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TO ABOLISH THE DEATH PENALTY

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AT URBANA-CHAMPAIGN

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

DD

NINETIETH CONGRESS

SECOND SESSION

ON

S. 1760

A BILL TO ABOLISH THE DEATH PENALTY UNDER ALL LAWS
OF THE UNITED STATES, AND FOR OTHER PURPOSES

MARCH 20, 21, AND JULY 2, 1968

Printed for the use of the Committee on the Judiciary



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ABOLISH THE DEATH PENALTY UNDER ALL LAWS OF THE UNITED STATES, AND FOR OTHER PURPOSES

WEDNESDAY, MARCH 20, 1968

U.S. SENATE,
SUBCOMMITTEE OF CRIMINAL LAWS AND PROCEDURES
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:05 a.m., in room 1318, New Senate Office Building, Senator Philip A. Hart presiding.

Present: Senators Hart (presiding), and McClellan.

Also present: William A. Paisley, chief counsel.

Senator McCLELLAN. Today we open a 2-day session of hearings on S. 1760, a bill to abolish the death penalty under all laws of the United States.

Out of deference to Senator Hart, who is the sponsor of the bill, I have asked him to conduct the hearings for the subcommittee today and tomorrow, as I have other hearings in progress and I must give my attention to them.

We hope to hear the pros and cons of this issue of abolishment of the death penalty under Federal laws. It is a question that can produce very emotional testimony at times, but the subcommittee members will study the record carefully and weigh all of the issues involved.

Personally, I am much concerned as to whether this is the proper time to repeal the death penalty when the crime rate continues to rise to new heights each year. During 1967, for instance, the crime increase was 16 percent over 1966; violent crimes rose 15 percent; and murder was up 15 percent. These are some of the factors that we must take into account in our consideration of this bill. It is argued by some that capital punishment is no deterrent to crime, and it is strongly argued by others that it is. Proving it either way will be rather difficult, if not impossible. I do want this subcommittee to develop the testimony and all supporting data that may be helpful in making our determinations and recommendations with respect to this proposed legislation.

I wish also to announce that the record will not be closed at the conclusion of tomorrow's session. Further hearings will be scheduled at a later date.

I now turn this series of hearings over to Senator Hart, who will preside and conduct them for the subcommittee.

Senator HART. Mr. Chairman, before you go, let me thank you very much for your willingness to do this. The chairman and I were not in disagreement over this but he was just suggesting that he had riots to

settle in that other committee, and was suggesting that Detroit made a substantial contribution to his problem.

I have thanked our chairman for his willingness to schedule these hearings, and I think he has suggested one of the things that we ought to attempt to resolve. He cited those rising crime figures, murder up 15 percent. I would hope that we would be able to localize the murders and other acts of violence, what States contributed the most to the increases, and if those States have capital punishment or not. I don't know what the answer will be, but with that kind of information, it will enable us to make a judgment removed from the emotion which, as he indicated, clearly attaches to the subject matter.

It was a surprise to me that the Senate of the United States has never held a hearing on the question of whether we should abolish capital punishment or not. We have been around here a long time, and capital punishment has been around a long time, and the Senate has spent its time on many subject matters, and in my list of priorities, we should have found the time long since to have considered the question that is posed by the introduction of the bill that the subcommittee now takes up.

I feel that the hearings are in response to a rising tide of public opinion which believes that capital punishment is, indeed, cruel and unjust.

We will introduce for the record several Gallup polls which shows that the majority of Americans now believe that it should be abolished.

It is not just the mass market that is reflected in the Gallup poll. Among the leading voices for abolition are scholars in the field, professionals in the field of criminology and penology, the researchers in criminology, legal scholars and sociologists show there is no evidence to support the notion that the death penalty is a deterrent to crime.

CHART 3

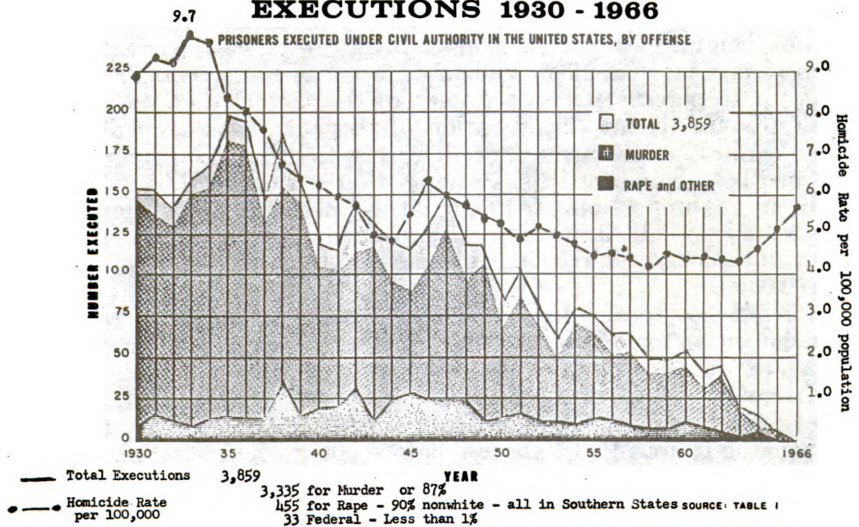
EXECUTIONS 1930 - 1966

DIAGRAM I

Homicide Death Rates, per 100,000 Population, in Maine, New Hampshire, and Vermont: 1920-1968

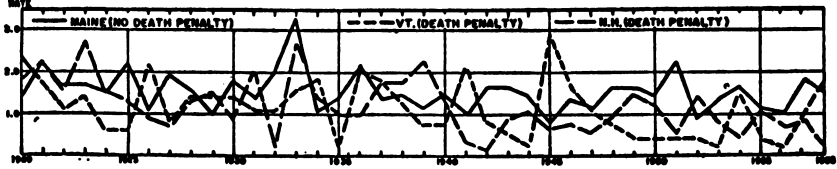


DIAGRAM II

Homicide Death Rates, per 100,000 Population, in Massachusetts, Connecticut, and Rhode Island: 1920-1968

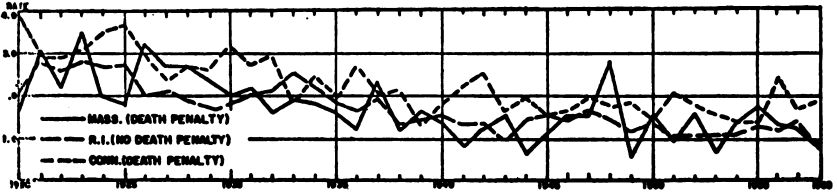


DIAGRAM III

Homicide Death Rates, per 100,000 Population, in Minnesota, Iowa, and Wisconsin: 1920-1968

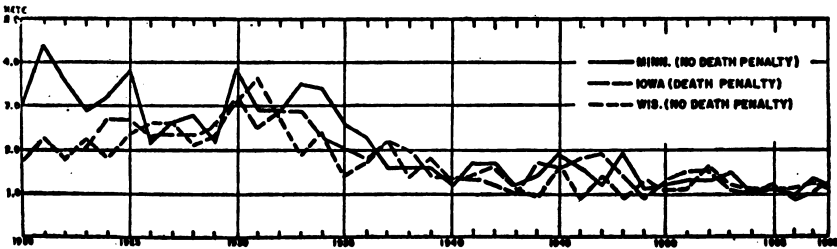
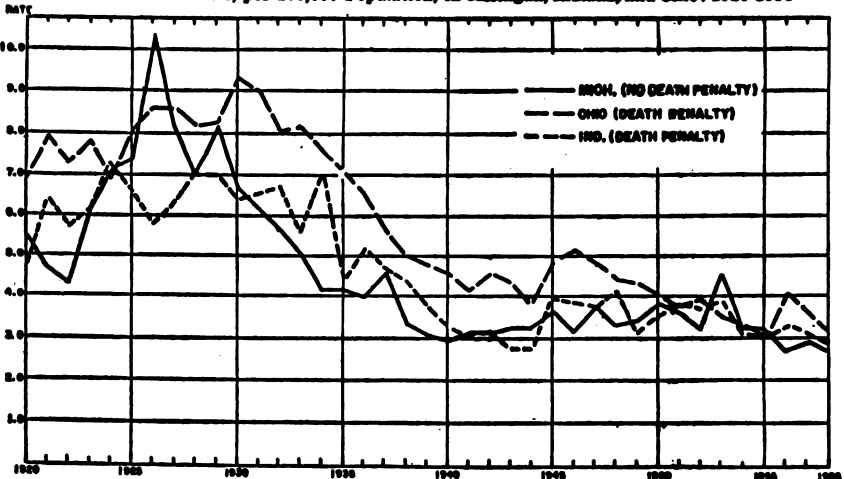
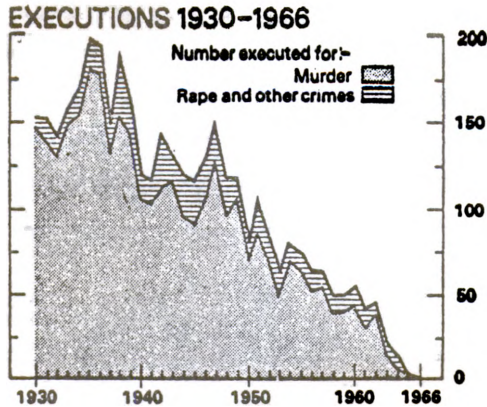


DIAGRAM IV

Homicide Death Rates, per 100,000 Population, in Michigan, Indiana, and Ohio: 1920-1968





The day-to-day experiences of penologists give individual witness that it is inhumane, unfairly employed, and if this is true, they will argue, and I must acknowledge that I am a prejudiced judge already. Having introduced the bill I have indicated my attitude, they will argue that it undermines the two main goals of modern penology: society's protection and the offender's rehabilitation.

If there is just one page in our country's legal history where an innocent man was executed by the community, that is one page too many, and there are quite a few such pages, innocent men executed at the hands of society and society later finds that it was mistaken, but that is one of those mistakes you can't do anything about.

The record in Federal cases shows our increasing reluctance to use the death penalty. Since 1957 one Federal prisoner has been executed.

When these hearings were first scheduled, I received scores of requests from individuals and organizations pleading to testify on the subject. In the case of those writing to me or communicating with me, they were eager to testify in behalf of abolition, but because the time allowed is brief, we have had to limit both the number of witnesses and the time allowed them.

The invitations, therefore, went only to those who have had experience, long experience with the administration of the death penalty. Witnesses we will hear during these 2 days, which as the able chairman indicated will not be the end of our hearings, represent the disciplines of Government, law, sociology, law enforcement and penology, and each is an outstanding expert in his own field.

Last night as I looked over that list, I felt I could honestly suggest that they comprise one of the most distinguished panels ever to appear before a Senate committee. We have much to learn from them, and I hope we will respond accordingly.

Having thanked the chairman of the subcommittee, let me thank also the staff who have cooperated so fully in the effort that culminates in these hearings today.

Let me ask our first witness, then, the former Governor of Ohio, a student in this field, and now the chairman of the National Committee To Abolish the Federal Death Penalty, Mike DiSalle, to come forward.

Governor, before you start, let me offer for the record the bill, S. 1760, and an editorial that appeared in this morning's Washington Post. It is brief but very much to the point. It concludes that "Congress ought to put the Federal Government in the vanguard of the reform so that it can help in leading the way to a heightened respect for the sanctity of human life." It begins by citing the passages from our witness' book, "The Power of Life and Death." It seems so appropriate that we will put it in the record right now.

(The bill S. 1760 and the editorial referred to follow:)

90TH CONGRESS
1ST SESSION

S. 1760

IN THE SENATE OF THE UNITED STATES

MAY 11 (legislative day, MAY 10), 1967

Mr. HART (for himself, Mr. BURDICK, Mr. HATFIELD, Mr. INOUE, Mr. JAVITS, Mr. LONG of Missouri, Mr. MCCARTHY, Mr. MONDALE, Mr. MORSE, Mr. NELSON, Mr. PROXMIRE, Mr. WILLIAMS of New Jersey, and Mr. YOUNG of Ohio) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To abolish the death penalty under all laws of the United States,
and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That (a) no sentence of death shall be imposed hereafter
- 4 upon any person convicted of any criminal offense punishable
- 5 under any provision of law of the United States, the District
- 6 of Columbia, the Commonwealth of Puerto Rico, or any terri-
- 7 tory or possession of the United States, and no unexecuted
- 8 sentence of death heretofore imposed under any such provi-
- 9 sion shall be carried into execution after the date of enact-

1 ment of this Act. Each such provision which authorizes or
2 requires the imposition of such sentence hereafter shall be
3 deemed to authorize or require the imposition of a sentence
4 to imprisonment for life, and each sentence of death hereto-
5 fore imposed under any such provision which remains unex-
6 ecuted on the date of enactment of this Act shall be deemed
7 to be a sentence to imprisonment for life.

8 (b) The Attorney General is authorized and directed
9 to transmit to the Congress at the earliest practicable time
10 his recommendations for appropriate amendments to be made
11 to all such provisions of law which by their terms provide
12 for or relate to the imposition of any sentence of death in
13 order to substitute for such sentence in all such laws a sen-
14 tence to imprisonment for life.

IN COLD BLOOD

Every official extinction of a human life is, as Michael V. DiSalle has put it, "a killing in cold blood." As such, it transgresses the canons of civilization. It sets an example in which the community does officially precisely what it forbids its constituent citizens to do. Mr. DiSalle, a former Governor of Ohio and now Chairman of the National Committee to Abolish the Federal Death Penalty, will lead a distinguished succession of witnesses today before a Senate Judiciary subcommittee considering an anti-death-penalty proposal.

Most of the instances of capital punishment in the United States are imposed by state courts and carried into effect in state prisons. A number of states have now abandoned this barbarous form of retribution. It is shocking that it is still countenanced in the courts of the United States. Congress ought to put the Federal Government in the vanguard of reform so that it can help in leading the way to a heightened respect for the sanctity of human life.—Washington Post, March 20, 1968.

**STATEMENT OF HON. MICHAEL V. DISALLE, FORMER GOVERNOR
OF OHIO, CHAIRMAN, NATIONAL COMMITTEE TO ABOLISH THE
FEDERAL DEATH PENALTY**

Mr. DiSALLE. Thank you, Senator.

Senator Hart and distinguished members of the subcommittee: I thought in passing, Senator, you would be interested in an experience I had some time ago. Our mutual friend, the former Governor of Michigan, Soapy Williams, had written to me about a matter, and then asked me what I was doing. I wrote back to him and told him that I just recently had completed a book on capital punishment, and one called "Second Choice," on the vice presidency, and Soapy wrote back and asked was it a coincidence or did I really have Hubert Humphrey in mind, when I joined the two subjects.

Senator HART. In view of the confused scene at the moment I will reserve comment.

Mr. DiSALLE. Senator McClellan this morning in opening this session pointed out the rise in the crime rate, and we might say that this rising crime rate has occurred in spite of the fact that 37 States of the United States still have the death penalty, and the Federal Government also has the death penalty, and so I would think that the rising crime rate in face of this type of punishment points to the need for some change in our criminal system and in our approach to crime generally.

Much has been written and said on the subject of the legislation which is before the subcommittee this morning. During the hearings today and tomorrow, the subcommittee will hear many distinguished witnesses with broad experiences in the fields of criminology, sociology, and correction. Some of the witnesses that you will hear are considered worldwide experts in their respective professions.

You will be given a very strong diet of statistical material. Consequently, as chairman of the National Committee To Abolish the Federal Death Penalty, my testimony will attempt to briefly cover the history of capital punishment worldwide, the evolution of capital punishment, and some of my personal experiences in what I feel is a most futile and barbaric exercise in the name of law and order.

My interest in the field had been largely academic, beginning with a debate as a college freshman. Later, as a member of the Ohio House of Representatives, I became emotionally aroused at the kidnapping

and subsequent death of the Matson boy in the Northwest section of the country. The next day, I introduced and successfully followed to enactment a Baby Lindbergh Act for the State of Ohio which made kidnaping a capital offense punishable by death.

In years since, maturity has produced a deeper feeling of the obligations of society in establishing a civilization which takes into consideration the element of example that a people must set. If we are to command respect for constituted law and order, must we not also set an example of restraint, of sound judgment, of a few based on the recognition of the weakness in our emotional and intellectual makeup, rather than base our conduct on revenge and a reversion to certain pagan motivations of conduct?

Each time in Ohio as I faced the necessity of making a decision as to whether a human being should live or be executed by his fellow citizens, I thought of the ritual that we engaged in, in disposing of a human life. It made me wonder why we did not use the tom-toms and the wild, abandoned tribal dances which were so necessary to create the emotional pitch before pagans indulged in the lust for the taking of life.

The October 1958 issue of the "Prison Journal," published by the Pennsylvania Prison Society (a member of the United Fund of Philadelphia), in its lead editorial summarized its conclusions in opposition to capital punishment as follows:

Pennsylvania has long debated abolition. Surely the time has come to put an end to that which is—

... designed to mete out justice in punishment, yet falls upon only one person for every hundred criminal homicides;

... retained to deter, yet is shrouded in secrecy so that the would-be murderer has no impression of the meaning:

... justified as protection to society, yet those without it are none the worse off;

... claimed to protect and teach respect for human life while making an examples of taking a life.

Some advocates of capital punishment are of the impression that the fear of death is a greater deterrent to crime than other forms of punishment. Man, throughout history and in different parts of the world, has attempted to deter people from many types of crime—even some that we might now classify as petty—by various types of horrible death.

We find the Japanese at one time resorting to a death which involved 21 cuts of the human body. The Peruvians sliced people until they had expired; the Chinese employed boiling people alive.

As late as 1777, we find people being pressed to death in England, as was the custom during the witchcraft trials in Salem in 1692. The ancient Greeks, Egyptians, and Romans employed the guillotine; the Spanish had the garrote; others used burning at the stake and breaking the body on a wheel. Crucifixion, the burying of people alive, and stoning were early forms of killing.

Now we are much more civilized—we use hanging, and there is a debate as to whether an execution by gas is not more humane than using the electric chair. In Utah we give the condemned an option. He can choose either to be shot or hung.

The world has moved steadily forward from the most gruesome of these exercises, and 73 nations have abolished the death penalty.

Austria abolished the death penalty in 1950. Belgium has not imposed the death sentence since 1863; that country's Minister of Justice, in 1930, said, "We have learned that the best means to teach the respect of human life consists in refusing to take life in the name of law."

Denmark let the death sentence disappear by disuse since 1892 and formally abolished it in 1930. Finland has had no application of the death sentence since 1826. Iceland abolished capital punishment in 1944. In the Netherlands, it was abrogated by disuse since 1850 and formally abolished in 1870. In Norway, the penalty has not been carried out since 1875 and was formally abolished in 1905. In Portugal, the sentence was abolished in 1867. In Sweden, it was not used since 1910 and formally abolished in 1921.

In Switzerland, the death sentence was abolished in 1874, but in 1879 the right was given to each canton to reintroduce it. Cantons representing 25 percent of the Swiss population did restore capital punishment, but the death penalty was finally abolished for all in 1942. A leading member of the Swiss National Council, in 1928, said:

I do not think of the State as an executioner; I see it as an educator, trying to prevent crime, to prevent evil, to rehabilitate the delinquent. I do not see the Switzerland of today—this old democracy—restoring the State executioner.

Italy abolished the death sentence in 1890; Mussolini restored the death penalty in 1931; it was abolished—along with Mussolini—again in 1944.

Germany had abolished the death penalty; it was restored by Hitler, and its use during that period is too well known to repeat. But West Germany abolished capital punishment again in 1949. England most recently abolished capital punishment; Ireland in 1944; Turkey in 1950.

All of our South American neighbors, with the exception of Brazil, which retains capital punishment for offenses against the state, operate without the use of the death penalty.

Is it too much to believe that the strongest and most democratic of all nations would not be threatened by the abolition of this form of punishment which is so repugnant to our concept of a democratic society?

The abolitionist movement in the United States started approximately in 1788 when Dr. Benjamin Rush, physician and signer of the Declaration of Independence, wrote an essay called "Inquiry Into the Justice and Policy of Punishing Murder by Death." His followers included Benjamin Franklin and the then U.S. Attorney General, William Bradford. Thomas Jefferson was also an abolitionist.

Thirteen of the 50 States have now abolished capital punishment, and certainly the record of those States—with experience ranging back to Michigan's 1846 abolishment—has not created States which are more crime ridden than those who use the death penalty. In fact, the five States of the United States with the lowest number of homicides per 100,000 of population are all abolition States.

Going back to Ohio, in 1960, there were approximately 250 inmates of the Ohio State Penitentiary who were found guilty of murder in the first degree but who for various reasons, including a recommendation of mercy by the jury, were not given the death penalty. Two hundred more of the inmates had been charged with murder in the first degree but were found guilty of lesser offenses. It might be well to note

that the possibility of a death sentence had not acted as a deterrent to these 453 men who were then living within the walls of the Ohio State Penitentiary. In fact, more of these inmates died within the penitentiary walls of natural causes than were executed by the electric chair.

One of the outstanding examples of the nondeterrence of the death penalty is found in the experience of an Ohio prisoner by the name of Charles Justice. Justice, a broom maker, was sentenced to 20 years in the Ohio State Penitentiary after a cutting scrape. He became a trustee assigned to housekeeping duties of the then new death house. He found the electric chair far from efficient; while obviously not designed for comfort, the chair was too big for the small nervous type of prisoner, who would squirm in his seat and cause the electrodes to make imperfect contact. As a result, the powerful current would arc between the electrodes and the doomed man's body, causing flesh burns and an unpleasant odor which discommoded the witnesses and officiating representatives of the State. Justice corrected this deficiency by designing iron clamps, which are still in use, to immobilize the limbs of the condemned man during his death reflexes and thus make for a neater execution.

For his exemplary service to the State, Charles Justice was granted extra time off and was paroled in April 1910. In November of the same year, Justice returned to the penitentiary—the charge: Murder in the first degree. On October 27, 1911, Charles Justice died in the electric chair he had helped make more lethal, immobilized by the clamps he had invented—undeterred by his first-hand knowledge of the efficiency of the death-dealing chair that he helped make more perfect.

During my experience as Governor of Ohio, I found that the men in death row had one thing in common; they were penniless. There were other common denominators—low mental capacity, little or no education, few friends, broken homes—but the fact that they had no money was a principal factor in their being condemned to death. I have never known of a person of means to go to the chair. It is the well-heeled gangster, the professional killer, who can afford the best legal talent to defend him, who gets off with a lesser sentence—who is able to use every legal means, including delay and appeals based on well-prepared trial records—who is able to escape death by legal killing. It is usually the poor, the illiterate, the underprivileged, the member of the minority group—the man who, because he is without means, and is defended by a court-appointed attorney—who becomes society's sacrificial lamb: a futile excuse for not improving our correctional systems—for not fighting the causes of crime rather than treating the results.

During my 4 years as Governor, I passed final judgment on 12 cases. Of the 12, 6 were executed. In those 12 cases, I found no one who had funds of his own to employ counsel. Three were able to employ counsel as a result of the borrowing by relatives of small sums of money inadequate for defense in a capital case. Only one had even 1 year of a high school education. Several had no records whatsoever of previous offenses. Several were of very questionable mental capacity; one had an intelligence quotient of 61 on a scale that marked 70 as the dividing line between the moron and the feeble-minded. One was 16 when he committed his first and fatal crime.

In Ohio, the sentence in first-degree murder cases without a recommendation of mercy is not only death but also the court orders the defendant to pay the costs of the trial.

It was also my responsibility to review 150 cases of men who had been sentenced to life and who, by State law in Ohio, received mandatory review of their cases after 20 years imprisonment. The pattern of the 150 cases was no different than the 12 I have just described.

One of the 12 was the 13th son of a Mississippi tenant farmer who had been left orphaned at the age of 4. He had been shuttled back and forth between relatives whose circumstances were no better, and finally he found his way into Ohio. He has been sentenced for an auto theft to the Ohio State Reformatory at Mansfield, Ohio; released prematurely without adequate parole plan or investigation; and within 5 months was in the Ohio State Penitentiary in death row. During the more than 2 years that he was in death row, he had no visitor except for his court-appointed counsel.

We in Ohio engage in a civilized practice which makes it possible for the condemned man to order a dinner of his choice before he is executed and to invite a person of his choice from within the walls to share it with him. This man chose the porter that cleaned death row . . . he had no one else.

Another, Joseph Cosby of Cleveland, Ohio, selected as his guest his father, who had been sentenced to life when Joe Cosby was 9 years old.

