

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

Held in Room 510-S, at the Statehouse at 2:45 ~~xxx~~/p. m., on February 26, 1975.

All members were present except: Mrs. Matlack, who was excused.

The next meeting of the Committee will be held at 2:45 ~~xxx~~/p. m., on February 27, 1975.

These minutes of the meeting held on _____, 19____ were considered, corrected and approved.



Chairman

The conferees appearing before the Committee were:

- Mr. Robert Tilton, Kansas Sheriffs' Association
- Mr. Don Rupert, Kansas County and District Attorneys' Ass'n.
- Mr. Vincent DeCoursey, Kansas Catholic Conference
- Mrs. Darlene Stearns, Kansas Council of Churches
- Mr. Ira Kirkendoll, Public Defender's Office
- Mr. Bill Arnold, President of the Kansas Council on Crime & Delinquency
- Rep. Ron Hein

The meeting was called to order by the Chairman who stated that he had been requested to take action on Executive Order #7. It was moved by Mr. Morris and seconded by Mr. Ungerer that it be approved, and a Resolution be introduced approving same. Mr. Rodrock stated that he wished he had more facts before voting. The Chairman agreed that Mr. Rodrock was perhaps absent when the Committee went through the Governor's budget message and discussed the proposal in detail. Mr. Rodrock stated he felt the committee should have some idea of how much more efficient this operation would be. Upon vote, motion carried by a majority with Mr. Rodrock abstaining.

The Chairman stated the next order of business was HB 2472, and it was moved by Mr. Marshall and seconded by Mr. D. Miller that the bill be reported adversely. Because a hearing was scheduled and individuals on hand to be heard, the Chairman ruled the motion out of order.

The Chairman introduced Mr. Robert Tilton, who spoke in support of the bill, and explained that while very few individuals are in favor of this legislation because they want revenge, never-the-less, it is the law enforcement people who see what happens to the victim, picks up the pieces and tries to console the family. He testified that in cases where individuals have been sentenced to life, there is really nothing to lose, and they feel they have a license to kill; and in fact do kill other inmates, guards and staff.

Mr. Don Rupert stated that Mr. Tilton had covered much of what he had expected to say. He explained that he does not represent 100% of the prosecutors because there are some who are opposed to the death penalty, but that he believes the death penalty is indeed a deterrent and prevents crimes against society. He suggested that the Committee should consider extending the penalty to life without eligibility for parole in the event the Supreme Court rules the death penalty unconstitutional.

Mr. Marshall inquired if this legislation would eliminate plea bargaining, and Mr. Rupert stated he believed plea bargaining would be even more prevalent. Mr. Robert Tilton stated that plea bargaining serves a good function in the system and he didn't see where this bill would prohibit that.

Mr. Vincent DeCoursey appeared in opposition to the proposal. See printed statement. Mr. Tom Slattery inquired if Mr. DeCoursey purported to speak for all of the Catholics in the four diocese in Kansas, and Mr. DeCoursey agreed that he probably did not.

Mr. Ira Kirkendoll stated that he is a Public Defender here in Topeka, but was appearing and speaking for himself, in opposition to the bill. He stated that in Shawnee County about 90% of the cases are plea bargaining situations; that he believes this bill would cause plea bargaining even in the case of innocent people because they would not want the death penalty and would not necessarily have confidence in the courts. He testified that he thinks it is illogical to not make the bill universal; that with regard to executive clemency, he feels the people have had enough of this in recent months.

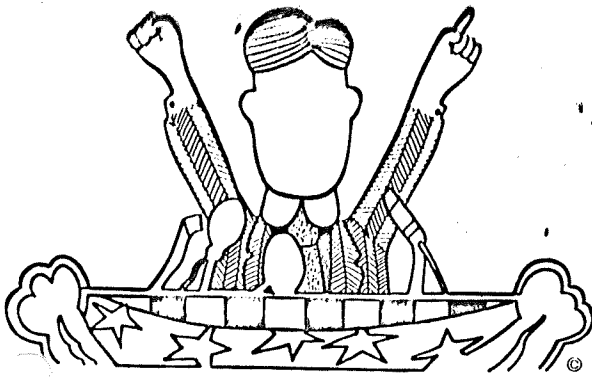
Mr. Bill Arnold stated that although he appears for the Kansas Council on Crime and Delinquency, he teaches at Kansas University. He stated he is in opposition to the proposal because it deals with a form of legislation which the Supreme Court has spoken to, and if the 8th Amendment means anything, this would be cruel and unusual punishment. He states that one of his concerns is that there is no assurance that sentencing patterns would be consistent. See printed statement. He expressed the opinion that this legislation would not be very helpful because most police officers would be killed during a riot or disturbance and it would be impossible to determine who had done it. Mr. R. Miller inquired how many law enforcement officers had been killed under those circumstances in recent years, and Mr. Arnold stated he didn't know. Mr. Reeves observed he couldn't think of a single case where the murder of a law enforcement officer had occurred in a riot situation.

