particular section of the United States.
  - 1. The States which have abolished the death penalty generally have slightly lower homicide rates than the adjoining states which have retained it.
  - 2. The significant difference is not between states which have the death penalty and those which do not, but between the different sections of the country, regardless of whether the states have or have not the death penalty. p. 293
  - 3. The composition of the population and the general culture of the section is much more important than the presence or absence of the death penalty in determining homicide rates. p. 293
  - 4. Thus the difference in the rate of homicides is due to things other than the death penalty. p. 294
- e. Similar differences are found within states. p. 293
  - 1. Vold found in 1932 that the average homicide rate in the southern tier of ten Iowa counties was 3.9 and in the northern tier of eight Missouri counties was 3.5, but in the southern tier of twelve Missouri counties was 10.5.
  - 2. The northern tier of Missouri counties is very similar to the southern tier of Iowa counties in culture and composition, but the southern tier of Missouri counties is significantly different.
  - 3. Both states have the death penalty.
  - 4. Thus the difference in the rate of homicides is due to things other than the death penalty. pp. 293-294
- f. Comparisons in European Countries
  - 1. On the average, the European States which have abolished the death penalty have lower homicide rates (which generally means lower murder rates in Europe) than states which retain the death penalty.

2. The Scandinavian countries, which have abolished the death penalty, have homicide rates about one-half as high as England, which retained the death penalty until recently and still retains it for some offenses. p. 294
- g. A second method of testing the deterrent value of the death penalty is by comparing, in the states which have abolished the death penalty, the homicide rates before and after the abolition. p. 294
  1. The general conclusion from this comparison is that the states which abolished the death penalty had no unusual increase in the homicide rates. p. 295
  2. Some of the states restored the death penalty after a few years on the ground that the murder rate had increased greatly after the abolition.
    - a. The statistics show, however, that the changes in homicide rates were almost exactly parallel in other states which had made no changes in their laws regarding the death penalty.
    - b. Kansas abolished the death penalty in 1907 and restored it in 1935.
      1. The annual average homicide rate in Kansas was higher in 1931-1935 than in 1936-1940.
      2. However, an identical trend characterized the states bordering Kansas.
      3. Table XVI.....Average Annual Homicide Rates According to Contiguity.

State	1931-35	1936-40	1941-46
Kansas	6.2	3.6	3.0
Colorado	7.5	5.5	3.7
Missouri	11.1	6.6	5.3
Nebraska	3.7	1.7	1.8
Oklahoma	11.0	7.2	5.6

p. 293

- c. Comparison of the "before and after" homicide rates of European countries which have abolished the death penalty also shows that the presence or absence of the death penalty has no perceptible effect on the incidence of murder. p. 295

## 2. Conclusions

- a. The evidence, such as it is, shows a relatively unimportant relation between the murder rate and the death penalty. p. 295
- b. The argument of the advocates of the death penalty that it is the most effective deterrent is not, at least, substantiated by the data available.
- c. It is based on preconceptions rather than on data, and the preconceptions are taken from the hedonistic psychology which assumes that the psychological processes are much less complex than, in fact, they are.
- d. Even premeditated murders are generally committed under the stress of a great emotion and the penalty is seldom considered. p. 295

(Sutherland, Edwin H. and Donald R. Cressey, Principles of Criminology, sixth edition, Chicago, J. B. Lippincott Company, 1960)

## B. The death penalty and certainty of punishment

1. The advocates of the death penalty argue that it is more certain than imprisonment, because imprisonment is frequently terminated by escape, pardon or parole. p. 295
2. Actually, the death penalty is very uncertain, because it is so seldom imposed even when it is authorized. p. 295
3. Also, the argument is made that juries are less willing to convict and witnesses less willing to testify when the penalty is death than when it is less irreparable. p. 295
  - a. Of 1,628 persons convicted of homicide in 29 states in 1936, only 4% were given death sentences, and ten years later, in 1946, of 1,923 persons convicted of homicides only 4.6 percent were given death sentences. p. 296
4. The uncertainty of the death penalty also is indicated by the fact that many of the persons sentenced to death are not executed.
  - a. Of those persons sentenced to death for murder in the courts of 25 states during the period 1933-1939, 80 per cent were executed; during the period 1940-1945, 81 per cent were executed. p. 296
  - b. In Texas in the period 1924-1952, 21 per cent of the death sentences for murder, 7 per cent of the death sentences for rape, and 73 per cent of the death sentences for armed robbery were commuted to life imprisonment. p. 296

(Sutherland and Cressey)

## C. The death penalty and financial economy

1. The death penalty often is defended on the grounds that it is less expensive than life imprisonment. p. 297
  - a. The per capita cost of imprisonment is perhaps \$1,000 per year, and the life term may amount to an average of twenty years, making a total of \$20,000.
  - b. If it is true that an execution costs less than this, the demand for executions would apply equally well to the non-criminal insane, to the feeble-minded, and to criminals who have committed offenses less serious than murder; for executions of such persons also would be cheaper than their maintenance in an institution. p. 297
2. But there is some doubt as to whether execution actually is cheaper than imprisonment.
  - a. First, the trials of death penalty cases are ordinarily much longer than trials of other cases.
  - b. Second, although the maintenance cost per prisoner may be high, this does not mean that it would increase appreciably if those now executed were committed to prisons.
  - c. Third, in considering costs of executions, the expenditures for death houses and for the closer custody which must be maintained in a capital punishment prison are usually not computed. p. 297

(Sutherland and Cressey)

## D. The irreparability of error with the death penalty.

1. Those who advocate capital punishment consider wrongful conviction as only a remote possibility.
2. But although most mistakes are prevented by the judicial system or by executive clemency, some occur due to mistaken identification, inadequate circumstantial evidence, framed and simulated evidence, perjury, unreliable expert evidence, overlooking and suppressing of evidence, and excessive zeal on the part of investigators and prosecutors. p. 297



Opponents To H.B. 509

NAME	ADDRESS	Do You Wish To SPEAK ?
Robert E. Hoffman	Assistant Attorney General	yes ✓
Charles B. Newman	Assistant Attorney Gen.	No
Col Hughes	Highway patrol	yes ✓
R. E. Roach	Manhattan	No
(Civilian class Dr Hi Manhattan Rogers)		
Harvey Schudemann	Junction City	no

MR BLYTHE	Yes ✓
MR JOSEPH	yes ✓
MR BOYD	
MR HOLT	
MR DIXON	
MR LINDAHL	No
MR SMITH	
MR MEEKER	
<u>MR DOCKING</u>	<u>YES</u>
MR COCHRAN	
MR CREAM	

Aldridge } sg co.  
Bazier }

or

~~Signature~~  
~~Signature~~