At this point, I know that someone will repeat the charge that I heard so often, and that is that I was a do-gooder with a heart bigger and softer than my head—that I thought only of the offender and not of the victim.

The time to think of potential victims is before the fatal crime is committed. Here, the State and Nation must implement programs that are designed to prevent crime. Certainly if it were possible to restore the life of the victim in trade for that of the offender, no one could seriously quarrel with the exchange. But this is not the case.

Too often, it makes pleasant reading to learn of the excitement of a trial involving a man's life. People are lulled into a false sense of security that actually something is being done, when instead it is a momentary exercise in preventing crime by eliminating one offender when there are a hundred ready to take his place.

I think we can summarize by taking nine points made by the Delaware study committee as follows:

1. The evidence clearly shows that execution does not act as a deterrent to capital crimes.
2. The serious offenses are committed, except in rare instances, by those suffering from mental disturbances; are impulsive in nature, and are not acts of the "criminal" class. Of those executed in Delaware, 50 percent had had no previous conviction.
3. When the death sentence is removed as a possible punishment, more convictions are possible with less delays.
4. Unequal application of the law takes place because those executed are the poor, the ignorant, and the unfortunate without resources.
5. Conviction of the innocent does occur and death makes a miscarriage of justice irrevocable. Human judgment cannot be infallible.
6. The State sets a bad example when it takes a life. Imitative crimes and murder are stimulated by executions.
7. Legally taking a life is useless and demoralizing to the general public. It it also demoralizing to the public officials who, dedicated to rehabilitating individuals, must callously put a man to death. The effect upon fellow prisoners can be imagined.

8. A trial where a life may be at stake is highly sensationalized, adversely affects the administration of justice, and is bad for the community.

9. Society is amply protected by a sentence of life imprisonment.

In conclusion I repeat that we can more easily prevent the making of a criminal than we can correct the already convicted violator, we have the responsibility of helping to eradicate poverty by affording opportunity to those capable of escaping from the rut. It is easy for orators to say that this is a responsibility of the home and church, but experience demonstrates that the vast majority of our offenders have no home and do not go to church. We reach our children in our schools. There we must seek out the causes of emotional problems, slow learning, and truancy, and strike the most telling blow against incipient criminality.

But if we fail, as we must for years to come, what of those unfortunates who reach the brink of darkness—the capital crime? I have already made my plea. They should not be put to death, because it is not our privilege to play God; because death is no deterrent; because death makes an error horribly irrevocable; because vengeance is no substitute for justice; because man is not merely an entity that is three-fourths water and the rest mineral and organic products worth somewhat less than \$3.

I believe that in every man there is some spark of the infinite, some fragment, however deeply submerged, of the universal good. If we can salvage the spark, we must fan it carefully until it flames into usefulness. I admit that this is not always possible. I have said many times that there are pathological incorrigibles who must be permanently separated from society. But they must not be separated by killing them in cold blood.

Dr. Karl Menninger, the distinguished psychiatrist, has said:

To a physician discussing the wiser treatment of our fellow men, it seems hardly necessary to add that under no circumstances should we kill them. It was never considered right for doctors to kill their patients, no matter how helpless their condition. Similarly, capital punishment is in my opinion morally wrong. Punishing and even killing criminals may yield a grim kind of gratification; let us all admit that there are times when we are so shocked at the depredations of and offender that we persuade ourselves that this is a man the Creator didn't intend to create, and that we had better help correct the mistake. But playing God in this way has no conceivable moral or scientific justification.

I want to thank the members of the subcommittee for giving of their time in what I believe would be one of the most significant steps forward in the perfection of justice and eliminating what is in effect an obstacle rather than a help to crime prevention and law enforcement.

Senator HART. Governor, thank you very much for a paper that is both moving and at the same time, as I hear it and read it, factual. You have said so much in it that we could hold you here I suppose the rest of the morning. I think as we make this record we ought to recognize that its purpose, among others, is to provide a source which will gradually creep into the consciousness of the public generally and Members of Congress specifically.

I indicated just before you began that this is the first time in history that the Senate has sat down and taken the time to inquire in the form of a hearing: What about capital punishment? If it took that long to ask the question, the answer isn't going to come the day after

tomorrow, and that is the reason I am hopeful that this record will have quality to it that will be so strong that it will accelerate what I judge will be a rather slow decisionmaking process.

You simply said that Thomas Jefferson was also an abolitionist. Thomas Jefferson is a source that is frequently referred to by a good many Members of the Senate, I understand.

Mr. DiSALLE. Some who favor capital punishment.

Senator HART. Let us put into the record Jefferson's compelling eloquence. Thomas Jefferson tells us:

I shall ask for the abolition of the punishment of death until I have the infallibility of human judgment demonstrated to me.

That case hasn't been made yet, so Jefferson's position we can be sure on this question remains the same.

Senator HART. You mentioned also that five States with the lowest crime per hundred thousand—was that the way you put it—are all States that have abolished capital punishment. As I think our chairman said in his introduction, all of us acknowledge as we go through this, you can make statistics play whatever music you want. It is true in this field as in others. But that is a statistic that has lot of meaning to it as I see it. Are you familiar with what States they are?

Mr. DiSALLE. Yes. I can cite an example of two neighboring States with which we are both familiar, Ohio and Michigan. Michigan eliminated the death penalty in 1846. Ohio still has the death penalty.

In the early thirties the northwestern part of the State, Toledo was in the throes of gang warfare. It was a bootlegging situation, and of course Toledo was very, very close to the Canadian source of supply at that time. But in spite of the fact that Ohio had the death penalty the people who engaged in gang warfare didn't bother driving 5 miles to the Michigan line to perform their killing where they could have escaped the death penalty, but did it inside of Ohio, within minutes of the Michigan line. So certainly these people were not deterred by the fact that Ohio had the death penalty and were not going to Michigan to try to seek a State that did not have capital punishment.

Maine, of course, a long time ago eliminated the death penalty.

Once, I debated the attorney general of New Hampshire on the subject, and said, "Will you tell me that New Hampshire is a safer State than Maine is?" And he said, "No, I couldn't ever say that and wouldn't say it."

Alaska and Hawaii are two States that had abolished capital punishment before they were admitted to the Union. West Virginia was one of our more recent States that abolished capital punishment. Tennessee came within one vote of abolishing it. In Indiana, the legislature had voted to abolish capital punishment, but the killing of a State highway patrolman between the action of the legislature and the Governor's signing the bill resulted in a veto.

New York has abolished capital punishment, Vermont has abolished capital punishment, Iowa, Oregon by a vote of the people, but I am sure the statistics that have been filed contain all of the 13 States, Minnesota, Wisconsin, are more.

Senator HART. Let me at this point introduce for the record the tabulation of what Governor DiSalle has just suggested. It is a listing of the 50 States, and the listing is in order of murder and nonnegligent

manslaughter per hundred thousand population for the period 1930–1965. The first figure is the number of executions for the years 1930 through 1965. The statistics come from the national prison statistics and the FBI's uniform crime report.

The table lists the States that have abolished capital punishment, in *italics*.

(The document referred to follows:)

Murder and nonnegligent manslaughter rates per 100,000 population, 1930–65

	Executions, 1930–65	Rate per 100,000		Executions, 1930–65	Rate per 100,000
Alabama.....	135	11.4	Ohio.....	172	3.6
Georgia.....	366	11.3	Colorado.....	46	3.5
South Carolina.....	162	9.6	Indiana.....	41	3.5
Florida.....	170	8.9	Pennsylvania.....	152	3.5
Mississippi.....	154	8.9	<i>Oregon.....</i>	<i>19</i>	<i>3.4</i>
Nevada.....	29	8.4	<i>Hawaii.....</i>	<i>0</i>	<i>3.2</i>
Louisiana.....	133	8.1	New Jersey.....	74	3.2
Tennessee.....	93	8.0	Wyoming.....	7	2.9
North Carolina.....	263	7.9	Kansas.....	15	2.7
Texas.....	297	7.5	New Hampshire.....	1	2.7
Maryland.....	68	6.7	Massachusetts.....	27	2.4
Missouri.....	62	6.7	Nebraska.....	4	2.4
Virginia.....	92	6.6	Washington.....	47	2.2
<i>Alaska.....</i>	<i>0</i>	<i>6.5</i>	<i>Maine.....</i>	<i>0</i>	<i>2.1</i>
New Mexico.....	8	6.1	<i>Rhode Island.....</i>	<i>0</i>	<i>2.1</i>
Arkansas.....	118	5.9	Idaho.....	3	2.0
Kentucky.....	103	5.3	Montana.....	6	1.7
Illinois.....	90	5.2	Connecticut.....	0	1.6
Delaware.....	12	5.1	South Dakota.....	1	1.6
Arizona.....	38	5.0	Utah.....	13	1.5
California.....	291	4.7	<i>Wisconsin.....</i>	<i>0</i>	<i>1.5</i>
<i>New York.....</i>	<i>329</i>	<i>4.6</i>	<i>Minnesota.....</i>	<i>0</i>	<i>1.4</i>
Michigan.....	0	4.4	<i>Iowa.....</i>	<i>18</i>	<i>1.3</i>
Oklahoma.....	59	4.4	<i>North Dakota.....</i>	<i>0</i>	<i>0.9</i>
<i>West Virginia.....</i>	<i>40</i>	<i>4.4</i>	<i>Vermont.....</i>	<i>4</i>	<i>0.5</i>

Senator HART. I wish I had a copy for Governor DiSalle.

Mr. DiSALLE. I have a copy.

Senator HART. As I read it, the five States with the highest murder rate have carried out more executions than almost any other State in the Union.

Mr. DiSALLE. That is right, Alabama, Georgia, South Carolina.

Senator HART. And the five with the lowest rates are States that have abolished the death penalty.

Mr. DiSALLE. That is right. This is also true with reference to police homicides. The 35-year record of the Federal Bureau of Investigation indicates that the rate of police homicides in abolition States is just a fraction lower than in States still retaining the death penalty.

Senator HART. That is, I think, important, because I have been set upon occasionally in the last few years in offering a bill for Federal abolition with the argument that, well, at least you have to protect the policeman, and if you abolish capital punishment, you are leaving the policeman as sort of a "sitting duck," and certainly if you do abolish, you should make an exemption to take care of the citizen, the individual, who fatally assaults a policeman.

Mr. DiSALLE. That hasn't been the result in the American abolition States nor has it been the result in the 73 nations that have abolished capital punishment.

Senator HART. Getting back to that table that we just introduced, you would agree, I suppose, that if you want to look at the statistics

from the science of the statistician, that you could get some scientific objection to that tabulated comparison because you have climatic features that some would argue are a factor, you have economic factors which vary State to State, although as between Michigan and Ohio you would have a hard time proving there was a difference between either climate or economic level. You have environmental differences. You have social differences. You have the accidents of history. All of these would play a role. I think we have to agree that that is true.

Even if you examine those figures on a regional basis, where you do adjust to the climate and the economy and the history and the tradition, when you take it on a regional basis those figures do not support the argument that the death penalty is efficacious in the reduction of crime.

Mr. DiSALLE. That is true, Senator, and I think that Dr. Thorsten Sellin of the University of Pennsylvania will go into detail on that particular element.

Senator HART. But you and I, nonscientists in the field of statistics, can agree that as between Michigan and Ohio—

Mr. DiSALLE. I wish I could say that Michigan was more crime-ridden, but I can't.

Senator HART. We agree. Michigan on the basis of statistics has less crimes of violence, fewer crimes, but for more than 100 years we have not used capital punishment.

Mr. DiSALLE. That is right.

Senator HART. And I vaguely remember that period of prohibition warfare, and you are right, I had forgotten the fact that nobody drove from Toledo up to Rome—neither to execute nor dump the body.

Mr. DiSALLE. They drove up for liquor but that was all.

Senator HART. I want so much to hold you, and yet I know it would be unfair.

Counsel, would you like to develop some aspects of this for the record?

Mr. PAISLEY. Thank you, Senator.

Governor, I must say that ever since I was a young man I have been opposed to capital punishment.

Mr. DiSALLE. I wish you were a member of the committee.

Mr. PAISLEY. I never thought it was a deterrent. I couldn't see the State taking a human life in cold blood unless it was a deterrent. Those who will argue against this bill, however, will say what protection can society have against a vicious killer. Can it be assured that a life imprisonment sentence will be enforced. That is what the opponents of this bill will argue. Do you feel that any safeguards should be written into the bill?

Mr. DiSALLE. I think that an adequate pardon and parole system and correctional system are safeguards in and of themselves. Too often we find in States that the parole officers are terribly overworked, large caseloads, the investigation is inadequate, and consequently might lead to improper releases. But you know we also hear the constant charge that these people are out in the streets by buying their way out. But in Ohio since the passage of the lifer law in about 1945, the average term of the lifer was 23 years. In 150 cases that I referred to, reviewing, for example, one man whose sentence was commuted, was commuted after service of 85 years. He was sentenced at the age

of 16. He was 51 at the time he was released. You can't compare the man at the age of 51 with the harum-scarum boy of 16.

In Ohio the mansion is staffed by lifers. We had 12 all the time, five who stayed on the premises, seven who were brought in each day and taken back to the penitentiary at night. Of the 14, 12 had been sentenced to life, and they were immediately placed in the Ohio penitentiary together with 4,000 rather seasoned criminals. You take a boy of 14 when he came in, in all cases it was a first offense, of course, and he served 20 years, he is now a man of 34. He certainly isn't the same man that faced the court, and if we had had a reasonable program of rehabilitation and training, he would have had some skills with which to go out into the world and make a place in society.

Fortunately the experience that we had in Ohio was that the lifer was the best risk. The man who had served that many years, the average 23 years, when he returned to society was hardly a recidivist. He had had a long time to think about what he had done and what it required to live in society. We had out of possibly 20, nine that were returned as technical parole violators, and this was the situation in other large States like California and New York, and I am sure that one of the witnesses will give the actual detail on what happened in each of these cases, so that society is amply protected. Lifers are not repeaters as a general rule.

Mr. PAISLEY. Are there any statistics available that you know of, Governor, as to how long lifers do actually serve in the various States?

Mr. DiSALLE. Yes.

Mr. PAISLEY. I don't know.

Mr. DiSALLE. Those statistics are available, and as I said, I think Dr. Sellin in his testimony will cover the major States.

Mr. PAISLEY. Knowing Florida, where I practiced for many years, they used to say that a life sentence meant about 5 years.

Mr. DiSALLE. I know a lot of lifers who wish that was true, but I do believe that release ought to be based on recommendations made by a professional board as to the likelihood of these people being restored to society, and becoming good citizens. Too often the recommendations are made by people who are not professionals in the field, and too often where there are influential people involved, the recommendation is made on the basis of influence, but usually the people I have had experience with are people who do not have influence and did not have money to retain counsel, and who served out their full minimum sentence of 20 years, and oftentimes over and beyond that.

Many, many times after a man has served 20 years, he becomes institutionalized, or his health is such, or he has lost contact with family or whatever friends he might have had, and there is no adequate parole plan. Sometimes someone like the Goodwill Society will make a place for him and find a job, but, you know, often these people have just lost all contact with the outside world. We had one man in Ohio at the London Prison Farm, who had been in 40 years, and he was commuted. He went back to Cincinnati where he had come from, and after being there about 5 days he came back to the institution voluntarily and asked to be readmitted, because he wanted to be protected from society; by that time, he didn't understand it any more.

Mr. PAISLEY. You feel that Congress would be better advised to leave that to the parole boards?

Mr. DiSALLE. Yes. I think actually the Federal pardon and parole system is much better than the system in most States, and I think if that is strengthened and adequately provided for, that this mechanism will take care of this problem.

Mr. PAISLEY. Thank you.

Senator HART. Thank you, Mr. Paisley.

Counsel is right. That is one of the most frequently voiced objections to the elimination of capital punishment. Yet I think that your answer, Governor, is the correct response. As Mr. Paisley says, many of us find it impossible to accept the sight of the State killing a man if you can't establish that it will deter others and thereby protect the innocent. Even if the statistics show that lifers actually serve only 10 years on the average, it still does not argue against the elimination of capital punishment if also it can be established, one, that it does not provide less deterrence to the initial offense, and, two, if through decent rehabilitation programs the readmission to society after 10 years makes good sense anyway.

Mr. DiSALLE. Senator, I don't want to interfere with the testimony that I know you will get from Warden Duffy and James Bennett of the Federal Prison System, but so many people feel that life should mean really life in perpetuity. We just don't know how long people are going to live. In some cases life may be 6 months and in other cases it could be 50 years of incarceration. But if you take hope away from a man who has been sentenced to life, then you make a very difficult problem for the prison authorities. You create a class of desperate people within the prison who are immediately trying to seek a way out, rather than through the orderly process of rehabilitation and training. A very important part of the correctional system is to make sure that people have some hope that somehow they will be restored and given an opportunity to reclaim themselves.

Senator HART. All right. We won't anticipate other testimony, Governor. As I thank you for your testimony, let me for a lot of people, and as you have suggested, perhaps the poorest among them, thank you for taking the time to give leadership to the National Committee to Abolish the Federal Death Penalty.

Mr. DiSALLE. Thank you very much.

Senator HART. You have a record to show that you don't do things entirely for what is in it, anyway, and this is just another example of your giving something for a cause that if you succeed you will probably get no medals for it, but the effort I hope is worth itself.

Mr. DiSALLE. The late President Kennedy visited the Mansion one time and I told him there were 12 people there that he ought to meet that might be prospective voters, and after I introduced him to all 12 of them I then told him that they had lost their citizenship as a result of committing a felony and they were not voters. But this is the unfortunate part about it. These people are not organized. They are not citizens. They have no lobby, and someone has to speak for them.

Senator HART. They are lucky to have you.

Mr. DiSALLE. Thank you very much.

Senator HART. I next introduce a man I have heard about, it seems to me, all my life, but it can't be. But I have heard about Warden Duffy for a long time.

I call to the stand Clinton T. Duffy, the former Warden of San Quentin.

Warden, let me summarize briefly for the record, because there will be many readers younger than I who don't have that memory. Our witness has spent 33 years in correction work.

Warden Duffy was born in the town of San Quentin and he began his career there in 1929. He is the author of several books on capital punishment, and was a delegate to the Third United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in Stockholm two summers ago.

We welcome you, sir. We are very grateful that you would take the time to come.

STATEMENT OF CLINTON DUFFY, FORMER WARDEN OF SAN QUENTIN

MR. DUFFY. Thank you very much, Senator Hart, and members of your committee.

As you said, Senator, I was born and raised in the prison town of San Quentin and I spent all but a very few of my adult years in working in prison work and my presentation therefore is going to be on my practical experiences that I have had for over 32 years in handling adult offenders, both male and female, those who have been condemned to death.

I have personally witnessed over 150 executions and have legally officiated at the execution of 88 men and two women. Prior to my appointment as warden of San Quentin, I participated in 60 legal hangings. The two women were the first women executed in the history of the State of California.

May I preface my presentation with a brief account of methods of executions in the United States. I would like to just say a word here about how executions became a part of the prison system in California. Prior to that time the sheriff of the county was required to perform the execution in his county, in his courtyard or in his court buildings. Some sheriffs did not like that idea, and so one of them recommended and suggested to his legislator that they change it from the county to the State prison, then only San Quentin in California. This was done, passed by legislation, and San Quentin became the place for legal executions. That sheriff was against it, as you can understand.

When it became a law, the same sheriff was appointed warden of San Quentin, and had to execute anyhow, and was still against legal executions, he, a peace officer.

Hangings were the No. 1 in our State in California, and I think they were prevalent throughout the United States. Hanging, whether the prisoner is dropped through a trap, after climbing a traditional 13 steps, or whether he is jerked from the floor after having been strapped, black-capped and noosed, is a very gruesome method of execution which has been used for many years, and is still used in several States.

When, on a nod from the warden, the executioner signals the three men in the small enclosure on the gallows, and the officials cut taut strings, one of these strings springs the trap while the other two are

attached to dummy ropes. This gives the three officers a "somewhat" clear conscience, projecting the actual springing of the trap on the other person.

The day before an execution the prisoner goes through a harrowing experience of being weighed, measured for length of drop to assure breaking of the neck, the size of the neck, body measurements, et cetera. When the trap springs he dangles at the end of the rope. There are times when the neck has not been broken and the prisoner strangles to death. His eyes pop almost out of his head, his tongue swells and protrudes from his mouth, his neck may be broken, and the rope many times takes large portions of skin and flesh from the side of the face that the noose is on. He urinates, he defecates, and droppings fall to the floor while witnesses look on, and at almost all executions one or more faint or have to be helped out of the witness room. The prisoner remains dangling from the end of the rope for from 8 to 14 minutes before the doctor, who has climbed up a small ladder and listens to his heart beat with a stethoscope, pronounces him dead. A prison guard stands at the feet of the hanged person and holds the body steady, because during the first few moments there is usually considerable struggling in an effort to breathe.

The legal witnesses are dismissed after having signed the usual witness forms. However, the body of the condemned is left hanging below the gallows for an additional 15 or 20 minutes. This is to assure those in charge that ample time has elapsed before cutting the rope in order to make certain of death.

The body is then placed in a prison-made casket and kept in the morgue until loved ones or friends claim the remains, or in some cases they are buried in what the inmates call Boot Hill, the inmates' cemetery on the reservation. Most bodies are claimed by relatives, loved ones or friends, and funeral services are conducted in many cases in chapels in their own home town. Or a member of the clergy arranges burial in a cemetery away from the prison.

Although I have seen several electric chairs, I have never witnessed an electrocution. Wardens and other noted penologists have told me that it is about as gruesome a procedure as hanging. The body has to be prepared beforehand for the fastening, and one of the pants legs split in order that an electric plate can be placed against the leg. When the executioner throws the switch that sends the electric current through the body, the prisoner cringes from torture, his flesh swells and his skin stretches to a point of breaking. He defecates, he urinates, his tongue swells and his eyes pop out. In some cases I have been told the eyeballs rest on the cheeks of the condemned. His flesh is burned and smells of cooked meat. When the autopsy is performed the liver is so hot that doctors have said that it cannot be touched by the human hand. As in hanging, electrocution disfigures the body severely.

Prison morale is disrupted by the dimming of the lights throughout the institution when the switch is thrown the several times necessary to insure death.

In facing a firing squad several rifle shots are fired, and all but one are effective. As in the case of hanging and electrocution, shooting disfigures the body severely.

Here again a little sidelight information. I was told by a warden recently that some years past at an execution by way of the firing

squad, the sheriffs are required to bring their squad of conviction to the penitentiary and perform the same. The prisoner was placed against the wall in the cell, imagine a target placed over his heart area, and when they gave the word to fire, they missed. They hit him in the shoulder. The prisoner went to the ground screaming in horror and in pain, forgot to bring additional ammunition when they were told to reload and fire again. That took about 20 minutes to go get more. They missed the second time. And so the sheriff went up and shot the prisoner in the head, walked out of the penitentiary, and resigned. This I received from a warden of one of the penitentiaries nearby that knew this to be a fact.

In administering death by lethal gas, which has been most of my experience, and hanging, from 89 personal experiences, I made the following observations:

With the exception of the death watch (which is used in all methods) there are no last hours of preparation of the body of the condemned. The prisoner is kept in a holding cell in a separate room for his last few days—usually not more than 20 feet from the lethal gas chamber. He does not see the gas chamber until he enters it. A few moments before the scheduled hour a chaplain of his choice visits with him. He is dressed in blue jeans and a white shirt. The reason for that is no other garments that might hold or pocket gas when the body is removed. He is accompanied the 10 or 12 steps by two officers, quickly strapped in the metal chair, the stethoscope applied, and the door sealed. The warden gives the executioner the signal and, out of sight of the witnesses, the executioner presses the lever that allows the cyanide gas eggs to mix with the distilled water and sulphuric acid. In a matter of seconds the prisoner is unconscious. At first there is extreme evidence of horror, pain, strangling. The eyes pop, they turn purple, they drool. It is a horrible sight. Witnesses faint. It finally is as though he has gone to sleep. The body, however, is not disfigured or mutilated in any way.

It could be said and it has been said that lethal gas executions are more humane. In all methods the person is, of course, dead. In my way of seeing it, there are no humane ways to kill people. However, in lethal gas the last preparations are not so grim. Lethal gas executions are a bit less nerve wracking on the personnel than other methods, and the family of the condemned prisoner, his loved ones and the friends who claim the body do not go through as much of a harrowing experience when they claim a body that has not been mutilated. I have talked with many of these folks and, although they are grief-stricken, it is not quite so hard on them emotionally, when the body is not disfigured.