Mr. J. Slattery inquired about the cases where law enforcement officers have interviewed murderers, and the criminal has indicated he would never have committed the crime if the death penalty had been in effect. Mr. Arnold stated he didn't think this testimony was necessarily reliable; that he believed the criminal never expected to be caught.

Rep. Ron Hein testified in opposition to the bill, and stated he believed most criminals don't take the penalty into consideration. He testified that he does not believe the death penalty is a deterrent, and said that there are too many cases to cite to the contrary. He stated that he has sympathy for the victim, but urged the committee to think of a possible situation where an individual intended to kill a law enforcement officer and accidentally killed an innocent by-stander. He stated that then the criminal would get a different penalty than if he had killed the officer.

Mrs. Darlene Stearns, Kansas Council of Churches, offered a printed statement in opposition to the bill.

The meeting was adjourned.



We invite all members to use this page as a forum for timely issues & problems affecting the profession. Views expressed are not necessarily official views of the KODAA.

Plea for Death Penalty

By Richard Hood
A Member of the Staff

One of the most vocal proponents of capital punishment in Kansas, the Wyandotte County district attorney, has renewed his call for reinstating the death penalty in the state.

Nick A. Tomasic, Wyandotte County district attorney, last week wrote to James Reardon, executive director of the Kansas County and District Attorneys' Association, urging the organization to push for legislation to reinstate the death penalty in Kansas.

The U.S. Supreme Court on June 29, 1972, struck down laws allowing capital punishment, ruling that the death penalty gave so much discretion to those who imposed it that it was "cruel and unusual punishment" in violation of the 8th Amendment. The high court did not impose an absolute ban on the death penalty, however, and since the ruling 28 states have reinstated capital punishment as punishment for specific crimes.

In his letter to Reardon, Tomasic suggested the new Kansas capital punishment law be modeled on the California statute which became effective Jan. 4.

The California law permits the death penalty to be imposed following a separate sentencing hearing after a defendant has been convicted of:

- Intentional murder "for hire" or by "contract."
- Murder of a peace offi-



NICK A. TOMASIC

cer in the performance of his duties.

• Murder of a witness to a crime to prevent his testimony against the perpetrator.

• Willful, deliberate and premeditated murder during the commission of a robbery, kidnaping, forcible and violent rape, sexual abuse of a child, burglary with an intent to commit larceny or rape.

• Committing one or more previous first or second-degree murders.

The California law specifically prohibits imposition of the death penalty for anyone less than 18 years old at the time a crime is committed or for anyone who was not present during commission of acts leading to a victim's death.

Tomasic said he and other

prosecutors last year urged legislators to pass a law reinstating capital punishment. He said he understood a bill prepared last year by the Kansas prosecutors and a bill prepared by the Kansas attorney general died in a Kansas House committee.

A Republican-sponsored bill containing similar provisions was killed in the Kansas Senate, Tomasic said.

"A proper death penalty has a place in a legal system as punishment," Tomasic said in an interview explaining his view on the death penalty. "I am convinced that the death penalty as punishment for a select few crimes is a deterrent to persons who might commit those crimes. For example, I'm told there is an inmate at the Kansas State Penitentiary at Lansing who has killed three or four men in prison. Since he is already serving a life sentence, he apparently believes he has nothing to lose."

The prosecutor said he is aware of the national debate on the effectiveness of capital punishment as a deterrent to crime, but he said he has wit-

nessed incidents which prove that defendants genuinely respect the death penalty.