Throughout all of my over 32 years of prison work, as a youngster growing up in a prison town, as a young man living within a few yards of the shadows of the prison walls, I have always been against capital punishment. I have been asked many times again by people, "When did you change your mind that you changed in favor of abolition of the death penalty and why did you change your mind?"

My answer has been one word, "Never." I have always believed that this is wrong.

Senator HART. Warden, at that point let me ask you a question which in substance is one of the arguments that is given against abolition. You have spent a lifetime around the prison, and all of your adult life inside a prison. Wasn't your lifesaver, weren't you more secure against being jumped because the prisoners with whom you worked knew that if they killed you, in an effort to escape, or out of frustration, that they themselves would be executed? Doesn't the existence of capital punishment deter at least inmates from abusing prison personnel?

Mr. DUFFY. I don't think so, your honor, because I will give you an example. I could give several.

I left San Quentin to go on the parole board, known as the outer authority, December 27, 1951. The following December 1952, in the big yard at San Quentin, there was a murder. Between here where I am seated and the door is the entrance to condemned row and the gas chamber. That man did not think of the death penalty when he murdered another prisoner. Four or 5 days later a second man committed a murder in this very same spot, within just a few yards of the entrance to the gas chamber. Within 4 weeks four men had committed murders in that same yard, with the door to the gas chamber right over there.

Now, did the first man think of the gas chamber within 20 paces from where he committed the murder? Did the second man think of what the first man might be facing, and the third what the first and second, and the fourth what the first, second and third were facing? No. They thought only of their incident, and I don't believe that the death penalty in our penitentiaries deters men from committing a crime that they have in their minds.

Senator HART. This is a very useful answer, because you know a whole lot more about the problem than the people who have made the argument.

Mr. DUFFY. Thank you. To continue. I have always been against capital punishment. Prisoners have always been a part of my life. Murderers have worked in our home. And I might say here that we believe in prison work, and know in prison work that the murderer usually is the No. 1 best prisoner, and the murderer released on parole is the No. 1 best parole risk in your communities.

As children, criminals of all types have been assigned to our gardens, repair and maintenance of buildings, and have attended to the needs around the grade school which I attended, as grade student.

I believe one of the reasons I have been against the death penalty all of my life is very, very simple. Wrong to kill.

It is wrong that these people in our penitentiaries have murdered. That they have committed a murder is 100 percent wrong. There is no valid reason for their act.

I believe it is also wrong that the State or Federal Government commit another premeditated murder. Two wrongs do not make a right.

DETERRENT

During my years at San Quentin I talked with every man (and two women) that I had to walk to the gas chamber, that were com-

mitted to San Quentin Prison under the penalty of death. Many of these have been executed, others commuted to life imprisonment some without possibility of parole. A few have had new trials or reversals. Some have died while serving their sentence within the prison walls. I found that 80 lifers died in prison in the 10 years surveyed, meaning that all lifers are not released, all prisoners are not released. Some are required to stay in prison the rest of their natural life and to die in prison.

I have personally asked every man (and two women) if they gave any thought to the fact that they might be executed should they commit a murder or a crime that is covered by the death penalty. I have asked hundreds—yes, thousands of prisoners, who have committed homicides, and who were not sentenced to death, whether or not they thought of the death penalty before the commission of their act. Their answer is invariably that they did not expect to get caught. That it was a crime of passion, jealousy, rage, temporary insanity.

I have interviewed and have asked the same question of thousands of robbers or men of aggression who have used a gun or other deadly weapon in the commission of their crimes. They are, of course, potential murderers. They give similar answers.

I have, to date, not had one person say that they had ever thought of the death penalty prior to the commission of their act. I have had peace officers tell me that prisoners in jail have said that the only reason that they did not use a loaded gun or they used a cap pistol was that they thought of the death penalty, and when they come to our penitentiary, however, their trials are over, everything is resolved legally, and I believe that they give you a little bit more of the regular story than they do when they are in jail trying to curry a little bit of favor, and so I have not had one of them say that they thought of the death penalty or used a toy gun or an unloaded gun. Yes; they say, "I used an unloaded gun because I didn't want to hurt someone. All I wanted was their money, and I wanted to scare them, but I didn't think of the death penalty, and that is not why I did not use it."

I do not favor capital punishment because I do not believe it is a deterrent to crime. Statistics show that where it has been abolished, there is no noticeable difference in the number of homicides committed in like areas. In some States homicides are higher in capital punishment States than in their neighboring abolition State. I believe that executions promote more similar crimes in the community. Many of us in prison work also know that there are more homicides following an execution than preceding same.

Why do I say I believe that executions promote more similar crimes in the community? Because we have them right after executions more than prior to that, and does it create in the minds of some of the weak people that are our citizens the idea to do something similar? I use the case of Caryl Chessman, which everyone knows, knowing that in California shortly following Caryl Chessman's execution, we had one and I believe two incidents similar to his red light bandit crimes that he was convicted of and eventually executed for. So this is the point you cannot prove. But you live with it, and it seems to be that you are promoting crime by having the death penalty

NO EQUALITY

There is no equality in conviction and sentencing of those who commit murder. I have often said, and I repeat here, that I can take you into San Quentin Prison or to Sing Sing, Leavenworth or Atlanta prisons and I can pick out many prisoners in each institution serving life sentences or less, can prove that their crimes were just as atrocious, and sometimes much more so, than most of those men on the row. The verdict of death by lethal execution is, I believe, an emotional release by those who are hearing the case.

May I just give another example on deterrence. We had a deputy sheriff that used to bring prisoners to us at San Quentin regularly. I talked with him. I had lunch with him. We talked of many things. He booked in prisoners in Los Angeles County for stealing automobiles, bad checks, all the way up to sex offenses, murder, and those sentenced to death, and brought them to San Quentin on assignment by the sheriff.

He killed his wife. He came to condemned row. I asked him, "Al, how come you didn't think of the death penalty, you are a deputy sheriff? You should have known." And we went through quite a little talk about it. He said, "Look, I planned the murder of my wife. I did it wrong. It should not have been that way. I should have handled it in some other manner, but my only thought was to plan the murder of my wife and carry it out. I did not think of the death penalty for one second. I should have."

There is a man, a peace officer, who brought men to San Quentin, who brought condemned prisoners to the institution, did not think of it.

We had another man who helped install a lethal gas chamber at San Quentin, when it was changed from hanging to lethal gas. He was in on a lesser crime. He was assigned as a laborer to help the engineer and the people who brought the lethal gas chamber from the State of Colorado, where it was manufactured, for installation.

Every night when he would come into the big yard, he would be surrounded by prisoners and they would say to him, "Tell us about the lethal gas chamber. Tell us about the horror chamber," as they called it. And he would give them a blow-by-blow description of the installation. Invariably he would say every night, "Fellows, this is as close as I want to get to the gas chamber." And so he went out eventually, served 4 or 5 years, and he was out maybe 4 or 5 years. He became enamored with a half sister. People tried to break it up. He killed three people, two members of his family and another.

He came back on condemned row, I asked him the same questions and his answer was almost similar to the deputy sheriff. "When the devil gets into you, you think of nothing else but what you are going to do. I did not think of the gas chamber, although I helped install it."

And so it is not as far as I see it, a deterrent. There are many, many other cases.

As far as equality is concerned, any prison warden will tell you, any peace officer will tell you that there is not an equal performance of the outcome of the cases that come before the courts and are sentenced to prison.

Governor DiSalle said something about the wealthy are never executed. I can give you a lifetime of experience that that is true. I have asked many hundreds and hundreds of people in public addresses that I have made, "Do you know of anyone that was wealthy that was ever sentenced to be executed in the history of the United States?" And after over 35 years of lecturing, I have yet to have one say that they could. And I also preface that by saying, "If you will give the name and the location, I will research it and use it in my lectures from here on." So I call it a privilege of the poor.

Have there been errors? Yes, there have. They are reported and there is always an element of the chance of error. It is true that the automatic appeal used in some States is a means of finding any errors. However, if an innocent person is put to death, as we know and in later years the real murderer comes to light, it is too late to do anything about it. There have been many reversals by the State and Federal courts. Many new trials ordered, lesser degrees administered, and Governors and Presidents have commuted many condemned inmates to a lesser degree than death.

I believe it is somewhat emotional on the part of the people who hold the belief that the death penalty should remain. People who come to our prison are, in most cases, emotionally or mentally disturbed. I have known cases where men have had to be executed when all they were able to answer were the legal answers to questions: "Know the difference between right and wrong, the seriousness and quality of their act, and the penalty they were facing." The old McNaughton rule. They would otherwise be so mentally gone that their case was pitiful. Some would have to be led to the gallows or the gas chamber; others dragged, while screaming from mental fear.

INNOCENT

Although I have never personally known of an innocent person to have been executed, there is documented proof that this has happened a few times. It is, of course, too late to do anything about it after the trap has been sprung.

VICTIMS

Often we are confronted with the statement: "How about the victims?" "How about their loved ones?"

Yes, we do think of the victims and of their loved ones. I have counseled with families of the victims who have come to see me about information they might be able to get from the condemned. I have directed them, consoled them, wept with them, and prayed with them. What has happened to their loved one is wrong. I repeat two wrongs do not make a right.

We also think of the loved one of the condemned. They too suffer greatly. They have not committed any crime, but their grief is heavy.

COSTS

It costs more to execute than to send a person to prison, to serve a full life sentence, and die in prison. This is proven by a survey made by a noted penologist in the State of Illinois. (See *Renewal*, Feb. 1,

1963) in which he states in part, "I found that 30 years of imprisonment," and 30 years in an insurance company actuarial type of measurement, "cost the State about \$45,000, assuming no cost-offsetting activity on the part of the prisoner. By way of comparison, the costs of a capital trial and appeals, special security handling in court and jail, and the long stay on condemned row, the rehearsals, and carrying out of an execution, were in excess of \$60,000. Capital punishment is by no means cheaper than life imprisonment, and the jurisdiction that maintains it pays for it dearly in both money and human costs."

California's Administrator of Youth and Adult Corrections Agency in an article in Federal Probation and Parole magazine, June 1964, wrote:

There is also the argument of cost. Why support some murderer for the rest of his life when we could execute him, and save all that money, the argument goes.

Like so many arguments favoring the death penalty, this does not hold up under factual analysis. The actual cost of execution, the cost of operation, the super maximum security condemned unit, the years spent by some inmates in condemned status, and a pro rata share of top level prison officials, time spent in administering the unit add up to a cost substantially greater than the cost to retain them in prison the rest of their lives.

Edmund G. Brown, former Governor of California, stated:

I am unalterably opposed to capital punishment. It doesn't do a single, solitary bit of good and this has been proved time after time. As a matter of fact, it increases violence because when the State is guilty of a violent act it encourages the individual to be guilty of a violent act. This is seen by violence following a war or following an execution.

I hate to base this opinion on costs, but the cost of killing an individual is far, far greater than if we gave him life in prison. The expenses of a trial, the delay, the additional guards, the lawyers' fees, the court fees are far greater than if life imprisonment were the penalty.

I will do anything I can to see that capital punishment is abolished.

FOR OTHERS

When people who believe in the death penalty for all premeditated murders are faced with the question:

Would you want your son, your daughter, your loved one, executed if he committed murder?

The answer invariably is "No". It therefore is obvious that it is good enough for someone else, but not good enough for me.

I have experienced several cases, and can quote them if need be, where people have said to me that all murderers should be executed. Then a member of their family is faced with execution, and they immediately do an about face and want their loved one saved. That has happened several times.

I believe that capital punishment in Federal and States should be abolished. Our prison systems are set upon the concept that they must protect society and must work toward the rehabilitation of the offender. I believe that most prisoners, except for mental cases, can be changed for the better. A few will have to be kept under close confinement for the rest of their natural lives. When I left the prison system there was a man who had 49 years in prison at that time, several who had well over 30 years, still serving time. Some must die in prison. Some lifers do die in prison. They have committed murder. They are

not sentenced to death. Some who have been sentenced to death would fall into this category, others could be changed.

I personally believe that the death penalty should be abolished. We have ample facilities to keep offenders away from society for the rest of their natural lives if warranted.

When the death penalty is stricken from our statutes, and the gas chambers, the hangman's noose, the electric chair, and the firing squad are done away with as the rack, the screw, burning at the stake, drowning, throwing to the lions, and other barbaric methods were "we will all be better for it."

May I submit, as I have been asked to do, sir, copies of photographs as Exhibit 1, San Quentin, one of the largest prisons in the United States, another is a photograph of the gallows that was used at one time.

This is where men are kept on condemned row in California's prison and similarly in other prisons.

This is a holding cell adjacent to the lethal gas chamber where the men are held the night before, until the next morning's execution.

This is the lethal gas chamber with the door open.

This is the gas chamber with the door closed when the man is in there.

And the last one is where the witnesses stand, which are the legal witnesses.

Thank you.

Senator HART. Warden, thank you very much. I felt strongly enough about this to introduce the bill to abolish capital punishment some several years ago, but if I had had any doubts about it, your description of what happens, when you and I as the State puts somebody to death would have resolved any doubts. And yet for this record I have an obligation to ask you some questions to be sure we have a balance here.

Mr. DUFFY. Yes.

Senator HART. You described the hideous, barbaric scene as somebody springs the trap or drops the pellet or pulls the electric switch. You described the disfigured victim, and the reaction it produced among the witnesses. But I know perfectly well that this subcommittee will be met by the person who says, "Look, there is the same disfigurement, there is the same torture, there is the same horror visited by that man on an innocent member of society. Why are you so overwhelmed by the sight which you describe, when the reason that that sight occurs is because that same individual went out on the street or went into a bedroom and took somebody who under nobody's definition deserved it, and did to him or her the same thing that you are now bewailing as society." What do you say when somebody comes to you with that reaction, and I am sure people must have come to you.

Mr. DUFFY. They have said that to me many, many times, Senator, and my answer is similar to what I have said in my statement, that what these people have done is completely wrong, 100 percent wrong. There is no rhyme or reason for it. There should have been some other way that they should have handled this. Yes, it was wrong. But is it also right for somebody else to commit another murder?

We have ways of handling these people. They do not have to be murdered, a second murder. They do not have to be done any other way

than we are doing today, with hundreds of homicides. Put them away. Keep them away safe from society.

No, I do not condone what these people have done for a moment. It is horrible, terrible, but should we in State and Federal also commit another horrible act?

Senator HART. I don't know how it will impress somebody who reads the record, just the black and white. I don't know to what extent it was your presence and your voice in reading the statement to us that affected everyone in this room as it did me, as you described a scene that few of us have seen, and after listening to you none of us will volunteer to see. But you know, the funny thing is that if we had a public exhibition of what you describe, if as in days of old the village was brought to the scene and everybody saw what happened to the man who today is executed at San Quentin behind the walls, in the view of very few, one of two things would result I suppose. Someone would say, "That is the way to make capital punishment serve as a deterrent. If the village saw what you described, then nobody in that village would commit an act of violence."

My reaction is that if everybody saw what you have described, we would indeed abolish capital punishment. The village would just cry "Stop."

Mr. DUFFY. I believe you are right, Senator, because in my book, "88 Men and 2 Women," which is on the death penalty, and believe me this is not a plug for the book because it is out of print, you cannot buy it, I say in there that if we held legal executions in Times Square, this is before New York abolished, or in front of the tabernacle in Utah, or on the bandstand in Golden Gate Park in San Francisco, using cross country as an example, that I believe we would soon convince the public in their minds that we should abolish the death penalty.

Senator HART. Mr. Paisley.

Mr. PAISLEY. Warden, you probably have often heard the argument that there can be no assurance that the killer will stay in for a life sentence. What do you say to that argument?

Mr. DUFFY. You are correct. There is no assurance that anyone will stay in prison for a life sentence unless the law says that they must stay the rest of their natural life, and that is more of an assurance than a regular life sentence.

A life sentence, as far as I have experienced it, for those who have been released, runs between 12 and 13 years, with those people being the No. 1 best parolees, above all other types of crimes in the penal code. Very rarely has it been known that a released lifer has committed another murder.

I have often had that said to me on the speaker's stand before groups. "Why do you let all these murderers out to kill again?" And I asked one simple question; "Name one." And the person who asks that question cannot name one, because they are just talking.

Well, there have been a very, very minimum number, in the 69 years I have been on this earth, I can only recall, as far as I can without research, about four or five in California that have committed another murder after they have gone out. One was a woman, one of the two that I mentioned, one was a man who went out who had been sentenced to second degree murder, 5 years to life with 20 months minimum term,

went out and murdered again. It is so rare that it is hardly an argument.

Mr. PAISELY. Of course this bill if enacted will apply only to Federal violators, Federal prisoners. Do you feel that Congress should write any restrictions into it, restrictions against the parole board paroling murderers, those who have committed capital crimes?

Mr. DUFFY. You are asking me personally. I say "No," I do not believe you should write in restrictions, for this reason.

Usually, if not always, parole board members are good, experienced, qualified people. As far as I have known them, all of them have been. As a member myself for 10 years, and knowing the way parole boards feel and act, I do not know of any parole board member who would ever let anyone out feeling that they might kill again. No, they just don't act that way. So they have the power to keep those kinds of people in for the rest of their natural lives, and they do that, and it happens.

Mr. PAISELY. Do you know whether or not any of the States which have abolished capital punishment in their legislation have done that? I don't know. I ask you, have restricted the parole boards?

Mr. DUFFY. Well, there are some cases where they have life without possibility of parole, or where a Governor has commuted a person to life without possibility of parole, but then as far as I recall, the Governor still has executive powers of changing that, if he so wishes, whether it be the same Governor or one to follow.

Mr. PAISELY. I believe in some States the jury fixes the penalty in these capital cases. Do you feel that this bill should be amended in that way?

Mr. DUFFY. I don't like the jury fixing sentences, because at the time of conviction and sentencing, and the time of possible release, the person or persons are changed, sometimes for the worse, and you have to let them out because their time has run. Sometimes the sentences are too long, and you keep them in too long, and they start going downhill. So a true indeterminate sentence is the way I in my experiences have dealt in my thinking. Keep them in until they make the changes that are necessary for their release, and if they don't make the changes, they die in prison.

Mr. PAISELY. You would recommend then that Congress leave the problems of parole to the parole board?

Mr. DUFFY. Yes; and get good qualified persons on your parole board, as has been done, and you will find that they perform well.

Mr. PAISELY. That is all, Mr. Chairman.

Senator HART. I should have asked Governor DiSalle this. He would answer it from another point of view, but I think it is not inappropriate to ask you. Because of our Federal-State system, unlike the many nations which Governor DiSalle cited as having abolished capital punishment, it would be abolished piecemeal in the United States. What effect would a Federal decision to abolish capital punishment for Federal crimes have on the several States who do have capital punishment?

Mr. DUFFY. I think it would encourage the other States to do the same as the Federal Government has done when they abolish the capital punishment. I very definitely believe this would be a big, big factor

in the way other additional States will follow, follow in the steps of the Federal Government's side.

Senator HART. Warden, we are grateful that you would give us the benefit of your experience in the management of prison and the study of criminal offenders and the effect that capital punishment may have on them. I hope lots of people read it.

Mr. DUFFY. Thank you.

Senator HART. We turn now to another American who has over long years been responsible for the management of penal institutions, the former Director of the U.S. Bureau of Prisons, an old friend of many members of the Judiciary. That does not apply to all members of the committee, but we have had the benefit of his testimony many times, James V. Bennett.

STATEMENT OF JAMES V. BENNETT, FORMER DIRECTOR, BUREAU OF PRISONS, U.S. DEPARTMENT OF JUSTICE

Mr. BENNETT. Good morning, Mr. Chairman, Mr. Paisley, members of the staff of the committee.

Thank you, sir, for your introduction.

It is true that I am the former Director of the Federal Bureau of Prisons, having been Director for some 27½ years.

I am a member of the council and former chairman of the Section on Criminal Law of the American Bar Association and presently the president of the Joint Commission on Correctional Manpower and Training.

Incidentally, Mr. Chairman, I served on the United Nations committee that drafted a report on the desirability of retention of the death penalty. We examined into that, and I take it that your staff has a copy of that report.

Senator HART. We will make sure that it is in the files of the committee. Did I understand you to say that that U.N study recommended retention?

Mr. BENNETT. No, sir. It recommended abolition of the death penalty, and, incidentally, all of the members of the General Assembly who were delegates to the General Assembly at the time that report came up voted in favor of the report; that is to say, voted in favor of recommending that members of the United Nations abolish the capital penalty.

In other words, Senator, we have a somewhat ambivalence on this matter.

Senator HART. We sure do.

Mr. BENNETT. We recommend it to others and retain it ourselves.

Senator HART. It would be nice to think that that was the only instance where we were inconsistent.

Mr. BENNETT. Mr. Chairman, I appear before you as the official of the Government who was directly responsible for carrying out the orders of the Federal courts when the death penalty was imposed.

I regret to say that during the 27½ years I was Director of the Federal Prison Bureau, I made the arrangements for the execution of 26 men and two women. Those executed for military offenses were the responsibility of the Army or Air Force. From 1930 to 1961 there have been 160 executions by the military. Of this number 148 occurred

during the war period between 1942 and 1950. Twelve members of the Army have been executed since 1954.

As you know, in your very able statement when you introduced this bill, Senator, you pointed out that there have been no executions of Navy officers, sailors or marines since 1843. To all practical intents and purposes the death penalty has been abolished for 125 years so far as it affects convictions by Navy courts-martial for such offenses as murder, rape, desertion in the face of the enemy, and so on, by Navy personnel. Incidentally I have never heard it argued that the abolition of the death penalty by the Navy has resulted in an increase in violent crimes by members of the Navy or the Marine Corps, as compared with Army people.

As one who has had firsthand acquaintanceship, so to speak, with the death penalty, let me say its grizzly nature was brought home to me some years ago when I was leafing through a pile of papers on my desk. Amid the myriad housekeeping documents that required my personal approval was a bill for \$5 for the acid and cyanide used in the execution of a man named Arthur Ross Brown. He was a kidnaper, a rapist, and murderer. He had been put on trial on a Monday morning and on Wednesday of the same week the jury found him guilty, adding a recommendation that the death penalty be imposed. The judge imposed it and 1 month and a day later, we carried out the sentence in the gas chamber. Not even Brown's mother, loyal and loving to the last, would tease out a series of appeals that she knew would be useless.

The whole sad business was handled quietly and expeditiously. Only one man protested, not against the execution, but against my decision not to allow him to photograph the proceedings in the gas chamber. The following morning, only a few paragraphs in the newspapers reported the event. If the point of the death penalty was to deter, I asked myself, who did the execution of Brown deter? Who ever knew about it, and who cared?

Let me interpolate there, Senator, that there have been many suggestions, and this is one of a similar nature, that whenever capital punishment is carried out, that it be put on TV. That is a suggestion that has been made to me, and is frequently made, both by those who advocate its abolition and by those who want its retention. Thank heavens nobody has so far ever ventured that far.

Senator HART. Mr. Bennett, why do you, as I take it you do, resist that suggestion?

Mr. BENNETT. Because we are a civilized country, Senator. This is a country that does not want to see such barbaric incidents any more than it wants to witness on TV certain types of surgical and other kinds of gruesome events that occur. We are a country that revolts against that sort of thing. It should no more be on TV or in the movies than many other things that offend and affront our moral sense of what is right, Christian, and civilized.

Senator HART. If you were an abolitionist, why wouldn't you continue the argument, though, and say because we are a people that are sensitive, which we like to think we are, if we could just get it on television, then our outrage would be registered in State legislatures and in the Congress?

Mr. BENNETT. I don't buy that argument, Senator. I don't think that it would be so any more than having hangings that Governor

DiSalle described in his book, when it was a great, gay day and everybody went out. That wasn't what prevented and stopped the hangman in England. There were other forces and other personalities and other reasons.

Senator, even more traumatic was my first experience with the execution of a citizen of your State—one Anthony Chebatoris. He had been convicted in Federal court of murder during an attempted bank robbery in Michigan. The death penalty had long been outlawed in that State, but it was Chebatoris' misfortune that the circumstances of the robbery brought it under Federal jurisdiction. Throughout his lengthy trial, he insisted that he had not shot and killed a bystander, as charged, but that a police officer must have fired a stray round. Chebatoris was found guilty and condemned to be hanged.

Warden John Ryan of the Milan institution was given the job of carrying out the sentence. Reluctantly, he erected a gallows in the interior of the prison and surrounded it with a canvas screen. Then he located a man said to be an expert hangman.

At 2 a.m., on the morning of the execution, Ryan called me at home. "Is it all over?" I asked. Ryan replied: "I wish to God it was. The hangman arrived about an hour ago. He's gloriously drunk and he's got three friends with him, just as potted as he. We've given him enough coffee to sober him up a bit, but he says he isn't going to do the job unless we let his friends watch. He wants them to see what a 'pro' he is." I reminded Ryan that nobody, under Federal regulations, could attend the execution except official witnesses, but Ryan replied: "I've been talking to him and he keeps threatening to pack up his stuff and get out if we don't let his friends in. They're all drunk. They can hardly walk." When I told Ryan that he would have to carry out the execution himself in accordance with regulations if a hangman could not be found, he blew up at me: "No, sir. I'm against the whole business anyway. We haven't had a hanging here in the State in a hundred years and the whole institution's on edge. You and the Attorney General can have this job right now."

We talked on some more, and eventually Ryan said that he would go back to try to talk the hangman into executing Chebatoris. He solved the problem when he realized that the hangman was too drunk, and the execution chamber too dark, for the hangman to be able to see whether his friends were in the room or not. Ryan told the hangman that he would let the friends watch from the back of the room, whereupon the man agreed to execute Chebatoris. Afterward, another uproar began. When the hangman asked his friends what they thought of the job, they complained that the warden had kept them outside. The hangman promptly accused Ryan of trickery and deception, adding that he was not fit to run a federal institution. He threatened a congressional investigation, as I remember it. At this, Ryan's patience finally broke, and he threw the lot of drunks out of the prison gate.

May I interpolate here, Senator, that it is a long custom for the issuance of a ration of liquor to the witnesses, the official witnesses of executions in some countries. One of those countries is Australia, and there is present in the room this morning a deputy assistant attorney general from Canberra, who is over here studying the death penalty for recommendations to his country. He tells me that the theory at

least that the witnesses are entitled to a strong drink of whisky is still in vogue.

Senator HART. Let me interrupt, Mr. Bennett, just in case our visitor leaves before you have concluded, I would have an opportunity to express our pleasure that he took the time to join us. I wish that our witness list was not already so long that we could get an Australian impression of this subject matter.

Does Australia have capital punishment still?

Mr. BENNETT. Yes, sir.

Senator HART. The practice you describe is a current practice. It is not history?

Mr. BENNETT. Yes, I think so. Senator, we didn't brag about this episode, as you can see. We didn't brag about the fact that we had succeeded in carrying this out, and gotten rid of these drunken people without any outward incidents, but the whole procedure was inherently disgusting, and indicates that the death penalty has led to many excesses, and it is small wonder indeed that such persons as Warden Duffy here, Warden John Ryan from out there, Lewis Lawes and James Johnston of Alcatraz have been in the forefront of those who wanted to abolish capital punishment.

May I say there, Senator, as to the effect that the abolition of capital punishment will have on crime, let me point out that bank robberies are almost always committed when the person is armed with a gun, and the potentiality of killing someone is very great. Yet bank robberies are on the increase, measurably on the increase, and there are a number of cases, of course, where people have been shot, in the course of a bank robbery, and yet they have not been executed, frequently because of some problem relating to the facts, the evidence, the commission of the crime, that makes it undesirable for one person or another to go forward with the carrying out of the death penalty.

One Charles Nussbaum is a good example of that. He was a gunman, a person with no regard for human life, who robbed a bank in Brooklyn, and in the process killed a policeman. But the Government accepted a plea of guilty, and he was given a life sentence.

Perhaps even a better case is that of Joe Valachi, who appeared before this committee, a nationwide amusement not to say amazement. He committed a murder, a coldblooded murder if ever there was one, and yet he was permitted to plead, and accept in return a life sentence. I will go into this a little bit more later on in my statement. But what I am interjecting here is to tell you that I believe that the retention of the death penalty instead of deterring crime is more apt to increase it or allow it to continue.

Senator HART. You say you will develop that statement further?

Mr. BENNETT. Yes, I will develop that a little later on. I also would like to call your attention to another case, Senator, in which you are much interested, and were very helpful, when it involved the possibilities that an innocent man might be convicted and sentenced to execution. I refer to the case, as you know, Senator, of Charles Bernstein. You are familiar with this case. You sponsored and introduced into the Senate and secured passage of the bill to compensate him for the nearly 8 years he spent in prison for an offense he did not commit, and for which he was once within 15 minutes of execution. I personally, among others, investigated the case, various officials of the Department of

Justice indicated they investigated the case, and they came to the conclusion that he could not possibly have been present as the principal prosecuting witness testified. For 26 years Charles Bernstein had lived a law-abiding life, had been a good citizen, and has been a credit to all of those, including yourself who were interested in him. He is present in the room this morning, Senator, as a man who was innocent and yet was within 15 minutes of being executed, a traumatic experience indeed.

Senator HART. Mr. Bennett, you are quite right. It is one case I think I do know, and I had considered as you suggested that we hear from Mr. Bernstein. In my book that is just adding to the cruelty of the case, because no one could have experienced what he did without having emotional reactions whenever it goes on public view once again. But anybody who wants to read, as you suggest here, the record in support of the bill, will be in a sense living with a man whom you say was just blink of an eye away from being executed, and society was absolutely 100 percent wrong, and that now is recognized. You helped convince Congress in this case.

Mr. BENNETT. Mr. Chairman, might I interject also in my statement there that Charles Bernstein carried his case through all of the various appeals procedures and to the Supreme Court of the United States and the fact that appeals lie is no protection, no assurance that an innocent man may not possibly be executed, because of course the appeals court considers only the law and not the facts.

Mr. Chairman, while I was serving as an Assistant Director of the Federal Prison Bureau in 1935 I made a list of the 199 executions that had taken place in the Federal and State jurisdictions during that year. I noted that executions were being carried out at a rate of 18 for every 1,000 homicides. In 1963, the year in which I retired, I compiled a similar list. There were 21 executions at a rate of three per 1,000 homicides. Since then, the actual use of the death penalty has declined further. In 1965, 67 men were condemned to death by the State courts and 62 were reprieved. In 1966, only one man was executed in the whole country. Today, more than 300 condemned men wait in their death cells while their attorneys maneuver through the appellate processes and it is safe to say that most of them will be reprieved.

Senator, it might be helpful to the committee if later on in the record I introduce some material from the State of Florida, where an investigation was made of all of those people that were on or still are on death row.

The purpose of this thing is to show the extent to which they were represented by paid counsel, by counsel appointed by the court, color, race, mental capacity, education and so on, a very interesting study, and it shows from actual sampling just what has been said here in argumentative form.

Senator HART. We will add to the record at the conclusion of your statement a paper. I hope you will be able to furnish it to us.

Mr. BENNETT. I will furnish that and other data for the record if you care to have me do so.

Senator HART. We do.

Mr. BENNETT. I doubt that I need to tell you, it is already in the record, of the trend toward abolition of the death penalty, the fact

that overseas and abroad there is a great deal of debate about it, and it is gradually being deescalated. I think there is no question but what the death penalty is revolting, susceptible to miscarriages of justice and ineffective in the sense that it is not a deterrent to murder. And of course, as Warden Duffy has pointed out very eloquently, its macabre methodology is revolting.

Its presence on the Federal statute books has led to all sorts of anomalies and distortions of the administration of criminal justice. How grotesque it is to be executing people for crimes carrying a penalty which is offensive to the people of the State in which the crime occurred as in the *Chebatoris* case. And there have been others. How can you explain why the death penalty is a dead letter in one branch of the Defense Department and is still embraced as a deterrent to crime by another. But it is even more of an affront to our ideals of equal justice under law when you note how it warps our system of criminal justice.

At bottom, the retention of the death penalty has led to all sorts of controversial not to say inconsistent and erratic decisions of our courts on such things as mental responsibility for crime, use of confessions admissibility of evidence, arrest and arraignment procedures and so on. We might not have the *Miranda*, *Escobedo*, *Mallory*, *Durham*, and other decisions were it not for the fact that the death penalty was involved. As Attorney General Robert H. Jackson put it:

When the penalty is death appellate judges are tempted to strain the evidence, and in close cases the law, in order to give doubtfully condemned men another chance.

If I do not trespass unduly upon your time and patience, I would like to recite briefly the facts in one case in support of the inconsistencies created in our Federal law by the presence on the statute books of the death penalty. It is the case of *Victor H. Ferguer* who was hung in Iowa in 1963 pursuant to a Federal court conviction of murder while engaged in transporting in interstate commerce a kidnapped person. He wrote to me toward the end of the 2 years his case was being processed in the Federal courts that he wanted to die and protested efforts on the part of his court-appointed attorneys to have his sentence set aside.

My investigation of this strange request showed that within a month from the time he was discharged from a State penitentiary he had bought over the counter of a Milwaukee gunstore a .38 caliber revolver with no questions asked.

Thus armed, Ferguer went to a telephone booth, opened the yellow pages of the telephone directory, and at random put his finger on a name. He called this doctor who was a greatly admired physician, and in a panicky voice asked him to come to a certain place to attend his extremely sick wife. When the doctor arrived in his car he kidnapped him at the point of his gun, drove him across the State line into Iowa, shot him in cold blood and left his body in a cornfield. He drove on to Atlanta, Ga., where he was apprehended while trying to sell the doctor's car.

His court-appointed attorney rested his defense entirely on a plea of insanity. He was examined by several psychiatrists including two of our Federal prison doctors who found he knew the difference be-

tween right and wrong and being tried in Iowa, the *McNaughton* rule would apply and he was responsible for his acts.

The doctors recited without making a judgment as to the degree of his mental illness the fact he had been diagnosed as a borderline schizophrenic, and had a long record of crime and juvenile delinquency dating back to his 11th birthday as well as rejection by all of his family. There were other facts, many of them, Senator, that I haven't put down here, to indicate that had the *Durham* rule which applies as you know in the District of Columbia, or the *American Law Institute* rule recently applied in New York, among others, defining mental responsibility for crime, had that been in vogue in Iowa, he probably would have been found not guilty by reason of insanity. Thus the inconsistency in our system to which I referred, and thus the fact that retention of the death penalty complicates our court procedures, our methods of gathering evidence, the use of confessions and so on to the point where probably it is responsible for some of the increase in crime that has occurred. Abolition I think might reduce crime by lessening the chance that guilty men will be freed, because of the fact that some of these decisions I feel sure at least would have not been made at this particular time. Violence indeed begets violence.

Senator, in summary I should think we could have a system of penalties that in the Federal system at least would promote consistent, equal, and humane administration of criminal justice. The best way to achieve that goal so far as crimes now taking the death penalty are concerned is to abolish a penalty that cannot be justified as a deterrent to crime, is unworthy morally of our civilization and destructive of our ideals of equal justice. I urge approval of this bill.

Thank you, sir.

Senator HART. Mr. Bennett, there are a great many Members of this Congress and others in earlier Congresses who know you and who have enormous respect for you. I have a feeling that your strong recommendations will be persuasive with some. I have a disagreeable item of information today. The word has reached us that there has been an objection made on the floor to any committee meeting while the Senate is in session. This is not some antiabolitionist Senator who made this point. It is that the point was made with respect to sitting of all committees for the balance of the day, and reflects a desire, I am sure, that the Members be present on the floor for the debate which began with that last snarl of the buzzer system, on a set of ethics for the Senate, that being the business of the day. We can't decide this morning what to do about executing others, but maybe we can do something about rules for ourselves.

I know how great the inconvenience to some of our witnesses this will be. I hope that we can adjust for tomorrow for the witnesses whom we have not heard. I hope those who are from out of town will be able to stay. Of course the record will receive their statement, but it is so much more helpful, so very helpful if they are able to respond to questions.

Mr. Paisley, have you some questions?

Mr. PAISLEY. Senator, I will make it short.

Mr. Bennett, how would you answer the opponents of this bill who say, "Well, we have no assurance that we can keep these vicious

murderers away from the public, no assurance that they will stay in jail. They will soon be out committing the same type of crime?" What is your answer to that?

Mr. BENNETT. I don't think it can be substantiated. I think as a matter of fact men who have been convicted of murder and paroled show a splendid record of readjustment in the community. There are very, very few incidents. I supplied a few. I think there is some statistical data on that, Mr. Paisley, and I think I can supply it to you.

Mr. PAISLEY. I was just going to ask you. You must have had a lot of lifers come under your jurisdiction. Do you have any statistics?

Mr. BENNETT. Oh, yes. You mean as to the percentage of them that have succeeded and failed? Yes.

Mr. PAISLEY. How many were released, how soon were they released, and whether they have been back.

Mr. BENNETT. Yes. Well, I can tell you this overall, Mr. Paisley. In the Federal system only about 33 percent of all of them across the board ever get into difficulty with the law again.

Mr. PAISLEY. Would you favor Congress writing in restrictions in this bill upon the parole boards?

Mr. BENNETT. No, because all that does, Mr. Paisley, is to transfer the responsibility for determining whether or not they should be released from the parole board to the executive branch of the service, and it would get nowhere. It would simply increase the already intolerable burden upon the Chief Executive.

Mr. PAISLEY. From your experience as head of the Federal Prison Bureau, you feel that the parole board usually acted with good commonsense with due regard to the rights of society?

Mr. BENNETT. I do, sir, even in a number of those cases that you prosecuted, Mr. Paisley, and who later on were paroled.

Mr. PAISLEY. I will ask you this, just as sort of the devil's advocate here.

Senator HART. We do have an obligation to play that role in this record.

Mr. PAISLEY. I agree with you, I agree with Warden Duffy and Governor DiSalle personally. I have no vote, but I feel an obligation since Senator McClellan can't be here, as I say, to play the devil's advocate.

How would you protect society from this man who called up the doctor, had him come out, kidnapped him, and murdered him?

Mr. BENNETT. Well, I can say this. That death penalty in that was no deterrent. What I would have tried to do was search out that fellow at an earlier period. I would have kept him in custody, probably in a mental hospital, or had I been the judge at the time he was committed, I would have committed this person for a long period under an indeterminate sentence procedure. If we had the law, if we had the diagnostic facilities which we should have, we could have spotted that fellow and prevented him returning to society until at least he would be improved, and there are many cases on record, as you know, where exactly that has occurred.

Mr. PAISLEY. You wouldn't favor then a provision in this bill that Federal juries would hear all facts about the criminal and fix the number of years the accused would serve?

Mr. BENNETT. Yes. On the contrary, Mr. Paisley, I would favor a system that said that after the individual had been convicted, and the evidence was all in, he would have a separate jury trial as to the punishment to be inflicted, and that if the penalty were retained under any circumstances, both the judge and the jury would have to concur.

Mr. PAISLEY. You mean in the death penalty?

Mr. BENNETT. In the death penalty. That is the least that we could do.

Mr. PAISLEY. Would you favor a provision in this bill that the Federal juries which hear capital cases, assuming the death penalty is abolished, could fix the time?

Mr. BENNETT. Oh, fix the length of time?

Mr. PAISLEY. Yes.

Mr. BENNETT. No, sir; I would not. I think that sentencing by juries, whether it be in Missouri, in Texas or any of the other States where it occurs, is dead wrong. The jury doesn't have the diagnostic material, it doesn't have the information about the individual that it needs to have, and more frequently their decisions as to the sentence are wide of the mark where the judge sentences, and of course as you know from your experience, where the judge does sentence, the question of the penalty to be fixed by the jury is of far greater controversy than the issue of guilt or innocence. So it doesn't work. Virginia is a State, incidentally, as you know, that retains sentencing by the jury.

Mr. PAISLEY. You would prefer the bill in its present form rather than to provide that the jury should find only guilt or innocence, and then another jury fix the punishment?

Mr. BENNETT. If the death penalty were approved, yes.

Mr. PAISLEY. You prefer the bill as it is?

Mr. BENNETT. Oh, of course.

Mr. PAISLEY. That is all, Mr. Chairman.

Senator HART. Mr. Bennett, I thank you for your always interesting and helpful testimony.

Mr. BENNETT. I would like to be of help to the committee in any way I can, Senator, and if it occurs that you want any information in detail about the various cases, why, perhaps I can secure it for you.

Senator HART. The figures that I think bear on the questioning that Mr. Paisley just developed will be in order. I would hope to the extent that you have or that the Department has information bearing on experience after release, and particularly experience after release of men who were found guilty of violent crimes would be useful.

I apologize again on the record to those who are going to be inconvenienced, and in anticipation that the Senate will be involved with the same subject matter tomorrow, and that the committees again will not be permitted to sit after the morning hour, I would suggest that we adjourn to resume in this room at 9 tomorrow.

Hearing no objection, we will adjourn until 9 tomorrow.

(Whereupon, at 12:30 p.m., the subcommittee recessed, to reconvene at 9 a.m., Thursday, March 21, 1968.)

ABOLISH THE DEATH PENALTY UNDER ALL LAWS OF THE UNITED STATES, AND FOR OTHER PURPOSES

THURSDAY, MARCH 21, 1968

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 9:25 a.m., in room 1318, New Senate Office Building, Senator Philip A. Hart presiding.

Present: Senator Hart.

Also present: William A. Paisley, chief counsel.

Senator HART. The committee will be in order.

Because of our earlier starting hour, the order in which we will hear witnesses will remain flexible.

The Attorney General of the United States, the Honorable Ramsey Clark, had been scheduled as a witness for today but unfortunately found, as is often the case, matters in the Department which obliged him to ask that the committee schedule him at a later date. This, of course, was done, and I only wish that the circumstances had permitted him to be here today. However, all of us understand the burdens of that office.

Let us start this morning with a young American, Douglas Lyons. Douglas Lyons is the chairman of Citizens Against Legalized Murder, a student volunteer organization. I would hope that Mr. Lyons will describe for us that organization, and, additionally, give us a little background about himself first.

STATEMENT OF DOUGLAS LYONS, CHAIRMAN, CITIZENS AGAINST LEGALIZED MURDER

Mr. LYONS. Thank you, Senator Hart.

I appreciate the opportunity to appear before the subcommittee.

The organization is on the campus of the University of California at Berkeley, where I am a junior. It is over 2 years old now. We are over 3,000 members in 48 of the 50 States, and the District of Columbia and Puerto Rico.

The organization's only purpose is to work for the abolition of the death penalty throughout the country. We are concentrating our efforts in California where 74 men are now on death row at San Quentin. This is a world's record.

The experts who preceded me here yesterday——

Senator HART. Mr. Lyons, do I understand that the Citizens Against Legalized Murder was organized on the campus at Berkeley but you now have campus chapters elsewhere?

Mr. LYONS. No. That is the only chapter, Senator Hart. There are abolition groups in other States that we have been working with very closely but that is the only chapter.

We are completely autonomous and the death penalty is the only issue that we take a position on. We don't worry about any other causes.

The experts who preceded me here yesterday cited for the subcommittee lucid and compelling arguments against the death penalty but I have come before you as a member of a different generation to speak in behalf of the major segment of our population, those under 25.

In our schools, homes, and houses of worship the young are taught that the taking of human life is wrong. Yet a glance at any newspaper tells that killing is not frowned upon in our society because killings are carried out by the State itself.

I believe that I speak for my generation in recognizing that this conflict between word and deed can only aggravate the alienation of our youth and broaden the generation gap.

I myself could never pull the switch on the gas chamber and as I could not, I consider it immoral for me to sit idly by and allow my representative, my employee, to do so for me. If the job of executioner were to rotate like that of juror, from citizen to citizen, the death penalty would soon cease to be an issue, for only a few would voluntarily pull the switch.

Ever so often we read about a particularly offensive criminal and the letters to the editor's columns lead us to believe that there would be no problem in rounding up volunteers to pull the switch for this criminal's execution, but there are few who would blindly assent to pulling the switch to execute any of the 448 lesser known men now under sentence of death in this country. Even among those who favor the death penalty, most would only consent to pull the switch if they were personally convinced that the individual condemned man were in fact guilty and that in the opinion of this would-be executioner, he did deserve the death penalty.

In this country such judgments are properly reserved for judge and jury only and not for the executioner.

The Harris poll of July 3, 1966, reported that only 38 percent of the Nation supported the death penalty. I believe that it is only the anonymity of the device such as the gas chamber activated by a nameless, invisible executioner with no blood, no sound, virtually nothing to see or hear that allows us to feel aloof when we participate in the killing of another human being.

In the belief that all citizens have both the right and the responsibility to witness the executions which they carry out, I suggest that all executions be televised. This figure of 38 percent for the death penalty would soon dwindle if executions were televised, and any dormant deterrent value which the death penalty might conceivably possess would be exploited.

Again speaking as one who is still a legal minor, I would point out to the subcommittee that four teenagers currently condemned to death are legally old enough to be executed but are not old enough to be permitted to be witnesses at an execution.

I therefore urge that reverence for human life be made a fundamental part of our national policy by the enactment of legislation, namely, your bill, Senator HART, S. 1760 to abolish the Federal death penalty.

Senator HART. Thank you very much, Mr. LYONS.

I must confess that while among other things I am just introducing the bill, I indicated disapproval of the practice of what you call legalized murder but, it did not occur to me that here, again, this generation which is yours might find in this still another reason to question the balance of its elders.

I did not realize that this is another thing that doesn't add up to a man under 30.

Mr. LYONS. That is true, and jurors are usually over 30.

Senator HART. You hit with considerable punch when you remind us that some of those teenagers on death row are old enough only to go in to be executed, not old enough to go in to witness.

Mr. LYONS. That is correct. You must be at least 21 in most States to witness an execution but you can be executed as young as 8 years old in many States. One of the people on death row today in Ohio is 16 years old, and was 15 when he committed murder. He was judged to be legally able to stand trial for his acts, and is currently condemned to death.

Senator HART. Governor DiSalle and Warden Duffy both told us that in their experience the one common denominator among men who had gone to death at the hands of the State was that they were poor. Now, that kind of discrimination, if you call it that, is offensive with respect to any age category, but when you think about a fellow—how old did you say this boy is now?

Mr. LYONS. Sixteen, in Ohio.

Senator HART. Sixteen. I am sure any bookmaker would agree he wouldn't even take a bet—if you wanted to bet—that that 16-year-old boy was a son of a wealthy family or was even very smart, probably.

Mr. LYONS. As I remember the case, Senator HART, he was convicted of the bayonet slaying of his adopted father, and the assault with the same bayonet on his adopted mother who survived the attack and testified against her adopted son at the trial. The judge broke down in tears when he had to pass the mandatory death sentence upon the 16-year-old because the jury did not recommend mercy, and the prosecutor said that he never expected the jury to bring in the death penalty. The case is still on appeal.

Senator HART. I suppose there are those people who would say that by executing that boy you will deter your children from attacking you with a bayonet in the future.

Mr. LYONS. That is not the idea of deterrence, Senator HART.

Senator HART. Also you happen to run counter to the judgment of several of the experts yesterday. You believe we should put the execution on television. I remember Mr. Bennett particularly suggesting that this would just run counter to our tradition and offended our instincts. Do you still think it would be a good idea?

Mr. LYONS. Well, most of the legislatures in this country, the 37 States that retain the death penalty, do so based on the theory that the death penalty acts as a deterrent and I thought that televising

executions would be in line and would be concurrent with the idea of deterrence, because as I understand the concept of deterrence in terms of crime prevention, the major components of a deterrent are swift, sure, and public punishment. We know that the death penalty is not swift. The average length of time spent on death row is almost 3 years in this country, between sentences and execution. It is definitely not sure. There were about 400 men on death row in 1967 and only two executions and there is only one in 1966, and that one in fact was of a man who wanted to be executed. He demanded the death penalty and asked his Governor not to spare his life. One of his lawyers tried to have his sentence reduced to life imprisonment and the condemned man tried to have the lawyer disbarred for trying to save his life, so the death penalty is neither swift nor sure.

The only hope left I thought was that it might be public, that people would know exactly the horrors of the death penalty. It took Aaron Mitchell 17 minutes to die in the gas chamber last April 12 and I thought if the horrors of death by gassing or by electrocution, hanging, or shooting could be brought into the living room, that this might act as a deterrent, whereas, reading objective acts of an execution might not have the same impact.

Senator HART. I must confess I have mixed feelings about it. As my questioning yesterday indicated, in the questioning of the warden and of Mr. Bennett, I have the feeling that you just expressed, that the public would cry "Stop" if they could see the cruelty and the barbarity of the State's action.

Mr. LYONS. I hope that would be the case, Senator.

Senator HART. Yes, one would hope it would be. But those two men against backgrounds of great experience and strong conviction said that the practice is wrong, and cautioned that we ought not to do it.