One such case occurred in a murder trial in Wyandotte County District Court before the U.S. Supreme Court struck down the death penalty, he said. A defendant pleaded guilty after listening to Tomasic question prospective jurors on their ability to return the death penalty.

Had the death penalty been imposed in a California murder case, a Kansas City, Kansas, teen-ager might still be living today, Tomasic said. He referred to the 1972 murder of a convenience store clerk in Kansas City, Kansas, by a man who had just been released from a California prison after being paroled on a murder conviction.

While he is adamant in his support of the death penalty, Tomasic concedes the official form of execution in Kansas—hanging—could be considered barbaric. "I think execution should be quicker and more painless than hanging," he said, "but I definitely believe we need a death penalty of some sort."

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WHITE COLLAR CRIME BOOKLETS:

A new booklet on white collar crime, published by the National Chamber of Commerce, is available at no charge through the National District Attorney's Association. A minimum of 100 copies must be ordered. To order, write the National District Attorneys Association, 211 E. Chicago Avenue, Suite 1515, Chicago, Illinois 60611.

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The Deterrent Effect of Capital Punishment

-----William K. Arnold

I. The rationales for capital punishment and punishment in general.

We generally give one or more of the following reasons for punishing people for crimes:

- A. Rehabilitation. Obviously, this can not be a reason for capital punishment. It is, however, a reason for not executing all murderers, for, on the average, they do not commit additional offenses. A California study showed, for example, that only 16% of the convicted first degree murderers violated their parole, and only a total of 2% were subsequently convicted of another felony. Violators of parole after conviction for other offenses vary from 20% for rape to well over two-thirds of the total paroled for most property offenses. (Johnson, 1968: 452)
- B. Incapacitation. This certainly can be a reason for capital punishment, but the problem is that the incapacitation is irreversible. The numerous studies of erroneous convictions . . . contain a sufficient number of solidly documented reports on actual executions of innocent persons to make the questioning of the real risk in this respect hardly a tenable position. They contain, further, a large number of cases which show to what degree life imprisonment, because of the time element involved and because of the continued interest in the victim which such life terms safeguard, permits the discovery of errors in convicting a person of a capital crime. They show, finally, that the sources of errors in judgement are frequently the same whether the error has led to an actual execution or to a life sentence. Thus, they dispel the notion that errors may have occurred in the past but do not occur in the present, and also the notion that though errors might occur in the cases of sentencing a person to a life term they do not occur in the cases of actual execution. (Pollack in Sellin, 1967: 209-210)
- C. Revenge. Although we do not give this as a reason for capital punishment in modern societies, it may be our real reason for keeping it. If, therefore, there is a desire to maintain the death penalty, let us at least be spared the hypocrisy of a justification by example. Let us be frank about that penalty which can have no publicity, that intimidation which works only on respectable people, so long as they are respectable, which fascinates those who have ceased to be respectable and debases or deranges those who take part in it. . . . Let us call it by the name which, for lack of any other nobility, will at least give the nobility of truth, and let us recognize it for what it is essentially: as revenge. (Camus, 1960: 197)
- D. Deterrence. The most important question about deterrence is, of course, whether or not having capital punishment available reduces the incidence of crimes made capital. Nearly all the evidence on this matter is on the effect of having capital punishment available to deter murder.

II. Making murder a capital offense has no effect on the homicide rate.

- A. Making murder a capital offense has no effect on the overall homicide rate.

Study type 1. Comparisons of contiguous states with and without capital punishment

Homicide rates were compared for six different sets of three contiguous states, at least one of which did not have capital punishment for all or part of the period 1920-1963. No significant differences were found between the homicide rates in the states with and without capital punishment. (Sellin, 1967: 136-137)

Study type 2. Comparison of rates in states when capital punishment is abolished or instituted

Eleven such studies have been done. For example, the average number of

murders in Colorado during the five years before abolition of capital punishment was 15.4; during the five years of the abolition of capital punishment, the average was 18; during the five years after capital punishment was re-instituted, the average was 19. The studies show that there are no significant differences between the periods in which capital punishment is and is not available. (Knudten, 1970: 627-629)

Study type 3. Comparison of rates before and after executions.