Mr. LYONS. One of the reasons I have been urging that executions be televised is to confront our society, to force our society to confront itself with the deed of execution, because not only is the executioner's hand on a switch in the gas chamber but my hand is on it just as much as his. He pulls the switch in my name for my protection and at my expense, and I think I have a right to see, more or less, what is being done with my money and for me. He is protecting me, after all.

Senator HART. I made a note of your comment as you went along, the suggestion that it is our hand that is on the switch in the form of our agent's hand. Do we really want that? And as you say, if the job was rotated, how many would pull it in fact? I wonder what kind of volunteers there would be. You said that if it was rotated you would find great protest. There would be some who would volunteer.

Mr. LYONS. There would be a few sadists who would come forward.

Senator HART. It would be interesting to get them identified.

Mr. LYONS. In Biblical times, I am sure you know, Senator, public stoning was the method of execution in which all members of the community took part, and it was public, but public executions have gone out of vogue even with the increase in so-called humane ways of executing people. As Warden Duffy pointed out, I don't think there is such a thing as a humane way of putting another man to death. But 17 minutes in the gas chamber is rather gruesome, I think, and I think the people have a right to see that, and the responsibility, which is more important, I believe.

Senator HART. On campus when groups are formed, there is usually controversy attached, the young Socialists, the young Democrats, the young Republicans, and there is always a counterforce that is at work. Did you run into any students who were critical of your effort to mobilize against legalized murder?

Mr. LYONS. Not a one, Senator. There are a few who are for the death penalty, demanding an eye for an eye and a tooth for a tooth, but if that Biblical statute were put into effect we would have many blind, toothless people on the streets. After all, we would have to cut off the hands of those who passed bad checks and we would have to burn down the homes of arsonists, and this cry of an eye for an eye and a tooth for a tooth is only raised in the case of murders. This is something that always puzzled me and I have yet to understand why.

Senator HART. I always thought that eye for eye, tooth for tooth was a harsh rule in a much earlier society. I was told only a few days ago that the eye-for-eye and tooth-for-tooth rule was established to reduce, to control punishment.

Mr. LYONS. It used to be two eyes for one eye or three fingers for one finger, and that was seen as a reform.

Senator HART. Yes, it was a modification, a restraint on the earlier practice of overreaching, as you say.

Mr. LYONS. Exactly.

Senator HART. An eye for an eye and a tooth for a tooth.

Mr. LYONS. Even if we stuck to an eye for an eye and a tooth for a tooth there are many crimes at the State level which involve no loss of life. The *Chessman* case, I suppose, is the best known example. People still think Chessman killed somebody. He was not convicted of murder. The case of murder never entered the case. There are many crimes which carry the death penalty. For example, in one State the desecration of a grave carries the death penalty. There is obviously no question of taking another life in a case like that, but the death penalty is carried.

Senator HART. What State has that law?

Mr. LYONS. Georgia. Armed robbery carries the death penalty in many States. More people have been executed in this country for armed robbery than for kidnaping, which is something I just found in the "National Prisoner Statistics" a few weeks ago. I had never heard of an execution for armed robbery, even when the question of murder is not involved, where no one is killed, but armed robbery carries the death penalty in a number of States.

Senator HART. I have a large family, and I really have never despaired of your generation.

Mr. LYONS. Nor I of yours.

Senator HART. But I hope very much that you are on television in a great many living rooms tonight, and I do not want to embarrass either parents or child, but you are what parents talk about when they say they hope they will have someone whom they can very proud of. Your parents certainly are.

Mr. LYONS. Thank you.

Senator HART. They take great pride in your sensitive conscience. I know you are not alone on the Berkeley campus.

Mr. LYONS. Thank you, Senator.

Next a member of the Ohio House of Representatives and also a member of the board of community action program in Columbus, Ohio, and the president of the Interdenominational Ministerial Association of Columbus, the Reverend P. D. Hale.

Reverend, we welcome you this morning.

STATEMENT OF REV. PHALE D. HALE, MEMBER, OHIO HOUSE OF REPRESENTATIVES, BOARD OF COMMUNITY ACTION PROGRAM, COLUMBUS, PRESIDENT, INTERDENOMINATIONAL MINISTERIAL ASSOCIATION, COLUMBUS

Reverend HALE. Mr. Chairman and members of the Judiciary Subcommittee, I appreciate the opportunity to give this testimony before you concerning bill S. 1760.

As you know, Christian philosophy certainly states that where there is life there is hope. If it says anything at all to us it says that there is reverence for life regardless of one's differences in other forms of theology. We have learned that persons can change and our religion teaches us that people do, in fact, change and the practice of capital punishment demonstrates a denial of this theology.

Saint Augustine in opposition to capital punishment states:

We do not wish to have the sufferings of the servants of God avenged by the affliction of precisely similar injuries in the way of retaliation, not of course that we object to removal from these wicked men the liberty to perpetuate further crime, but our desire is rather that justice be satisfied without the taking of their lives or the maiming of their bodies in any particular, and that by such coercive measures as may be in accordance with the law they be drawn away from their insane fringes to the quietness of men in their sound judgment, or compelled to give up mischievous violence, and partake themselves to some useful labor.

Senator HART. That was Augustine, did you say?

Reverend HALE. Yes.

Many Protestant churches have taken an official stand against capital punishment. The religious argument against the death penalty generally centers around the belief that even sinful men are the objects of God's redemptive love, and that vengeance belongs to God, not man.

In the words of Bishop John Wesley Lord of Washington, D.C., at a conference of the Methodist Church:

A Christian view of punishment must look beyond correction to redemption. It is our Christian faith that redemption by the grace of God is open to every repentant sinner, and that it is the duty of every Christian to bring to others by every available means the challenge and opportunity of a new and better life. We believe that under these circumstances only God has the right to terminate life.

Similarly, the following resolution was adopted in 1958 by the general convention of the Episcopal Church:

Inasmuch as the individual life of infinite worth in the sight of Almighty God, and whereas the taking of human life falls within the province of Almighty God, and not within the right of man, therefore be it resolved that the General Convention go on record as opposed to capital punishment.

In the Old Testament when Cain killed Abel, Cain was not put to death.

When the State takes a life it cheapens life, and I think, therefore, must justify its action. When the State attempts to justify its actions it

inevitably turns to what it considers to be a fact that capital punishment serves as a deterrent to crime. Now, let us look for a moment at the individual attitude concerning capital punishment serving as a deterrent. Let's take an individual, for example, who is preparing to commit a crime. He anticipates, premeditates first degree murder. Now, this man in his premeditation of this murder obviously figures he is going to get away with the murder or he couldn't commit the murder at all. He figures he is not going to be caught. Otherwise, he would not commit the murder, for he is not going to intentionally kill himself unless he plans suicide, and this is not murder. So, you see, the man who premeditates a murder figures that he is not going to receive the electric chair, therefore, capital punishment does not serve to deter him from committing his crime. Likewise, when a man commits a murder in the act of violence, he obviously doesn't have time to consider capital punishment, and so it does not serve as a deterrent to the commission of that particular crime. In a barroom brawl or in the heat of passion, a bedroom, when one kills another, a capital punishment does not serve to deter that crime. And if this is true with individuals, it would likewise prove true of cities and States.

Let's look, for example, at three States that have abolished capital punishment that are relative in size to three States that have retained capital punishment. Ohio, Indiana, and Illinois have retained capital punishment. Michigan, Wisconsin, and Minnesota have abolished capital punishment. Ohio and Michigan, of similar size, have the same rate; Indiana, 2.0, Wisconsin, similar size, 1.0; Illinois, 4.0, Minnesota, 0.9.

Let us look at cities within the same States.

Chicago, 5.9; Detroit, without capital punishment, 3.1; Cleveland with capital punishment, 4.4; Minnesota, St. Paul, 1.2. Cincinnati, with capital punishment, 4.0; Milwaukee, without capital punishment, 1.0. Columbus with capital punishment, 3.2, Flint, Mich., without capital punishment, 1.9. Dayton, with capital punishment, 5.7, Grand Rapids, without, 2.0. Toledo, with capital punishment, 3.0, Lansing, without capital punishment, 2.8.

Now, I am not trying to make a point here that because the State abolishes capital punishment their rate is lower, because this is not always true, but it is over a long period of time and by and large it is never any greater.

This, likewise, proves true in regard to police officers. There seems to be no deterrence to not shooting police officers when the State has capital punishment as against when it does not.

Concerning this question of deterrence, let me give you a quote from ex-Warden Clinton T. Duffy of San Quentin Penitentiary, who spent his life for all practical purposes, as a warden of that penitentiary, and this is his statement:

I have asked hundreds, yes, thousands of prisoners who have committed homicide whether or not they thought of the death penalty before the commission of the act. I have to date not had one prisoner to say that he thought of the death penalty prior to the commission of the crime. I do not favor capital punishment because I do not believe it is a deterrent to crime.

On another area concerning this, capital punishment cases deal with fallible human beings and ask these people to make irrevocable decisions. Thus, the chance of executing an innocent man is always possi-

ble because we are fallible human beings, and the decision we ask a jury to make is unchangeable. In a very large sense, this is a denial of the due process of law because the criminal, once executed, has no chance to change the decision that has been passed upon him. Now, if this were really true it would prove true in fact, and in fact it has.

Since 1893 there have been 74 wrongful convictions of the death penalty in the United States. These figures are from the Library of Congress, compiled by the Legislative Reference Service in Washington. Now, these wrongful convictions of the 74 of them, some have been released, some have had their sentences commuted to life imprisonment, and various things have happened to them. But, gentlemen, eight of them have been executed, in fact, I think this is important, capital punishment also is notoriously uneven and unjust. If you are a wealthy man the chances are infinitely against your ever being electrocuted. From 1930 until 1964 there were 555 executions in the United States for the crime of rape; 405 of these were poor people, Negroes, and from the South. All in the same category. Of all the executions in the United States, in the history of this country, 53.6 percent of these people have been poor people, Negroes, and from the South.

I think this is important. In Pennsylvania, all Negroes between the ages of 15 and 19, 100 percent sentenced to the electric chair were executed, while only 22 percent of the white in the same age bracket sentenced to death were executed.

Senator HARR. What State was that?

Reverend HALE. The State of Pennsylvania.

In Ohio during the year of 1958 and 1959, 78 percent of the Negroes convicted of murder were executed, while only 51 percent of the white were executed.

Negroes as a majority factor in the unequal application of the death penalty: The Federal Bureau of Prisons in its 1965 National Prison Statistics Bulletin on execution indicates that during the period 1930 to 1964, nine-tenths of all executions for rape have been nonwhite. As National Prison Statistics show, of the 19 jurisdictions that have executed men for rape since 1930, a third of them have executed only Negroes.

The death penalty also is very costly. We think, off the cuff, how easy it is to execute a man and, therefore, eliminate the cost. But, in fact, this proves to be just the opposite. For example, when a man receives the death sentence it is usually 18 months to 2 years before he is ever executed, and incidentally, most of the cost is borne by the taxpayers. In nine out of 10 cases a court-appointed attorney is required because the person is not financially substantial enough to hire his or her own attorney. This also certifies the fact that there is inequity in the death sentence. It is very seldom that the court appoints topflight law firms to represent the poor. Therefore the attorneys who represent the poor in a death sentence are assigned, they are defended by inexperienced attorneys without the staff that the district attorney has, without the staff to do research on the background of the jury and witnesses and the actual case.

So the taxpayers bear the burden of the death penalty, which is more costly than life imprisonment. California has done a study on this and they have arrived at a figure of \$90,000 to finally execute a

man, and a person can be kept in the California State Penitentiary for a lifetime for a little over \$30,000. We know the figures exactly because of the cost of food and lodging in a penitentiary that can be figured on a day-to-day basis.

Let me also point out that over the 3,000 executions in the history of our country, 178 have been teenagers. I think I need not add that there seems to be something wrong with our faith in humanity when we execute a teenager.

By and large, the objective facts seem to say to us that capital punishment is a denial of the equal protection under the law.

Still another point that doesn't have as much weight perhaps, but is increasing in its strength because of our understanding of people through modern methods of psychiatry, is that a mentally unbalanced person actually seeks out a State where capital punishment is in effect in order to commit suicide. By this, I mean the person who is mentally unbalanced and would commit suicide but doesn't have the courage, will move into a State where capital punishment exists and kill someone in order to receive the execution of the electric chair, or gas chamber, or whatever the method may be. The psychiatrists have no complete and exact figures but they know many cases where this is true as far as individuals are concerned, and on a large scale this would mean that the States that have capital punishment would have a larger or higher first-degree murder rate than other States.

Still another fact on this subject is that in a very real sense you have a biased jury in a capital punishment case and fundamentally the trial is unfair because of the sensationalism involved in a murder trial.

Justice Frankfurter has commented that he would be against capital punishment even if it could be proven that it were deterrent because of this very fact of the glamor and excitement and sensationalism that goes with a capital punishment trial or murder case. You see, when 12 people are chosen for a first degree murder trial they are asked if they are opposed to capital punishment and if they do not believe in capital punishment they are excused from the jury, which means that you have 12 people on a capital punishment case, all of whom are capable of accepting capital punishment.

Then, too, it must be noted that capital punishment runs counter to modern penology. There is not a reputable penologist, or a man who has studied crime and criminals and penitentiaries in the United States who does not oppose capital punishment. Our present Attorney General Ramsey Clark, and our prior Federal Attorney General Katzenbach both opposed capital punishment for our country. And incidentally, the civilized trend is against executing people. For example, this year only one person in the United States has been executed. Last year only one person was executed, and the trend is downward as against upward.

I submit for your thinking we have on the books of the United States a law that is unnecessary, unjust and unjustifiable, and should be removed.

Thank you for your consideration.

Senator HART. Thank you, Reverend Hale, for your thoughtful recommendations.

You are sitting now as a member of the House of Representatives of the State of Ohio; is that correct?

Reverend HALE. Yes.

Senator HART. What effort, if any, has developed in Ohio to eliminate capital punishment from the statutes of your State?

Reverend HALE. In 1965 there was a bill which was defeated 68 to 61, 22 short of the requirement for constitutional amendment, the 107th assembly. The bill submitted was defeated.

Senator HART. The 107th current assembly?

Reverend HALE. Yes.

Senator HART. Was the effort which failed 68 to 61 an effort to amend the constitution?

Reverend HALE. Yes.

Senator HART. Do I understand that capital punishment is a part of the Ohio constitution?

Reverend HALE. Yes.

Senator HART. Was there great public attention paid to the effort or either of these efforts to get great press attention, or relatively little?

Reverend HALE. Relatively little, in the current effort, not too much public attention.

Senator HART. Is there any organized lobby that goes to Columbus and does what lobbyists properly can do, stop you in the halls, make a recommendation?

Reverend HALE. There was not very much. This bill was introduced by Robert Jones, a Republican, a member of the majority party. He is in the house. He introduced it in the senate. It was defeated in the committee. It did not reach the floor of the senate. Evidently the party did not want this law.

Senator HART. Has either political party in recent years made the abolition of capital punishment a part of their platform?

Reverend HALE. No.

Senator HART. Yesterday, I think it was Mr. Bennett, but one of our witnesses, reminded us that there isn't a very effective lobby in support of the abolition of capital punishment. Those who have experience are not here to lobby, and those who are among the 400-odd now on death row are generally, as you have said, rather forlorn, forgotten people, many of whom have offended in an outrageous fashion what society thinks is essential for its survival.

I think we are faced with a legislative effort that has to be motivated pretty largely by one's own feeling about what is right or wrong in this issue, and we cannot wait, as the legislative body, until we can point to the mail stack which shows 400 letters in favor of the abolition and only three against it, and say, "Now the time has come."

It is very likely that we will never get that kind of mail count, and it is an issue where really you resolve it without reference as to what is or isn't the popular mood. Would you agree to that?

Reverend HALE. I agree to that. It might be that if this were brought before the people of the State of Ohio, if we could get a good press on it, if we could debate it in the State of Ohio through the news media, through radio, I think that many people would become interested, that it might be more palatable, and increase the chances for getting through the legislature. As of now we have not had that.

Senator HART. The witness who preceded you, Douglas Lyons, described the effort on the Berkeley campus. It may very well be that this issue could be turned around and that the kind of steam that I just suggested would never develop; namely, a really strong, effective lobby

could be generated out of student power, because if we ever had any doubt about the effectiveness of student power, we have learned in recent days that there is steam to it. It is possible that that is the source to which you should look.

Reverend HALE. I think that is quite suggestive. I am not doubting the power of student power and student bodies. I have two children who are in college, and they sort of keep me up to date on what is going on. I would certainly take this, though, as a suggestion and go back to Columbus and see if I can't start something for the next session of the legislature.

Senator HART. I know that you in this session supported the effort to abolish it, but in addition to sermons on Sunday and visits to the Columbus newspapers, maybe you ought to go over to the campus there at Ohio State.

Reverend HALE. I will.

Senator HART. And see if in addition to their football team they couldn't get something else going.

Reverend HALE. Yes.

Senator HART. Namely, a chapter to zero in on capital punishment.

Reverend HALE. Yes.

Senator HART. Thank you very much both for your testimony and for your efforts at home in this cause.

Reverend HALE. Thank you.

Senator HART. Excuse me. Mr. Paisley, I am sure, has some questions.

Mr. PAISLEY. Reverend Hale, I preface my questioning by saying to you that I agree with you. If I had a vote, I would vote for this bill. But I guess you heard Mr. Lyon's testimony this morning that the Gallup poll shows 38 percent of the people do not favor abolition. Did you hear him so testify?

Reverend HALE. I didn't get the figure.

Mr. PAISLEY. What is that?

Reverend HALE. I didn't get the figures.

Mr. PAISLEY. I understood him to testify to that. So eventually some questions are going to be asked about this bill, so I might as well take a few moments to ask you a few.

In the first place, the jury has to find you guilty, proved beyond a reasonable doubt. That is true, isn't it?

Reverend HALE. Yes.

Mr. PAISLEY. And I believe the Federal law is, as it is in many States, that the jury may recommend mercy if they feel that there are extenuating circumstances. That is true. And if a mistake is made by the jury, there is still appeal for executive clemency. The Governor or President may pardon or may commute the sentence to life in prison or a lesser number of years.

My question to you is what do you say to the opponents of this bill who say, "Well, a life sentence just doesn't mean a life sentence. In a few years this man or woman who has committed this horrible crime is out on the public again, and the public has a right to be protected."

I have in mind, for instance, the recent case of the Boston strangler, who kept the people up there, the women, in fear for a number of months as I read the paper. Then another case that comes to my

mind is the man who walked into a bank out here in Nebraska, robbed it and shot three people lying on the floor.

How is the public to be protected from the possibility, the probability, that a life sentence will only mean a few years? What is your answer to those people?

Reverend HALE. No. 1, research has indicated that society is amply protected by a sentence of life imprisonment. Research has also indicated that a very small percentage of persons who have been paroled have repeated crime.

In answer to a part of the first statement that you made, we still have to reckon with the fact of the infallibility of human beings, and it is a tremendous risk to kill a man and knowing that the judge and the jury might be wrong.

Mr. PAISLEY. There are pretty good safeguards, aren't there, the jury, the Governor, and the President. Doesn't the Governor always have the record before him? Undoubtedly they all conscientiously read the record. Isn't that a pretty good safeguard that it is very unlikely that an innocent man is going to be executed?

Reverend HALE. But the records are recorded by fallible men who are subject to making wrong judgments, making wrong decisions. The record also indicates that most of the people who are executed are poor people who do not have the means to employ the best lawyers, the best technicians to defend them. So many times you might not have all of the facts brought out.

There is also the possibility of having prejudiced persons sitting on the jury.

Mr. PAISLEY. I have one other question that I will ask you now.

Should there be written into this bill any restrictions on the parole boards, or that a life sentence should consist of at least a certain number of years, something like that? Would you favor that?

Reverend HALE. I would prefer that we seek to strengthen the rehabilitation efforts in the institution. It is recorded that many people, most people who commit murders are mentally or emotionally disturbed. They are sick. They don't need to be killed. They need to be held.

Mr. PAISLEY. You feel, then, that the matters of parole can safely be left to the Federal parole board? This would be a Federal statute. It wouldn't apply to the States.

Reverend HALE. I believe so.

Mr. PAISLEY. Would you favor the jury, if it recommends mercy in a capital case, fixing a number of years for the man accused? Would you favor that?

Reverend HALE. I am not sure. I am not sure whether I do or not.

Mr. PAISLEY. Do you happen to know, Reverend Hale, what the effect of the so-called Lindbergh law was? You remember when the Lindbergh baby was kidnapped and murdered?

Reverend HALE. Yes.

Mr. PAISLEY. And it was made a capital offense in the Federal court system?

Reverend HALE. I know something about it.

Mr. PAISLEY. To kidnap and kill or do bodily harm on the victim. Do you happen to know whether it has had any effect as a deterrent?

Reverend HALE. No; it did not serve as a deterrent.

Mr. PAISLEY. What is that?

Reverend HALE. It did not serve as a deterrent.

Mr. PAISLEY. It did not? You don't think it did?

Reverend HALE. No.

Mr. PAISLEY. I have nothing further.

Senator HART. Reverend Hale, thank you very much.

Reverend HALE. Thank you, Senator.

STATEMENT OF HON. G. MENNEN WILLIAMS, FORMER GOVERNOR OF MICHIGAN

Mr. WILLIAMS. Thank you very much.

Senator HART. Governor, let me explain to you and to other witnesses who have prepared statements, the statements will be printed in the record in full as though given in full, and if as a witness goes along there is any amplification or summation that he cares to make, feel free to do it.

Mr. WILLIAMS. Thank you very much.

My statement is very brief. I am not what you might call an expert witness, but I will give you a few reactions of my own.

I thought it would be particularly useful to give you my reactions as of the time I was Governor, and so I have quoted extensively from a telegram that I sent to California at that time when they were considering revising their law, and I have attached that to the statement.

As you have indicated, I was the Governor of Michigan from 1949 to 1960, and I am here to testify in favor of abolishing the death penalty.

Michigan was the first State to abolish the death penalty and did so in 1846. The people of Michigan have been satisfied that they took the right step.

For example, the restoration of the death penalty was defeated 352,594 to 269,538 in a 1931 popular referendum.

During the 12 years that I was Governor, from 1949 to 1960, there was no real effort to restore the death penalty. On March 8, 1960, I was

able to telegraph an inquiring California State senator, "No bills on this subject have been introduced in recent legislative session."

In my mind there are two principal arguments in favor of abolishing the death penalty. One, there is no good evidence that the death penalty deters crime.

Two, because of human fallibility, the death penalty permits the possibility that some innocent people can be executed along with the guilty.

As to the first, the primitive law of retaliation, an eye for an eye and a tooth for a tooth, has generally been discarded as outmoded.

For example, we no longer chop off a man's hand for theft. However, the death penalty has been retained on the theory that it deters murder.

The fact of the matter is, however, that there is no good evidence that the death penalty acts to deter homicide.

In the above-mentioned telegram to the California senator while I was Governor, I responded to his question, "Has absence of death penalty in any way increased danger to the public safety," as follows:

"Statistics on capital offenses in this and other States show no correlation with death penalty or its abolition and there is no evidence that its abolition in Michigan has in any way endangered public safety."

Chairman Hart, in your statement introducing the bill to abolish the death penalty, you pointed out that the States not having the death penalty by and large had fewer capital crimes than those which had capital punishment in recent years as well as at the time I was Governor.

In passing, in response to the California State senator's question, "Does absence of death penalty create greater security problems in prisons," I replied:

"As a group, our lifers are better behaved than any other inmates. Our corrections deputy director advises lack of death penalty does not create any security problem."

As to the second point, that the death penalty permits the possibility of legal execution of innocent persons, may I again refer to my California telegram. In it I said:

"In recent years, several Michigan men convicted of capital offenses and sentenced to life have later been released because of substantial doubt as to guilt. Had they been executed, no power on earth could have eased society's guilt in these cases."

In conclusion, then, while there are many supporting arguments, such as the trend among most European and Latin American countries against the death penalty, as I renew my own personal reactions when I was Governor, and my study of the arguments today, I feel that the case against continuing the death penalty is more than adequately made by the two arguments.

First, the death penalty survives the outmoded "an eye for an eye" system of justice only on the assumption that it deters crime, whereas in fact there is no evidence that it does.

And second, the existence of a death penalty makes the execution of innocent people possible.

Therefore I would hope and recommend that this committee will in turn recommend that the death penalty be abolished.

Senator HART. Thank you, Governor.

I may be the only one in the room who can testify of my own knowledge that you did more than just get periodic monthly reports from penal institutions in Michigan, but went into them and spent an enormous amount of time in attempting to upgrade, not alone the institutions themselves, but the rehabilitation efforts that are so critically important. I may be the only one here to remember that once when you visited an institution you were kidnapped by inmates. You, I am sure, recall that incident. Do you think that it would not have occurred if Michigan had capital punishment on the books?

Mr. WILLIAMS. I don't really think it would have made any difference. One of the would-be kidnappers was called Crazy Jack and he was true to his name. He was demented. The other one, the principal one, thought only that this was a means of escape. He hoped to use the Governor as a shield to get out of the prison and get away.

I am sure that he was motivated by only one thought and that was escape, and I am sure that he wouldn't have been deterred by the fact that there was a death penalty.

Senator HART. Do you recall the circumstances that gave rise to the referendum vote in 1931 in Michigan? I do not.

Mr. WILLIAMS. No, I am not sure, but in order to respond to the Honorable Fred Farr, the State senator in California, we had research done, and our colleague Alfred Fitt, now in the Defense Department as Under Secretary, I believe researched this out, and presented these facts.

Senator HART. I think I should comment on the record that as I look at this telegram sent by the Governor of Michigan, G. Mennen Williams, to the Honorable Fred Farr, State senator, it is a rather long telegram, and up at the top under the Western Union code I see that it was sent collect.

Mr. WILLIAMS. That was just one more evidence of our economical operations.

Senator HART. I wanted to make that point.

Mr. WILLIAMS. Thank you. I think so long as you made reference to this telegram, the second point might be brought out in testimony as the previous witness touched upon it, and apparently in the questions of counsel the idea is important, and that is in response to his question about the police, we replied:

"No evidence whatsoever that police endangered by lack of capital punishment."

Senator HART. Mr. Paisley.

Mr. PAISLEY. Governor, you probably don't remember it, but you and I were coworkers in World War II.

Mr. WILLIAMS. Well, that is something that one presidential candidate has forgotten, that he was a colleague also.

Mr. PAISLEY. I remember you quite well.

Mr. WILLIAMS. Thank you, sir.

Mr. PAISLEY. I just thought I would mention that.

Can you tell us, Governor, what the average time served by lifers in Michigan is?

Mr. WILLIAMS. Let me begin to testify on that with this observation. When I became Governor, we had the problem of setting up a policy for executive clemency, and in Michigan it only went to those who were in for life.

We discovered that previous Governors, and my memory may be a little faulty but it is pretty close, during the course of a year probably released only five to 10 people. I think one Governor went so far as to release 30.

We decided that we would release them on the basis of what we thought was justice, and we didn't get too high at it. My recollection—Senator Hart, who was legal adviser to me may have a better memory than I—I think it was 10 to 20. It wasn't higher than that. And as a consequence, I would recollect that most of the people had been in 20 to 30 years, and most of the people were rather elderly by the time that they moved out.

Mr. PAISLEY. I think most people agree that the death penalty is not a deterrent, but so many people seem to worry about the fact that these vicious killers go around killing people, raping little girls and murdering them, and such crimes as that, and that they will soon be out on the streets again, and they are worried about it. Of course, the vote in Michigan was in 1931. Probably the percentage, if it were held today, would be more in favor of abolishing the death penalty. But now a lot of people are worried about it. What is your answer to those who oppose this bill on this ground?

Mr. WILLIAMS. Well, my best answer would lie in the neighboring State of Ohio, because when my wife went down there to visit Jane Lausche when Senator Lausche was Governor, I discovered that the inmates who were serving in the governor's mansion, many of them were murderers, and so I gather that they had their choice of who they were going to have, they wouldn't pick that kind of person if they had fear about them.

I would say that obviously many people would have an instinctive reaction against at least a recent murderer being turned loose, but the statistics and the facts of the matter are that the number who repeat is exceedingly small, and I think that with a reasonable system of release, and as I listened to your questioning of the former witness, it sounded as though it was just going through a revolving door, you go in and the next day you come out, whereas, as my testimony indicated as far as Michigan was concerned it was 20 or 30 years, I think that the danger from the former murderer is probably not greater but less than from the average run of the mill citizen you might run into under equal circumstances.

Mr. PAISLEY. You see no point then in amending this bill to place any restrictions on parole boards? You feel that the parole boards can adequately protect the public from this fear.

Mr. WILLIAMS. I feel that the parole board would feel a responsibility, and not only the parole board but the chief executive who appointed the parole board would feel that responsibility, and I would imagine that any policy adopted to begin with at least would be most conservative until they had had a favorable experience, and so I think

there really isn't much necessity of trying to curtail the parole board, because I think that they would treat the matter with a great deal of caution.

Mr. PAISLEY. Thank you very much. It is good to see you again.

Mr. WILLIAMS. Thank you. Nice to see you again, sir.

Senator HART. Governor, I can't recall, when I had the privilege of working for you as legal adviser, anyone going out who was under life sentence, short of surely the period you indicated, I am sure not.

The lifer got a first parole board review after 10 or 15 years, I forget which one it was, but invariably he was put down for a second review and the inmates understood that practice. They didn't even anticipate a serious crack at it before that time.

Mr. WILLIAMS. If it would be useful to the committee, I could inquire of the parole system.

Senator HART. Would you, please?

Mr. WILLIAMS. Surely.

Senator HART. We will make it a part of the record at this point. (The information referred to was not supplied.)

Senator HART. Again, Governor, thank you very much for coming.

Mr. WILLIAMS. Thank you, sir.

STATEMENT OF PROF. LEON RADZINOWICZ, WOLFSON PROFESSOR OF CRIMINOLOGY AND DIRECTOR, INSTITUTE OF CRIMINOLOGY, UNIVERSITY OF CAMBRIDGE; ADJUNCT PROFESSOR OF CRIMINAL LAW AND CRIMINOLOGY, COLUMBIA UNIVERSITY

Mr. RADZINOWICZ. Senator Hart, I feel a little bit like an old Victorian piece of furniture. I was asked to appear before you largely because I was a member of the Royal Commission on Capital Punishment, but this, Senator Hart, was a very, very long time ago, and we did take a long time on the job. We started in 1949 and we finished in 1953.

Capital punishment is a grim, complex, and grave matter, and it deserves careful dispassionate analysis.¹

We have been greatly helped in our onerous duties by a group of distinguished experts, American experts, Felix Frankfurter, Learned Hand, Charles Breitel, among the judges, Herbert Wechsler, George Deirgan, Thorsten Sellin and Louis Schwartz, among the professors, not to mention many others. I shall always remember the exciting times that I had in your country when I came here to study the working of your capital punishment laws.

¹ The Commission produced a most comprehensive report of some 500 pages, including 16 specialized appendixes; and minutes of evidence running to 900 folio pages were subsequently published.

The Commission made many important recommendations and all considerations of the subject in Britain since 1953 have largely been made in the light of its report.

I am honored to have been invited to testify before you, but I am painfully aware that I cannot in any way be as helpful to you as our American friends who worked with us nearly 20 years ago.

You have asked me to come here because England has been a classical country for the study of many great problems, industrial revolution, growth and fall of an empire, parliamentary system, common law. At a different level it would be difficult to find another civilized country in the world that would afford an equally rich opportunity to study the evolution of capital punishment in the conduct of a civilized society.

I don't wish to bore you. I do not propose to give an academic lecture, but I think that it is important to study capital punishment in your country also, in the context of its evolution.

Between 1750 and 1825 the criminal law of England bristled with capital sanctions. One statute alone, Waltham Black Act, contained at least 100 provisions to which the punishment of death was appointed. This was a period of suspended terror, of crude retribution, of confused scales in crime and punishment. Even when a timid change was proposed, like, for instance, abolition of capital punishment for shoplifting, the House of Lords rejected the bill not less than six times between 1810 and 1820.

In the second period, from 1829 to 1839, at last the principle had been acknowledged that no offense against property unattended by violence should carry capital punishment, and indeed that the same principle should apply to certain offenses against a person that were of a minor character. As a result of the second attitude, capital punishment went down the scale and was appointed for not more than a dozen or so crimes.

The third stage is 1861. An ultimate balance, or shall I better say a tributary equation, was established between the crime of murder and the legal executed death. Since that time, treason apart, there have, in fact been no executions for crimes in England other than murder. Although between 1864 and 1949, several attempts have been made to dilute this equation or even to do away with it. None proved to be successful. Thus an equilibrium has been established which has lasted nearly 100 years between the top crime and the top punishment.

We are now at the stage of a radical departure. We enter upon the phase leading to the Murder (Abolition of the Death Penalty) Act of November 8, 1965.

In 1949 a Royal Commission was appointed "to consider and report whether liability under the criminal law in Great Britain to suffer capital punishment for murder should be limited or modified . . .". They were specifically precluded from considering whether the abolition of capital punishment would be desirable. Among the chief recommendations of their report of 1953 were that the doctrine of "constructive malice" should be abolished; that the jury should be given discretion to impose a sentence of life imprisonment instead of a death sentence, and that the minimum age limit for the death penalty should be raised to 21. There was no immediate change in the law.

In 1955 the House of Commons passed a motion on a free vote to take note of the Royal Commission's report, but rejected a call for legislation to suspend the death penalty for 5 years. In 1956, after another

similar motion had been carried, the House of Commons passed the death penalty (abolition) bill on a free vote. It was rejected in the House of Lords by a very large majority.

Late in 1956 the Government introduced a homicide bill designed to restrict capital punishment for murder to the categories of murder that were considered to strike especially at the maintenance of law and order, namely:

1. Murder in the course or furtherance of theft.
2. Murder by shooting or causing an explosion.
3. Murder in the course of resisting arrest or escaping from legal custody.
4. Murder of a police officer or a prison officer.

This bill passed into law as the Homicide Act 1957. It retained the death penalty for repeated murders as well as for those in the categories listed above. For any other type of murder the penalty was life imprisonment.

The act also introduced, for England and Wales, the defence of diminished responsibility whereby, under section 2 "where a person kills or is party to a killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing." A person charged with murder who puts forward a successful defence on this count is convicted of manslaughter.

In 1964, a further bill to abolish capital punishment was introduced by a private member of Parliament. The Government gave the measure parliamentary time and allowed a free vote. The bill was accepted by both houses and became law as the Murder (Abolition of Death Penalty) Act on November 8, 1965.

The act does not extend to offenses other than murder. The death penalty still applies to offenses of treason; piracy with violence (Piracy Act 1837); arson in H.M. Dockyards (Dockyards Protection Act 1772); and to certain naval and military offenses under the Naval Discipline Act 1957, the Army Act 1955 and the Air Force Act 1955.

The main features of the act are:

1. The death penalty is abolished for murder, and the sentence of imprisonment for life substituted. This provision extends to trials before a court martial.

2. The court, in passing a sentence of life imprisonment, may recommend a minimum period that should elapse before the murderer is released from prison.

3. The Home Secretary must consult the Lord Chief Justice and the trial judge, if available, before using his powers to release on license under section 27 of the Prison Act 1952 a murderer sentenced to life imprisonment. If a murderer sentenced to life imprisonment is eventually released, he remains on license, and is liable to recall at any time at the discretion of the Home Secretary.

4. The Act has force for an initial period of 5 years, after which it will be reconsidered by Parliament.

Under section 61 of the Criminal Justice Act 1967 the Home Secretary may release a life sentence prisoner on license only if

the Parole Board so recommends. The provision comes into force on April 1, 1968.

On November 23, 1966, the House of Commons on a free vote refused a private member leave to introduce a bill to restore capital punishment for the murder of police and prison officers.

Parliament will be obliged to consider the law governing the penalty of murder again before July 31, 1970, since on that date the 1965 act expires unless Parliament otherwise determines by affirmative resolutions of both Houses.

Thus the movement for the abolition of capital punishment stretches over more than 250 years, from 1750 to 1964. It represents a checkered and fascinating chapter of criminal law and penal history of great interest to the English-speaking world. At the end of it, England had reached, or very nearly reached, the abolitionist status. It was a long and tortuous process, which cannot be regarded as having gone through its full cycle yet.

DIFFICULTIES IN PROPERLY ENFORCING THE DEATH PENALTY

If, when the Royal Commission was appointed, a referendum had been launched to know where the population of the United Kingdom stood with respect to capital punishment, I would guess that the majority (and a comfortable one) would have been in favor of retaining it. But the minority, though small, was an enlightened one, and, like all other minorities, was vociferous, determined, and deeply motivated. They were helped by the real objective difficulties encountered in the imposition and enforcement of capital sentences. These difficulties, I venture to say, may be relevant to your own pre-occupations and I shall therefore indicate them briefly:

(1) Difficulties of redefining and amending the law of murder; retaining or abolishing the doctrine of constructive malice; extending the criteria of provocation; excluding certain additional categories of homicide from the definition of murder according to its degrees; mode of execution or premeditation. All existing attempts proved unsatisfactory simply because of the heterogeneous character of murder and the virtual impossibility of expressing its many shades in technical language—a necessity which is required whenever capital punishment is retained for murder.

(2) Second, the growing reluctance to avoid executing women and younger delinquents. Sex and age seem to be taken seriously into account in all civilized contemporary society when it comes to enforcing a sentence of capital punishment. Rightly or wrongly, it is felt that when these two factors come into play, they should exercise a restraining effect on the enforcement of capital law. It is felt that one should avoid putting to death women or young men.

(3) Third, there is confusion and often distortion with respect to the proper assessment of the mental state of the offender accused of a capital crime. It is said that much of the trouble we have applying any kind of rules to assess the mental state of such an offender (M'Naghten Rules, Durham Rule, and so forth) would disappear or at least recede into background if they were not connected with the infliction or noninfliction of the capital sentence.

(4) Juries rightly demanded a very high standard of proof before they would convict of murder. In addition, there was evidence that they sometimes returned verdicts of manslaughter, and more rarely of guilty but insane, or acquittal, in cases where there was little doubt the offender was guilty of murder.

(5) And last, but not least, the prerogative of mercy, used on the advice of the Home Secretary, to reprieve those already found guilty and sentenced to death, was much the most important factor in the non-enforcement of the death penalty.

During the past 50 years some 45 percent of condemned murderers had been so reprieved. This was seen as "the natural consequence of a law which has the basic defect of prescribing a single fixed automatic sentence for a crime that varies widely in character and culpability, and for which the penalty of death is often wholly inappropriate."

The Commission found three objections to this arrangement whereby the actual sentence was selected not by the court but by the executive.

(a) The prerogative ought to be invoked only as an exceptional measure. It should interfere with the due processes of law only in those rare cases that could not be foreseen and provided for by the law itself.

(b) The Secretary of State should not act, in effect, as "an additional court of appeal, sitting in private, judging on the record only, and giving no reasons for his decisions." At the same time, the Commission accepted the arguments against requiring him to give reasons.

The wide gap between death sentences pronounced by the courts and death sentences executed was seen by some witnesses, especially the Archbishop of Canterbury, as reducing the sentence to a mere formula and thereby degrading the majesty of the criminal law. Others disagreed. The Commission thought that at least it was an anomaly that should be removed if practicable by altering the law.

THE LIKELIHOOD OF ERROR

Important as all these circumstances and factors may be, they become secondary when compared with the likelihood of judicial error. No sanction is perfect and (at least some of the limitations connected with the death sentence would be charged to the inevitable imperfection of our social and penal arrangements. But the likelihood of error in a capital case stands on a different footing altogether. If proved to have occurred, it would certainly produce an explosion of deep emotions in society at large. It could not fail to engender revulsion against capital punishment as such.

The possibility of wrongful conviction and miscarriage of justice in a capital case was barely touched upon. On the evidence of witnesses, and in view of the existence of so many safeguards (including the availability of the prerogative in any case where there was a shadow of doubt), it seemed virtually ruled out. In any case, it was not of direct concern to a commission charged with considering the limitation of capital punishment rather than its abolition.

But mention was made of the very rare cases where the Home Secretary might recommend a reprieve because, though the condemned had been rightly convicted on the trial evidence, there remained a

"scintilla of doubt." As an illustration was given the case of a man convicted mainly on the evidence of another person with criminal antecedents, who, if the accused were really innocent, must himself have committed the murder.

THE CASE OF TIMOTHY JOHN EVANS

I now have to refer to the case of Timothy John Evans. It is a case which more than any other factor related to the enforcement of capital punishment in England helped to mobilize public support for a change in the law.

Among the most potent arguments used by abolitionists in Britain in the last decade has been the possibility that an innocent man was possibly hanged in London in 1949. The case, that of Timothy John Evans, aroused little interest at the time, and appeared to be an ordinary murder case, in which the evidence was comparatively straightforward. Among the most important evidence was a confession by Evans that he had killed his wife and baby daughter.

The case aroused fresh attention in 1953 when the other male occupant of the house in which Evans had lived, John Christie, was convicted of murder and found to be a multimurderer whose various female victims were found lying under floorboards and in the garden of the house. It appeared that Christie had killed these women, including his wife, over a period of years, and in each case sexual gratification was the motive. As Christie had been a leading prosecution witness in the *Evans* case, considerable doubt was felt about the conviction of Evans, who was a man of very limited intelligence and could easily, it was argued, have made a false confession.

An official inquiry was held by Mr. John Scott Henderson, Q.C., before Christie was executed. This inquiry, which was completed in a short space of time, came firmly to the conclusion that Evans was guilty of the murder of both his wife and his daughter.

Many, however, remained unsatisfied, and detailed criticisms of the Scott Henderson report were put forward in many quarters in the succeeding years. In particular, Mr. Ludovic Kennedy, in a book written in 1961, vigorously defended Evans' innocence and attacked the Scott Henderson report. There were repeated demands to successive Home Secretaries for a fresh inquiry into the case, but these demands were consistently rejected until, in 1965, the Home Secretary appointed Mr. Justice Brabin to hold a fresh inquiry.

This new inquiry took a year, and was most thoroughly carried out. Mr. Justice Brabin stressed the difficulties under which he had worked, due to the time that had elapsed since the events of 1949. In these circumstances, he felt, to come to any conclusion beyond reasonable doubt was impossible. However, the terms of his inquiry did not restrict him to conclusions of this degree of certainty, and, after carefully weighing the evidence, he reached the conclusions—(a) that it was more probable than not that Evans had killed his wife; (b) that it was more probable than not that Evans had not killed his daughter.

Evans, however, had been convicted of the murder of his daughter, and was not tried for killing his wife. In these circumstances, the Home Secretary recommended a royal pardon in respect of the conviction, and this was granted.

THE DETERRENT EFFECT OF CAPITAL PUNISHMENT

This, as you realize, is a big subject in itself, a subject which has filled many hundred pages in every country of the world where capital punishment has been debated in order to justify its retention or its abolition. It is, I am afraid, a subject upon which sober and critical men allow themselves to be led along a path of phantasy and wishful thinking. I believe that what our Commission had to say on the subject still deserves careful notice. I hasten to add that my respected friend, Prof. Thorsten Sellin (whom I am delighted to see here), has helped enormously. Here is the gist of our reasoning, and again I can do no more than to put the communication before you in almost telegraphic terms.

Under this head the Commission found it "extraordinary difficult to find conclusive arguments either way" (p. 18, par. 55). The arguments, both for and against, fell into two main groups: (1) Arguments from commonsense and "human nature"; (2) Arguments from statistics.

1. "*Commonsense*" arguments

(a) The general a priori argument from human nature and the fear of death. This was supported by all ranks of police and prison services. The case was well put earlier by James Fitzjames Stephen: "All that a man has will he give for his life"—nothing is more feared than death, therefore nothing can be so effective a deterrent.

The counter-argument is that death is by no means certain even in a capital case: in the 50 years 1900–1949 there was only one execution for every 12 murders known to the police.

But against that it can be argued again that few potential offenders are likely to know how great is their chance of escape.

(b) The indirect effect in building up abhorrence of murder because it incurs the death penalty is at least equally important: "We think it is reasonable to suppose that the deterrent force of capital punishment operates not only by affecting the conscious thoughts of individuals tempted to commit murder, but also by building up in the community, over a long period of time, a deep feeling of peculiar abhorrence for the crime of murder" (p. 20, par. 59).

(c) The special deterrent value of the death penalty in restraining professional criminals—(i) from proceeding to murder to gain their ends or to silence a victim; (ii) from carrying arms. This again was strongly supported by police and prison services. No evidence from other countries that abolition had produced the consequence feared. But the Commission agreed that it was "inherently probable that, if capital punishment has any unique value as a deterrent, it is here that its effect would be chiefly felt and here that its value to the community would be greatest" (p. 21, par. 61).

2. *Statistical arguments*

Mostly collected by those favoring abolition. Countered by arguments that statistics are open to different interpretations, unreliable, or not valid for comparison.

Claim that abolition of capital punishment in other countries has not led to increase of murder or homicide. Can be based on either—(a) comparisons between countries, or (b) trend of homicides

within a single country before and after abolition (this is a firmer basis).

(a) Comparisons between countries are misleading except within very narrow limits because of differences in

- (i) legal definitions;
- (ii) practices of prosecuting authorities and courts;
- (iii) methods of compiling statistics;
- (iv) political, social, and economic conditions.

Where they were possible (e.g., between certain groups of States in the United States, and perhaps also between Australia and New Zealand) the Commission agreed with Sellin that "there is no clear evidence of any influence of the death penalty on the homicide rates of these States * * * both death-penalty States and abolition States show rates which suggest that these rates are conditioned by factors other than the death penalty" (pp. 22-23, par. 64 and app. 6).

(b) "Before and after" comparisons within the same country. There were also difficulties about these.

(i) Many countries had no statistics of murders known to the police, only of commitments or convictions.

(ii) Again, gap between crimes committed and convictions could vary widely according to police efficiency, methods of recording, court attitudes.

(iii) Juries might be readier to convict once death penalty was abolished.

(iv) Statutory abolition in most countries was preceded by a long period when the death penalty was in abeyance or seldom enforced.

(v) It cannot safely be assumed that variations in the homicide rate after abolition are in fact due to abolition, rather than to other causes altogether or other causes in combination with abolition.

(c) The conclusions of the Commission under this head were:

(i) There was some evidence that abolition might be followed for a short time by an increase in homicides and crimes of violence.

(ii) But once a country became accustomed to abolition, it would not lead to an increase in the long run.

(iii) There was no clear evidence in any of the figures that abolition had led to an increase in the homicide rate or that its reintroduction had led to a fall.

(iv) The figures afforded no reliable evidence either way: too many other factors came into the question.

(v) "All we can say is that the deterrent value of punishment in general is liable to be exaggerated, and the effect of capital punishment specially so because of its drastic and sensational character" (p. 24, par. 67).

(General discussion on statistical evidence, pp. 22-24, pars. 62-67, and app. 6, pp. 339-380.)

The most recent statistical interpretations—how real are they?

A distinguished high court judge of New York has given me the most up-to-date definition of statistics:

"Statistics," he said, "are like a bikini. What they reveal is significant and what they hide is vital." This naughty witticism may well apply to the present-day interpretations of the trend in the crime of murder, now advanced in England in more than one quarter, and

often with sharply conflicting motivations and differing conclusions.

As you will remember, in 1957 the Homicide Act was passed. It retained the death penalty for murderers who had been previously convicted (recidivist murderers) and for four other defined categories of murder. It also introduced the concept of diminished responsibility, as a result of which a person charged with murder who put forth a successful defense on this count was convicted of manslaughter. You will also remember from my brief introductory account that in 1965 the Murder (abolition of the death penalty) Act of November 8, 1965, became the law of the country. Thus, the first change took place some 10 years ago, and was subsequently superseded by the radical change which was implemented roughly speaking hardly 2 years ago.

How did the trend in the crime of murder react (if at all) to these legislative innovations? I shall not bother you with long statistical tables, but I shall put before you broad figures and a few basic comments.

1. The first thing to remember is that until quite recently England was passing through a persistent, widespread, and steep increase of crime in general and of virtually all kinds of crime in particular. If the rate for the volume of indictable crime for 1950 is taken as a hundred, by 1957 the rate went up to over 118; by 1962 to over 194, and in 1966 to as much as 260. In absolute figures it rose from slightly under one-half million (461,435) to nearly 1,200,000 (1,199,859). In the same period violent offenses rose from 100 (1950) to 175.4 (1957), to 287.2 (1962), and to as much as 427.5 in 1966. In absolute figures from just over 6,000 (6,249) to nearly 27,000 (26,716).