Two studies were conducted in Philadelphia and one in Chicago. They show that the homicide rates do not change materially after executions, regardless of the notoriety or news coverage of the executions. (Sutherland and Cressey, 1970: 331-333)

B. Making murder a capital offense has no effect on the homicides of police officers.

A questionnaire study was conducted asking police departments in states with and without capital punishment about police officers killed in line of duty from 1919-1954. For the entire period studied, the homicide rate of policemen in the states with capital punishment was 1.3 per 100,000 population in the states; in the states without capital punishment, the comparable rate was lower, 1.2. For the period 1961-1963, the numbers of policemen killed in line of duty was compared with the numbers of policemen. In states with capital punishment, the rate was 1.328 per 10,000 policemen; in states without capital punishment, the comparable rate was slightly lower, 1.312.

C. Making murder a capital offense has a minimal effect on the safety of staff and inmates in prisons.

Study 1. Comparison of staff safety when murderers are and are not executed.

While murder is a capital offense in Canada, the proportion of those convicted whose sentences have been commuted to life imprisonment has varied considerably. As the proportion of all convicted murderers who were executed decreased from 74.9% for the 1930-1939 period to 12.8% for the 1960-1965 period, the frequency of killing prison guards has remained the same. (Akman in Sellin, 1967: 161-168)

Study 2. Comparisons of staff and inmate safety in states with and without capital punishment

Questionnaires were sent to prisons in the United States asking about assaults on staff and inmates in 1965. Six states with capital punishment reported they had had no assaults during the year; four states without capital punishment reported no such assaults. The rate of persons committing these assaults in states with capital punishment was 38 per 100,000 inmates, while the comparable rate in states without capital punishment was 68 per 100,000 inmates. The chances are about nine out of ten that this is a "real" difference showing that the states with capital punishment had a lower rate of homicides in prison. (data on assaults and attackers taken from Sellin, 1967: 154-160; rates computed by the author)

Study 3. Opinions of prison wardens about the deterrent effect of capital punishment.

A survey of wardens in the mid-fifties showed that 89% of those answering did not feel that capital punishment was a deterrent for murder, and 92% said they did not think murderers considered the consequences of their criminal acts. (Thomas, 1957: 244).

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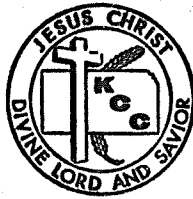
TESTIMONY

VINCENT DeCOURSEY

EXECUTIVE DIRECTOR, KANSAS CATHOLIC CONFERENCE

Re: House Bill # 2472
Federal and State Affairs Committee
House of Representatives
February 26, 1975

The United States Catholic Conference has officially gone on record as being opposed to Capital Punishment. The Kansas Catholic Conference concurs with and supports this position.



Kansas Council of Churches

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DR. OSCAR W. OLSEN
EXECUTIVE SECRETARY

"Until we attain unto the unity of the faith"

STATEMENT IN OPPOSITION TO HB 2472

The Kansas Council of Churches has as constituent denominational

Judicatories the following: African Methodist Episcopal Church
Fifth District
Christian Church(Disciples of Christ)
Kansas Regional Assembly
Church of the Brethren Western Plains District
General Conference Mennonite Church
Western District Conference
Lutheran Church In America
Central States Synod
National Baptist Convention, USA, INC.
Missionary State Convention of Kansas
Protestant Episcopal Church
Diocese of Kansas
Diocese of Western Kansas
United Church of Christ
Kansas-Oklahoma Conference
United Methodist Church
Kansas East Conference
Kansas West Conference
United Presbyterian Church In The USA
Synods of Mid-America

The Kansas Council of Churches makes this statement in opposition to
HB 2472, and indeed, to any legislation proposing the death penalty.

We doubt that capital punishment is a deterrent to crime; it is
too arbitrary in claimed victims to meet the requirements of
justice; it does not protect society from murder. We see the criminal
as a product of society as well as a responsible human being. Both
external and internal forces can lead to committing murder. We
believe the cause of justice is not served when society cuts short
the criminal's life for his act of murder. Neither act is any less
reprehensible. We believe that in order to protect society, capital
offenders should serve sizeable minimum sentences, with proper
evaluative safeguards to restrain unwarranted and premature release.

Respectfully,
Darlene Greer Stearns
Darlene Greer Stearns
Kansas Council of Churches