In such a period it would be very surprising if the crime of murder alone had remained static; indeed, it would be logical to assume that the trend in murder should be seen as part of the whole picture of crime in relation to which any change in the law of murder would be of secondary importance. What has happened is this: From 1950 to 1966 murder went up from 100 (as a rate) to 147.1, or in absolute figures from 138 to 203. It is thus important to note that when compared with the total rate of indictable crime in general and of crimes of violence in particular, the increase in murder has been much less drastic.

2. The other factors to be taken into account are that during the last decade the definition of murder has been altered several times and these changes had different effects on the statistical pattern of murder.

There are also difficulties in recording the crime of murder. Not all murders may come to light; and some which are discovered years later may be too late for inclusion in the relevant statistics. On the other hand, some events which are provisionally recorded as murders by the police may in fact not be. In the case of detected offenses, corrections in the light of legal proceedings are made to the statistics (up to the time of publication); but of course in the 10 percent of undetected offenses no such correction is possible. Further, in the case of acquittal, the crime remains classified as murder (since it is possible the accused was guilty but acquitted for, e.g., lack of evidence); but the home office research unit has estimated that in about half such cases there was no murder—and if this is so, then “the number of

offenses finally recorded as murder each year may be on average about 5 percent too high."

4. All these problems are exacerbated by the relatively small number of recorded murders in England and Wales each year, varying between a maximum of 35 per year and a minimum of 15, to take the latest period of 10 years.³ This has the effect of making small absolute changes look proportionately of considerable (not to say excessive) significance. This also emphasizes the danger of relying on figures for 1 or 2 years in isolation. The figures went up from 22 in 1957 to 35 in 1966. On the basis of this, opponents of the abolition of the death penalty have argued that capital punishment should be reinstituted since the rate for 1965-66 was about double that of 1963-64. To this the abolitionists replied that variations from one year to another are considerable, and that the numbers are small, so that as has been said, "It is possible to get quite big differences between sets of figures for 2 years": for example, the average for 1959-60 would be 53, and for 1962-63—33.⁴

Senator, the overall conclusion is that it is entirely unsafe and rather speculative to draw any kind of solid conclusion one way or another, and that the effect of the 1965 act suspending capital punishment cannot be yet assessed from statistics at present available.

What the future holds is difficult to foresee. And one must always remember that statistics are by no means the only consideration affecting the question of whether or not there should be capital punishment for the crime of murder. Statistics are relevant to the extent that they can throw light on the question of whether or not the death penalty is such a deterrent to murder that it ought to be made available regardless of any other consideration. But again may I emphasize that it is still too early to draw even purely statistical deductions about the effect of the 1965 act.

The alternative to capital punishment; a grave social and penal responsibility

May I preface this by giving three illustrations of past penal history. In Russia, Catherine the Great abolished capital punishment, and homage was paid to her by all the philosophers of the period. But an English visitor to that country noticed the alternative that had been substituted for the death penalty. Offenders were subjected to 333 lashes of the knout instead. Joseph II of Austria also abolished capital punishment, and he, too, was singled out by philosophers as a great liberal of the period. But again a contemporary traveler recorded the following impression of prisoners, who, instead of being put to death were manning galleys. "A Danube vessel towed by human beings is so repulsive a spectacle that even an executioner who has become familiar with breaking upon the wheel will turn his eyes away."

The great Edward Livingstone was very much in advance of his time when he proposed abolition of capital punishment in his system

³ It is difficult to make comparisons between countries with respect to the rate of crime. It is particularly so with respect to the United States in view of the size of the country, number of jurisdictions, and variations in the definition of murder, etc. However, there can be no doubt that the difference in the rate of murder between the United States and the United Kingdom is very considerable. The figure of 48 murders per million population in the United States, as compared with six is frequently quoted as an indication of the difference.

⁴ 1952, 22; 1958, 18; 1959, 23; 1961, 18; 1962, 18; 1963, 15; 1964, 20; 1965, 32; 1966, 35.

of penal law for the State of Louisiana. But the substitute that he proposed, permanent segregation, was frightening in its inhuman soul-destroying regime.

Mr. Chairman, it is fairly easy to do away with capital punishment, but it is much more difficult to build up an alternative that would not shock our conscience, and that would combine humanity with safe containment, that would prevent the destruction of personality through the slow and inexorable weight of very long incarceration. I was again made aware of this when I was asked to be the chairman of a committee to investigate the regime for maximum security prisons. The abolition of capital punishment imposes social and moral responsibility which it is much too easy to escape.

Capital punishment in the comparative context

Already the Royal Commission had noticed that capital punishment was fading away. Since then the process has become even more accentuated. As the chairman of the Scientific Criminological Council set up by the Council of Europe in Strasbourg, I have ample opportunity to observe the recent trends in Western Europe. Both the Council of Europe and the United Nations have kept the subject under review in their excellent recent inquiries.

But may I draw your attention to the most recent publication just issued under the auspices of the United Nations (Department of Economic and Social Affairs), entitled "Capital Punishment Developments—1961–65," prepared by the Criminological Center of the Chicago Law School, so ably directed by Prof. Norval Morris. [Note: This publication is available for examination in the files of the subcommittee.]

Senator HART. Thank you. I have no doubt that your classes are interesting and exciting places, and we are all delighted that you would spend this morning with us.

The way you summarized the paper also obliges us to thank you. But as you were summarizing, I read some of the more detailed presentation which will be part of the record and I suspect it will be required reading for anyone in our country or any place else who attempts to develop a clearer understanding of what is involved in capital punishment.

You are the first witness who has suggested that while the abolition of capital punishment is easy, a substitute is not so easy to come by.

Do you make any prediction as to what Parliament's decision will be in 1970 when the period of suspension terminates?

Mr. RADZINOWICZ. Mr. Chairman, I avoid being a prophet not because I don't like the profession as a vocation but I find it extremely difficult. It is difficult to know what the attitude will be. Assume that murder goes up substantially and the general state of crime goes up. Then the issue becomes an emotionally loaded issue. It may even become a political issue, and then it is very difficult to know what may happen.

If murder moves as it is now, I believe that Parliament would finally do away with it, because the other system was so bad. It is so difficult to have a good capital punishment law enforcement system, that if there is no absolute necessity to retain it, enlightened societies are rightly or wrongly, I am not expressing an opinion now, in favor

of abolishment. So if there is some extraordinary trouble, like, for instance, the killing of three or four policemen—we had a case like this only a few months ago, our police are not armed—this may change. Public opinion is terribly sensitive to the issue of capital punishment. It is emotional. It is erratic. This is all I can say.

Senator HART. I have just one other question on which I welcome your reaction. You indicated that the statistics, or do I understand you correctly, that you are saying that the statistics neither prove the deterrent power of capital punishment, nor do they disprove? Is that the correct summary?

Mr. RADZINOWICZ. The summary would be as follows: First, there is some evidence that abolition might be followed for a short time by an increase in homicides and crimes of violence, a short time.

Second, once a country became accustomed to abolition, it would not lead to an increase in the long run.

Third, there is no clear evidence in any of the figures that abolition had led to an increase in the homicide rate or that its reintroduction has led to this one way or the other. The figures afforded no reliable evidence either way, because too many other factors came into question.

And then comes the statement all that we can say is that the deterrent value of punishment in general is liable to be exaggerated, and the effect of capital punishment especially so because of its drastic and sensational character.

This is as far as we went, and we have examined thoroughly our position in the country before and after, between the countries, in a country for a very long time, and we could reach no greater conclusions than this one.

Senator HART. It is a thoughtful conclusion that the Commission reached, and as usual as is so often true with thoughtful positions, it doesn't lend itself to a ready handle and label as to the conclusion. But let me push just a little further on this.

Let's assume that the general conclusion could be put that the existence of capital punishment so far as the figures are concerned does not prove that it is an effective deterrent. Would it be a sound position to take that in a society such as Western civilization claims, we have developed the burden of proof should be on society before it takes a life, and since the statistics do not establish that it is a deterrent, that the burden has not been carried, and therefore abolition would be the appropriate action. Would you buy that oversimplified reasoning?

Mr. RADZINOWICZ. Senator Hart, I don't think it is oversimplified. I think if I may say so, you have put your finger on something which is of vital importance to the whole issue.

I would add this very briefly to avoid any kind of confusion.

My first point would be that statistics are relevant to the extent that they can throw light on the question of whether or not the death penalty is such a deterrent to murder that it ought to be made available regardless of any other consideration. There are other considerations that you have to take into account, whether we should or should not have capital punishment, which may be even more important than the statistics. And the statistics used are of limited value, only as far as they can throw light as to what extent the death penalty is a deterrent in our penal colony.

Next, certainly in view of the fact that capital punishment is a supreme penalty, and in view of the fact that there are other circumstances that are very important, our conscience, the danger of an error, the division of opinion and all these other kinds of things, it is the duty in contemporary societies to prove the case of capital punishment. The proof of murder must in fairness be put on those who are in favor of capital punishment, because it is this which makes the difference. Having or not having is the difference. It is a difference which is so grave that those who feel that it should be retained must prove that it is absolutely necessary to have it.

Absolutely may be too strong because nothing is absolute in this life, but there is a heavy, a very decisive volume of evidence of one kind or another which justifies it. Did I reply to your question?

Senator HART. Indeed you did.

Thank you very much.

Mr. Paisley.

Mr. PAISLEY. Just one or two questions.

Professor, you spoke about statistics.

Mr. RADZINOWICZ. Yes.

Mr. PAISLEY. Can you give us any idea how long a so-called lifer stay is incarcerated in England, on an average?

Mr. RADZINOWICZ. There is a fundamental difference between your country and ours in relation to the length of sentence, or there used to be. We were a country of relatively short terms of imprisonment. We had no parallel system. We had a lot of probation, and to us a sentence of 5 years is quite a serious sentence, and until quite recently people sentenced to imprisonment for life wouldn't stay, as a general rule, longer than 10 or 12 years, because, as I say, there was a tendency against long sentences. It is also felt that, after 10 or 12 years, the personality disintegrates to such an extent that it really is not justifiable in human terms to keep the person longer. But, sir, lately in view of the emergency of certain crimes, for instance, the train robbers, the killing of the three policemen and certain gang warfare, long sentences have been given of 20 or 25 years, and of imprisonment for life, on a much larger scale, and we now have a small group of people, very small, 150, that we would regard as maximum security prisoners, and who may well stay there for the rest of their natural lives. Before it was 10 or 12 years.

It is also true to say, sir, that those who were sentenced to death up to a few years ago on the whole did not present great problems, but the people whom we have now, the maximum security prisoners are of a different caliber altogether, and you may have noticed we had trouble only a few weeks ago in one of the maximum security prisons. So we are now facing a problem, as I said before. Your problems of today are becoming our problems of tomorrow. We are now facing for the first time in the penal history of our country how to deal with offenders who may have to stay 20, 25, or even 30 years in prison, and who go there when they are still young.

Mr. PAISLEY. You spoke about a slight increase in murders or capital offenses after the abolition of capital punishment.

Mr. RADZINOWICZ. Yes.

Mr. PAISLEY. Did I understand you to say that was in England?

Mr. RADZINOWICZ. In England, and I have provided the statistics in my table. There is a difference there between maybe 10 or 12 cases,

but it is too short a period, too small figures, and also it may well be that the jury now, because capital punishment has been abolished, are more likely to sentence people for murder than they used to be before when capital punishment was in force. It is a point which I did not mention in my memorandum but which ought to be included in the record.

Mr. PAISLEY. Just one other question that might be relevant in consideration of this problem. Do you know whether or not the Communist countries have abolished capital punishment?

Mr. RADZINOWICZ. The Communist countries had an interesting attitude about it. In Soviet Russia at first, when the Bolsheviks took power, they really did feel that the best way of showing that there is no crime in the Socialist country is to suppress criminal statistics, and criminal statistics have been suppressed. Capital punishment has been quite extensively used. Then it was abolished, replaced by long sentences. Now it has been reintroduced again and it has been reintroduced for certain offenses, even against property, not only offenses against the person.

In Poland capital punishment has been appointed, is in the criminal code for a great number of offenses, at least 10 offenses. I should have thought that the same applies to Bulgaria and Czechoslovakia. I do not know what the position in Yugoslavia is. I don't know whether they have capital punishment. Therefore, on the whole I would say that they do have capital punishment now. They sometimes abolish it, and then again they reintroduce it. But they do have capital punishment.

Mr. PAISLEY. Thank you very much.

Senator HART. I think your question should remind us that the committee ought to ask the Library of Congress to prepare, and there will be printed in this record, an accurate summary of the nations where capital punishment is in effect, and some indication both of the crimes which carry capital punishment and if at all possible some indication of the frequency of the executions. I think that would be of value.

[Note: See, "Capital Punishment," United Nations Report, 1968, in subcommittee files.]

Professor, you have been exciting as well as helpful and we are grateful.

Mr. RADZINOWICZ. Thank you very much. I was honored to be invited.

STATEMENT OF PHILIP HANSEN, ATTORNEY GENERAL OF THE STATE OF UTAH

Mr. HANSEN. Senator, I stand here with mixed emotions if you can use the two words together, humble and proud, proud that I have been asked to attempt to make a contribution and humble in realizing my

inadequacies in associating myself with those distinguished witnesses who have preceded me and who are to follow me.

As I have sat through the session this morning, and as I have reminisced some of the past, I can't help but think that those who are for capital punishment are those who are uninformed.

My 17-year-old boy, Steven L. Hansen, who is with me today, made the comment last night: "How come, Dad, it is so obvious to us that the death penalty should be abolished, and yet there are those that still want it retained who seem equally as sincere."

And upon an analysis of that inquiry, it is pretty obvious that the person that is for capital punishment, and I care not who he is or what he is, he is for it toward the stranger. He is for it toward one about which he is not informed, and in most cases about which the subject is not informed. The moral person delves into the statistics. The more a person delves into the statistics, the more a person delves into the realities of life, the more he realizes that all the waters of all the seas cannot wash away the stain on any society that retains the death penalty.

Without touching on the religious aspects, without touching on the barbaric aspects, without being hysterical, permit me to be historical in substantiating my position that as we become more intelligent, as we become better informed, the more obvious it is that there is no place in an enlightened society for the death penalty. You can trace it rather rapidly from the days of the caveman carrying the club and being impulsive and animalistic in killing that which bothers him up to the modern day where, although the Congress and you people specifically are to be praised for your congressional leadership in leading many of our retarded State legislatures out of the wilderness, we see that the older the country, the historical significance as outlined earlier of the development of the European countries now numbering 73, I believe as to those that have abolished capital punishment, they are older, they are more mature than this comparatively young Nation of ours. They are in most instances more highly cultured in the arts, more renowned in many of the science fields, and are more humane as they deal with the problems such as capital punishment than the United States in its infancy.

This is somewhat analogous to a situation of a father and son. The older man, if he is adequate, should be more intelligent than the son, and he should set an example. And as the rambunctious youth becomes more mellow and better informed, he realizes that there should be more compassion, love, and understanding, more forgiveness and tolerance, help rather than hurt, and he realizes these values of life.

Now, this is what we are gradually doing in America. Thirteen States have abolished capital punishment. That is a far cry from the 37 that remain, and I sincerely hope that the courage and the statesmanship that you have taken in bringing this before the Senate and

the Congress for the first time in American history will serve as an example and give courage to those that have been more timid in the past on the legislative basis statewide. If you don't act soon, and if the respective States don't act soon, I feel confident though the U.S. Supreme Court has heretofore held the death penalty not to be cruel and unusual punishment, that it will be stricken down and we won't have to await legislative and congressional acts, but I think that we ought to do it before, so that we cannot be accused of retardation on a subject that is so long overdue to be tackled.

Now, I have been a judge, I have been a defense lawyer. I have been a prosecutor. As the chief law enforcement officer of the State of Utah, I make the plea that somewhere along the line you, as our leaders and our legislators, for the future will permit us to practice law with intellect rather than emotion, will permit us to practice law, though perhaps it is wise that the lag of the law is slower than that of our culture, so that we don't have sporadic and impulsive change too often. Antiquity does not necessarily deserve reverence and when we find something that is wrong we ought to attack it, and we ought to seek out its solution.

It seems that most people in public office are more concerned with their purse and with their politics and their popularity rather than being concerned with people and with problems and with principle.

I think that if we were to practice medicine as we practice law, they would think we were back in the days of the Spanish Inquisition. We practice law somewhat to the effect now of emotional stampedes, letting juries, mind you, triers of the fact, usurp the judicial duty of the judge, the court itself in the imposition of sentence, and we know that for the various reasons that I am sure have been stated in yesterday's hearings and thus far today and those that will follow, that the poor, the colored and the underprivileged are always the prey, the victim. You never see a wealthy man getting killed by the State.

You read the chiseled marble, "Equal justice under the law" on the Supreme Court Building and you wish it were so but you know it isn't because people are human beings and they have imperfections. If we were to be in the status symbol of going to a psychiatrist, and he were to tell us that we were immature as an individual because we do not meet our responsibilities, and yet when society does not meet its responsibilities because of the splitting of responsibility such as a jury of 12 rather than putting it on the shoulders of one man, the judge, to make the decision, when responsibility is split, it is not assumed. We see that society has a problem, and yet we don't try to solve it.

We think, well, it is popular to say we are against crime, so let's beef up the police force. Everybody is against crime, and nobody is advocating coddling a criminal. But when you stop to think not only in the area of capital punishment but in criminology generally we have our head in the sand, and we think that with an arbitrary sentence of a period of time, by taking a person out of society or forever by capital punishment that we are going to solve the problem of killing, we are going to solve the problem of crime.

We seem to concentrate on the theory of "Let's capture and incarcerate" rather than where we should stand, "Let's treat and educate."

We take a person that has committed a crime and we put him in prison. We don't tell him, scientifically, at least what caused it. We don't tell him what the real reason is.

If he has been given probation or parole, or if he has had one sentence and it is light, the next one is more severe and the average judge will say, "My word, don't you ever learn your lesson? You had a chance and you flubbed it."

You put him down in prison without adequate segregation. In Utah—we are probably run of the mill with other less fortunate States—we have for approximately 714 inmates the services of a psychiatrist for a half a day a month.

For every crime there must be a concurring act with an intent, and we know that you cannot separate the mind from the body and we know, even though they say psychiatry is in its infancy, that there are many principles of psychiatry and psychology from which we should learn what makes man tick.

He is a complex bird, granted, but because we don't have the answer today doesn't mean that we should just turn our head and not attempt to solve it for tomorrow.

I have heard questions, would you favor life imprisonment forever as an alternative to capital punishment? What is the average time that a person serves for a death penalty, and how many years do you think there should be.

How can you be arbitrary with the complexities of humanity? Do the doctors say he who has cancer must stay in the hospital for a certain period of time regardless of whether we treat him, regardless of whether we cure him, because society has arbitrarily said we don't know the answer to cancer, so let's put him away for awhile?

If I were to walk into my doctor and he were to say, "My word, you have syphilis, I am going to sentence you to 6 months in the hospital, he doesn't treat me, he doesn't tell me how I got it, he doesn't do anything to cure me. He sentences me arbitrarily for a period of time in the hospital, with a little bit of skill and little bit of luck from the opposite sex I spread it while in the hospital, it becomes more aggravated within my own system. I serve my arbitrary period of time and then I am released, and when I am back in society my odds are a little better and I scatter it a little further and it becomes more complicated still within myself, and we wonder why doesn't he ever learn. He has still got syphilis.

We wonder why society has this illness. And yet this is the way we practice law. We don't realize that there is a cause for every effect. We don't realize that prisoners, killers, if you please, are human beings. They are like the ice cube that floats in the glass, as my eighth grade general science teacher taught me, nine-tenths under the surface.

People are this way. You can't judge the fiber of the man by the title of his office any more than you can the fiber of the cloth in his coat by the label in the lining. You have got to dig down underneath that surface. You can't, whether you are a jury or whether you are a judge or whether you are a Senator or whether you are king or any other person, you cannot, by seeing the surface, expect to know the person.

I have represented 46 murder cases, first degree murder cases, as a defense lawyer. I have tried in excess of 5,000 cases that has required

one or more court appearance in three different States, and the more I am exposed to this situation called crime, the more I realize that it is a problem of society that must be solved, not ignored or not pounded on the head.

You don't take your child that breaks an expensive piece of Dresden and hit him in the head with an axe because the value of the article was supreme. Why should you take a life because the value of a life is supreme. If you are going to say "kill because you killed," you might as well use the example that was used in the Utah prison, rape because you were raped.

We have a case, a rather classic case in the State of Utah, the *Jesse Garcia* case. Jesse Garcia was raised in the same bed where and while his own mother practiced prostitution. He had sisters that were around the house with different boy friends that he in his tender age thought were his brother-in-laws. He lived on animalistic impulse. When he was hungry he looked for something to eat, when he was sleepy, he lay down and slept and when he wanted something he stole it or got it one way or another.

When he was 3, 4, 5 years old, he would pick on little kids, steal their pennies, gum, paper—kids on the corner. At the age of 7 years when he legally became liable for his criminal acts, he ended up in the industrial school. Unfortunately, our problems are there too. I quipped once that ours was a prep school for prison, and the administration got a little disturbed, but I can document it.

We have got to start young. Jesse Garcia was the product of our institutions. He was in and out of industrial school until he was 15 years old, when he raped his 5-year-old niece. She screamed and he ran and committed, admittedly, according to his own figures, about 37 burglaries before he was caught. But he pleaded guilty without benefit of lawyer or anything else, for the crime of rape, and it carries a 20-year to life sentence.

He was 15 years old when this happened, and during the interim before going to prison, while in the county jail, he turned 16. The day that he walked into the Utah State Prison, one of these believed to be brother-in-laws handed him a knife, an inmate handed this new inmate a knife, and said, "Here, you are going to need this. They don't like sex offenders, and they are going to kill you after mess, the evening meal."

After mess a bunch of them gathered around him and four or five of them with knife points pricked at his arms, chest and back, threatened to kill him. Joe Valdez, the Mexican leader of the Mexican element of the Utah State Prison, put his arms around Jesse Garcia and said, "This is America. We are going to give you a fair trial." And they had a kangaroo court, conducted within the walls of the Utah State Prison, where judge, jury, defense counsel, prosecutor, witnesses, spectators were all inmates.

The findings, "You are guilty of rape. We sentence you to rape." And 26 men at knife point, with him on his hands and knees had sexual relations with this young boy, and Joe Valdez, after it was all over, put his arm around Jesse once more, with the spirit of friendship, and said, "You be my punk and you won't have to put up with the rest of them because they fear my element here." Through a fit of jealousy Joe Valdez almost killed him at one time with an axe that he had hidden

because he was sitting too close to another fellow at a prison movie one evening and others pulled Valdez off Garcia and said, "Why waste your life on this kid," and Joe Valdez sold Jesse Garcia to Mack Riffenberg, another inmate leader, who had gone through this cycle and was older in prison life, for 15 Drenova pills, a trade name for pep pills, as I am sure you are aware.

Then Jesse became involved in a prison murder because this pill racket of Riffenberg's was discovered, and was going to be "finked on," as they use in the jargon of the prisons, and Riffenberg and others planned to murder.

Now, in this case society developed Jesse Garcia. Society isn't smart enough to catch a problem that early when it had that boy in its custody in its institutions, at the very earliest possible age, and I am sure if I had been more adequate in my historical development of the background of this case I would have seen probably State welfare records, where they were aware of the conditions of this family, but the conditions were ignored because it was an ugly problem not to be solved.

Now they say drop a bomb on the prison. They are all bad, they are all convicts. You wouldn't have to call an orthopedic surgeon to repair my fractured arm for patting myself on the back if I were to be arrogant enough to say that I am competent enough as a prosecutor, as anybody worth his salt, that if given the facts, I could convict each and every one in this room of having committed a crime. All of us have lied. All of us have stolen. All of us have hurt others unjustifiably. All of us haven't been caught. All of us haven't ended up in this snare.

You can document case after case after case where two young kids pull a caper. One gets caught. The other turns the corner and gets away. The one that turned the corner and got away usually ends up as what we call a law-abiding successful citizen. The one that gets caught in that first snare starts with a record of some kind. Society brands the name convict, criminal, on him, wonders why they go back to prison when they won't hire them themselves.

I hired an ex-convict when I became Attorney General and the local papers that are represented here today criticized me editorially. Imagine, the chief law enforcement office, an ex-defense counsel, hiring an ex-convict. And they wonder why they go back to prison.

This is like a game of football, and then without knowing there is another set of rules you go in to play basketball and you tackle and you block and you foul out. This is what we do with our prisons. We put a person down there and he learns a game of rules that couldn't possibly be applied to everyday life.

He comes out into society, and he tackles and he blocks and he goes back and you say why.

Why can't we realize that everybody that steals isn't the same. Everybody that kills isn't the same. We are all individuals.

If you have three children, for example, maybe one of them needs a pat on the back. Maybe another needs a kick a little bit lower down in the same general area. Maybe one needs a helping hand. But they are different. And we have got to realize that prisoners are this way.

We can't sit in our position of smugness and pass judgment on others, and think that we are going to solve the problem. If for no other reason, and believe me, I don't believe in using human beings as guinea pigs, but if for no other reason, we should keep these people that we

call mad dog killers alive, so that we can study them, so that we can find out what caused this particular guy to do this particular act, so that we can have a pattern of what caused a lot of guys to do a lot of acts, so that we can calculate risks that we are to assume in becoming an educated and enlightened society to solve our problems, so that we can prevent, at least cure, at least try.

How can you arbitrarily say how long it is going to be before a person can be rehabilitated? Think of the thousands, the millions that we use for research for the cause of cancer, for the cause of leprosy, for the cause of heart problems, for all of these medical problems.

I kind of have tongue in cheek when I think we as lawyers are supposed to be smart enough to advise doctors, and yet they are so much further ahead of us in educating the people on how they should be received. Why can't we become this scientific? Why can't we dig down underneath the surface? Why can't we realize, as we reflect and as we recall and as we should remember well, that no man, no man is worthy of passing judgment on another.

We all have faults. And the fact that I say my faults are less than yours, to quote Gershwin in "Porgy and Bess," "ain't necessarily so."

If we would try to help to understand what caused Speck or another to kill, maybe tomorrow we could prevent eight other nurses from being killed. Maybe tomorrow we could prevent future Boston stranglers. Maybe tomorrow we would be able to say we are really trying. We are really moving forward.

I stand here with shame to admit that the body that I will graciously refer to as our last legislature in the State of Utah attempted to pass a bill for the mandatory death penalty, just because someone else introduced a bill for the abolition of capital punishment, tit for tat, venegance. That is all capital punishment is.

They might say they are for capital punishment, but they wouldn't say that if they were pointing their finger towards their own mother, toward their own child, toward their own self. They wouldn't want to put someone in the seat that we use for execution in Utah, if they knew beans about him.

I have two friends here now with me, Tommy Saterio and Leo Saterio who are pharmacists by profession. They are now in medical school and have a brother, Gus, who is also a pharmacist. They are scientifically oriented, and we discussed this comparison of law and medicine, and they shake their heads and they can't understand why we in the legal field are so fundamentally retarded. I explained the death scene, though I have never seen it, but again can document it with other statistics, in the State of Utah, and they shudder.

Do you know how the death penalty is carried out in the State of Utah? By the way, we are a rather distinguished State in that we give them a choice. They may either be hanged or they may be shot.

The last person who was hanged was a few years back, and—he, by the way, was mentally deficient—he only did it because it cost the State of Utah more to build the scaffold than its inexpensive seat of execution otherwise.

I am a Mormon, and yet there are those within the leaders of my church that say capital punishment is a commandment of God. Even your rabbis do not say the "eye for an eye and a tooth for a tooth," that which was the Mosaic law, was one for retribution. There was

one for recompense. And nowhere in the mission of Christ can you see any hint of his advocating capital punishment.

On the contrary, you see a classic example of the adúlteress that was taken to him where death by stoning was the penalty, and that is when he said, "Ye among you who are without sin cast the first stone." When he himself was crucified he didn't say, "You be sure and pay these guys back, give them vengeance."

You be sure that Jerusalem goes down in history as favoring capital punishment.

On the contrary he probably uttered the most famous words in history when he was hanging from the cross with his torn ankles and mouth bleeding and his whole body wracked with pain. He said, "Father, forgive them for they know not what they do."

Why can't we? We must.

Senator HART. General, thank you very much.

You should be one of the last men in the profession to argue against the elimination of emotion with the substitution of intellect for it. The way you approach a jury, I am sure you do it both ways, but I am sure you are under no handicap with your present style.

Mr. HANSEN. I am out of practice. You have to think on your feet as a trial lawyer. You can take things under advisement as the Attorney General.

Senator HART. Very early in your remarks you said something that I noted, and until this morning it had not filtered through to me, but I return to it again. You said that your son, 17, was here yesterday and commented to you or asked you why it is so clear that it is wrong, why are there those who insist that capital punishment is of value.

Then at the very opening of our hearings today, Douglas Lyons spoke eloquently the attitude of several thousand young Americans in opposition to what they call legalized murder.

Maybe it is that generation that will have to mobilize in order to persuade the Utah Legislature that that Hobson's choice which you describe is just—

Mr. HANSEN. Shameful.

Senator HART. Outrageous.

Mr. HANSEN. Barbaric.

Senator HART. Will you be hanged or will you be shot.

Mr. Paisley.

Mr. PAISLEY. I have one or two questions.

Mr. Hansen, in Utah can the jury recommend mercy if they find a man guilty?

Mr. HANSEN. Yes. The death penalty is mandatory if the jury just finds guilt. The jury has to take the initiative to go one step further and act toward its recommendation. Then it becomes discretionary. Only twice in the history of the State of Utah has a trial judge overriden the recommendation of leniency made by a jury. On both occasions the sentence was commuted to life by the board of pardons.

Mr. PAISLEY. I think the present Federal law is that the jury can recommend mercy. Now, if the jury finds the accused guilty beyond a reasonable doubt, which they must do, and fails to recommend mercy, that is a pretty good indication that the crime was pretty serious, isn't it?

Mr. HANSEN. No, not at all. Juries are not qualified to pass sentence. To revert back a moment to the *Garcia* case again, there were three defendants in this case. I represented two of them, the two young fellows. The other one's name was Bowen.

Bowen was from a Mormon family with a good background, a boy that had gone to school, had a high IQ, played the violin, had some talents and what not, and I represented that case jointly with Riffenberg's trial, and Garcia's case followed it, because of their having filed differently because of his age.

I totally forgot, in my manner of not coming prepared, I developed another field that I had in my summation, and I totally forgot my plea against capital punishment.

Riffenberg was given the death penalty, Bowen was given leniency. Later Garcia was given the death penalty and it took me 4½ years to get that one done way. Riffenberg committed suicide in prison. But here we are, the same jury, the same fact, the same crime, the same defendants, different penalties.

That wasn't the severity of the crime, and it isn't the severity of the penalty that deters. It is the certainty. Anybody with a speaking acquaintance with criminology will bear that out.

Mr. PAISLEY. I don't want to stop you, but don't you feel or do you feel that the fact that first the jury must convict, second, they must fail to recommend mercy, and third, that if there has been a mistake made by the jury, that there is an appeal to the chief executive, don't you think that is a pretty good safeguard, about as well as society can do?

Mr. HANSEN. Absolutely not.

Mr. PAISLEY. You don't?

Mr. HANSEN. For these reasons. You have a trial. You have the jury. You have the verdict. The sentence is mandatory. That means that the judge is nothing but a rubber stamp in his capacity for the jury in its capacity. So the jury says, with 12 of them there, split responsibility, "Well, I had some doubts. I wanted to give him life, but these other guys talked me into it finally, so I could go home," whatever the reasons are "we all give it to him so it is not all my responsibility."

The judge says, "I have nothing to be ashamed of. All I did was carry out the jury's verdict."

And so the prosecutor says, "All I did was carry out the case, it is not my fault."

Mr. PAISLEY. You don't mean to say that the chief executive of the 50 States, and the President if he has occasion to pass on it, would just do a perfunctory job, do you?

Mr. HANSEN. In this example I am giving it is mandatory that they do just that. They have no choice. The death penalty is carried out. Then they go down and the warden now, it used to be the county sheriff in Utah, he carries out the execution for the same reason.

The board of pardons could, but ordinarily on some occasions does and on some occasions doesn't.

Mr. PAISLEY. I am talking about the chief executive of the State.

Mr. HANSEN. Utah has no such provision. The power of pardon is strictly with the board of pardons, not the Governor.

Mr. PAISLEY. Then you feel that there is a very good chance that many people will be executed in this country when they are not guilty, is that right?

Mr. HANSEN. Precisely. We have another case that is pending in Utah now, the case of Darrell Devere Polson, who raped and murdered a little 11-year-old girl. Darrell Devere Polson was an inmate of another institution in the State of Utah, the American Training School for Handicapped Children. The State of Utah declared Darrell Devere Polson insane for purposes of sterilization.

The State of Utah says Darrell Devere Polson is sane for purposes of execution. The State of Utah went through this trial with a conviction from the date of the crime through the trial, within 30 days, whipped it through our supreme court. Now it has been taken, with some of these other more sane tactics, such as your Federal procedures of writs, and the State of Utah Supreme Court and trial judge denied him a stay of execution pending his appeal to the Supreme Court.

The defense lawyer called the Justice here and at first blush the Justice that was called denied his request for a stay and he was to die the next morning, and I called and asked him as the prosecutor of the State. And I was criticized quite severely for, as the prosecutor, keeping this guy alive.

Now, there are more basic truths and values in things just as supreme, such as our Constitution, as there is in guilt or innocence. He has the right to conclude his appeal and the State of Utah said, "Oh, yes, you may go ahead and have your lawyer perfect an appeal. In the meantime die and we will send the results by airmail."

Mr. PAISLEY. I don't want to stop you but I have two or three questions that I would like to have answered as concisely as you can, because I know that time is limited, and there are other witnesses. But I would like to ask you this. The testimony this morning was that the latest Gallup poll showed 38 percent of the people polled were opposed to abolishing capital punishment.

Mr. HANSEN. What were the percentages?

Mr. PAISLEY. Thirty-eight. That is the way I understood it. Now, what recommendation, what alternative do you have to recommend as an informed person in this area, that would probably satisfy those people who are concerned about abolishing the death penalty? Do you have any?

Mr. HANSEN. Educating them.

Mr. PAISLEY. Educating who?

Mr. HANSEN. The public. First as an alternative, I am diametrically opposed to the death penalty. I am diametrically opposed to life imprisonment.

Mr. PAISLEY. So am I.

Mr. HANSEN. I am diametrically opposed to any set period of time. I say take a person that poses a problem to society and remove him from society and if the State of Utah or the United States isn't great enough and glorious enough in all of its majesty to protect society, whether it is by competent boards of pardons, in knowing when to release a person or whether it is by the care and treatment that they get while they are there, some way or another society ought to be big enough to protect itself so that this guy doesn't run out and start killing again, which is really a fantasy rather than fact.

But I say this. Take that person out of society that poses the problem of violence, understand him, treat him, educate him, and calculate the risk later on when he is to be released.

The Loeb-Leopold matter, nobody will deny the rehabilitation of Leopold, and yet arbitrary intervention. Darrow says life imprisonment. Darrow was smart there because he wouldn't let them split the responsibility. He went through the procedure of putting the responsibility on one man, the judge, and he said life imprisonment against that. He had to because he was so far advanced in the reasoning. We don't have to do that today. Polls be damned. We that are supposed to be the enlightened leaders in any field ought to educate the people so that they can recognize the problem, and as they recognize it perhaps the solution will be there.

Mr. PAISLEY. I understood you to say that you thought the Supreme Court would soon declare capital punishment to be cruel and unusual punishment and therefore unconstitutional. Is that what you said? Just answer me yes or no.

Mr. HANSEN. Well, I can't categorically. That is only part of it. I think they are going to hold it unconstitutional, perhaps not as cruel and unusual punishment, so they don't have to distinguish in past cases. Perhaps on the deprivation of equality.

Mr. PAISLEY. Is there any case on the way up there?

Mr. HANSEN. Yes, there is a series of cases. The State of California has approximately 57 or so cases bunched together that are going through the Federal Court. Either Illinois or Florida has a similar situation of 40-some-odd cases.

Mr. PAISLEY. On the way up.

Mr. HANSEN. They are going through the Federal district court level now. They will ultimately reach the Supreme Court and there are these constitutional problems, one of which is cruel and unusual punishment.

Mr. PAISLEY. At the time the Constitution was adopted England had capital punishment and so did all the Colonies, the 13 Colonies, didn't they?

Mr. HANSEN. That is what I said. We have learned their history.

Mr. PAISLEY. They would have a little difficulty with declaring capital punishment unconstitutional.

Mr. HANSEN. No, not necessarily.

Mr. PAISLEY. Cruel and unusual punishment?

Mr. HANSEN. Not necessarily if they limit it just to the act of the killing. They would have problems in trying to distinguish from past cases, but if they apply it to the theory, the manner of waiting, the manner of imposition, the manner of execution, not the killing itself, cruel and unusual, but the long haul wait.

Mr. PAISLEY. I have just a couple of other questions.

You told us about this kangaroo court.

Mr. HANSEN. That is documented.

Mr. PAISLEY. You described it in great detail. Did I understand you to say that some official of the prison sat in on that?

Mr. HANSEN. No, all inmates.

Mr. PAISLEY. All inmates.

Mr. HANSEN. When this prison trial came to light, a grand jury was called to investigate the conditions. There were knives, there was dope. There was homosexuality, and lack of segregation.

Mr. PAISLEY. How did you learn about this?

Mr. HANSEN. I defended two of the three.

Mr. PAISLEY. From whom?

Mr. HANSEN. From the witnesses. It is all in the court record. I can document every line of it.

Mr. PAISLEY. Was there ever prosecution for those crimes?

Mr. HANSEN. No.

Mr. PAISLEY. Did you try to prosecute?

Mr. HANSEN. I ended up defending them. I tried to get prosecution in this respect. I said it isn't fair for a prosecutor—there were eight inmates involved in this plan. Their whole plan was: involve enough inmates to get these two leaders, the word got out, that they are the ones to fear, and with the prisoners' code of no finking on each other, they didn't think the bulls would find out about it. One of the guys that helped plan it, Billy Randall, was the guy that as a last-minute substitute sent Garcia up in the attic as a lookout. He went down and had his alibi by a guard. He was the one that told on the others. He is out on the streets and he has got a Huntsville record as long as your arm, 10 years in prison, and these other kids started out in this mess and that is how it ends up.

I started to tell you, and I am going to really impose on you, to listen for a minute about this execution in Utah. They take an old office chair, and they set the prisoner down there and they strap his legs to the front legs of the chair. It has arms and they strap his arms and wrists to the arms of the chair. They belt him in around his back. They put a hood over his head. They have a doctor with a stethoscope with a 2-inch diameter white patch.

Mr. PAISLEY. Unless you just want to, you don't need to recite this for my benefit.

Mr. HANSEN. I want it for the record, please.

Mr. PAISLEY. We have already had this type of testimony.

Mr. HANSEN. You haven't had this type. It doesn't exist any place except in Utah.

Mr. PAISLEY. The electric chair?

Mr. HANSEN. This isn't the electric chair. This is a shooting. They strap him in there. They find his heart. They put the patch. They have five guys with rifles, four loaded, one blank. They stand from a distance of maybe 6 or 8 feet, half the distance of this table away. Ready, aim, fire, and they shoot with these high-powered rifles. They have had to reload on occasion. They have shot in ankles on occasion. Then while he is twitching like the chicken with his nerves and the head cut off, the doctor goes in with his stethoscope again in approximately 2 minutes or in excess thereof. He finally says, "dead." The priest or chaplain, whichever religious denominational faith, says, "God have mercy on your soul," and they haul him away. But these bullets go through his body. They have as the backdrop 1 by 4 boards about 4 inches apart with sand in the middle. They take him out between the fences right out in the yard and shoot him and these bullets go through him, the board, the sand, the board, and ricochet off like in the cowboy movies. That is what we have going on in the State of Utah. I am sure other types of killing are just as cruel, are just as barbaric, are just as senseless. For hell's sake, let's do something about it.

Senator HART. Thank you very much, General.

Mr. HANSEN. Thank you.

Senator HART. As I indicated, we have with us this morning Prof. Thorsten Sellin.

Professor, if you will come up I will summarize, but we will ask that the record contain in full some of the distinguished contributions that you have made in this field.

Professor Sellin is emeritus professor of sociology at the University of Pennsylvania. Since 1929 he has been the editor of the *Annals of the American Academy of Political and Social Science*.

He has represented our country at international congresses and seminars on prevention of crime and treatment of offenders.

As Professor Radzinowicz reminded us earlier, he has cooperated in the study of the Royal Commission, as well as many other things.

Professor, we welcome you.

STATEMENT OF PROF. THORSTEN SELLIN, EMERITUS PROFESSOR OF SOCIOLOGY, UNIVERSITY OF PENNSYLVANIA

Mr. SELLIN. Thank you very much, Senator Hart.

Senator HART. Your statement will be printed in full as though given in full. If you want to expand or summarize, feel free to do so.

Mr. SELLIN. Thank you.

I am grateful for your invitation and I will try to be as brief as possible and not read the statement, although I may wish to quote from it here and there.

(The prepared statement follows:)

THE DEATH PENALTY

At present, a threat of being punished by death for some crime or other exists in most American states, as well as in federal law. In eleven jurisdictions (Alaska, Hawaii, Iowa, Maine, Michigan, Minnesota, Oregon, Puerto Rico, the Virgin Islands, West Virginia and Wisconsin) the threat has been completely removed. In four additional states it has been restricted to treason (North Dakota); murder by a prisoner serving a life sentence (Rhode Island); the killing of a peace officer on duty and the murder by a life convict of a guard or fellow inmate or while attempting to escape (New York); or treason, kidnapping for ransom, a second "unrelated" murder by a person previously convicted of murder in the first degree, or the killing by a prisoner of a guard or a peace officer (Vermont).

The movement to abolish the death penalty in the above states has a long history. It should be noted that three of these states—Michigan in 1846, Rhode Island in 1852 and Wisconsin in 1853—were among the first in the world during the 19th century to abolish capital punishment. The movement made no headway, however, until half a century ago and appears to be having its greatest success since the second World War. During the last decade, for instance, seven of the fifteen previously listed jurisdictions have either abolished the death penalty completely or have restricted its use to such a degree that one can predict its disappearance in practice in states like New York or Vermont, barring unforeseen developments.

In the jurisdictions that have retained the death penalty, the number of crimes punishable by death varies greatly, whether one applies a strict legal definition or some generic classification. In practice, however, the penalty in recent decades actually has been executed only for seven crimes. During the period 1930-1967, there were 3859 executions. Most of them—3335—were for murder. In addition, there were 455 executions for rape, 24 for armed robbery, 20 for kidnapping, 11 for burglary, 6 for aggravated assault by prisoners serving life sentences and 8 for the federal crime of espionage. Only 33 persons, including the espionage cases, were executed for federal crimes. This does not include, however, 160 executions by the Army, mostly during the war, for murder, rape and desertion (one case).

One very significant development is observed when one examines the statistics

of executions during the thirty-eight past years. In the 1930ies, the annual average number was 166, in the 1940ies 127, and in the 1950ies 71. Since then the annual number has been rapidly declining from 56 in 1960 to 1 and 2 in 1966 and 1967 respectively. So far as the federal jurisdiction is concerned, it is noteworthy that while there were 10, 13, and 9 federal executions in the 1930ies, 1940ies and 1950ies respectively, there has been but one during the present decade—in 1963.

In practice, then, the death penalty appears to be reaching the vanishing point in the United States.

Considering these facts it might appear puzzling to find that tremendous resistance is shown in legislative assemblies when proposals to abolish death penalty are introduced. Even in states that have not practiced executions for two or more decades, abolitionists discover that an attack on capital punishment touches a raw nerve of the body politic, mobilizes the defenders of tradition and ends in a debate which displays all the hackneyed arguments which, at least since the debate between Caesar and Cato on what to do with the Catiline conspirators, have remained relatively unchanged throughout the centuries, except for the fact that in recent times there has been available a great deal more empirical data to buttress the arguments of the abolitionists. Some of these data will be utilized in the following pages in which I propose to examine, in particular, the argument most commonly advanced for the retention of the death penalty, namely that this penalty has such unique power that its removal from the penal law in favor of life imprisonment would create a hazard for people generally or for certain specific groups of people, such as the police or the personnel of prisons.

GENERAL DETERRENCE

During the debate in the British House of Commons in 1956, Sir Patrick Spens, a former Chief Justice of India, defended capital punishment saying: "I am absolutely convinced—I know—that fear of violent death is a deterrent, and no statistics, no argument whatever will convince me that it is not." During the same debate Sir Robert Grimston, in commenting on the statement of the Royal Commission on Capital Punishment that "capital punishment has obviously failed as a deterrent" of murder, stated: "We can number its failures. But we cannot number its successes. No one can ever know how many people have refrained from murder because of the fear of being hanged."

It would be useless to enter into an argument with the first of these two speakers, whose closed mind would be impervious to proof that would not support his point of view. But Sir Robert's statement, which recurs in all debates about the death penalty, raises an interesting point. Is it, in fact, impossible to know how many people have refrained from committing murder because of the fear of being hanged? If this question is answered in the affirmative the debate on capital punishment would have to seek some other ground than deterrence. Let us, therefore, examine its validity.

If a state has the death penalty for murder, the statement assumes that fear of execution causes an undetermined number of persons to refrain from committing that crime. If this were true, what should happen, when the death penalty for murder is abolished in such a state? Freed from the fear of execution, at least some of those assumed to be governed by that fear alone would now be added to the number of those who would commit murder anyway and this should increase the murder rate. Conversely, the introduction of the death penalty after a period of abolition should decrease the rate, since now an appeal is made to the controlling power of fear of death. Finally, one would expect that states having the death penalty for murder would have lower murder rates than similar but abolitionist states.

A number of researches have been made that have examined all available data on willful homicides over periods of time and have aimed at demonstrating the truth or falsity of the above assertions. These studies have shown that neither the abolition nor the introduction of the death penalty for murder has any demonstrable effect on the homicide rate. Studies of such rates since 1920 in American states that have abolished the death penalty and contiguous states that have retained it have shown that (a) the rates are the same in both types of states, and that (b) their trends are identical.¹ In other words, a public policy

¹ See Thorsten Sellin, *The Death Penalty*. Philadelphia: The American Law Institute, 1959.

of inducing fear of execution as a means of reducing the murder rate of a state has been found to be ineffective.

Evidently, there are other factors, inherent in social life, that determine the size, the fluctuations and the trend of murder rates in a population.

A few specific researches have been made to test the effect of the executions of inhabitants of a city on the rate of homicides in that city in a period following the executions by comparing these rates with those of a period preceding the events, the assumption being that locally such highly publicized executions should have the greatest deterrent effect. The results of these studies have substantiated the conclusion already stated.²

The belief in the unique deterrent value of the death penalty in protecting the life of citizens is shared by the police, whose views are generally given much credence by the population in the mistaken belief that the police are an authority on most matters concerning crime and criminals. In the United States and Canada, the opposition of police organizations to the abolition of capital punishment has often determined the reaction of legislative assemblies to abolish bills. And yet, studies hitherto made in the United States indicate that police opposition to abolition is based on myth and not on facts.

An extensive research on police homicides during the period of 1920-1954 in six abolition states and eleven contiguous death penalty states showed that the rates of police killed per 100,000 population were identical in both types of states.³ An even more persuasive analysis of police homicides during the years 1961-1963, when 140 policemen were killed in the United States by criminals or suspected criminals, showed that only nine of these policemen were killed in the abolition states, which at that time were six in number. The annual average risk of a policeman being killed was 1.31 per 10,000 policemen in the abolition states and 1.32 in the death penalty states bordering on them.⁴

The cultural basis of police beliefs in the protective value of the death penalty is obvious from the fact that in capital punishment states the vast majority of the chiefs of police hold this belief, while in the abolition states most police chiefs express a contrary view.

In legislative debates on abolition of capital punishment speakers for the opposition generally support the contentions of police organizations. They also believe that the death penalty should be retained as a means of safe-guarding the lives of the inmates and the staff and employees of prisons to which convicted murderers would be sent if they were not executed. Such legislators apparently believe that a person who has once taken a human life is likely to do so again even in the setting of the prison.

Until recently no study had been made to ascertain the truth of the belief mentioned. Numerous statements by prison administrators did exist to the effect that inmates serving life sentences for murder were generally the most orderly and least troublesome of prisoners, but hard facts were absent. In 1966, I undertook a large survey of prison homicides. It covered all but five, mostly very small, of the 50 states and included the state prisons and reformatories for adults as well as the federal prisons. Data were requested for the calendar year of 1965.

During that year, there were 61 homicide victims—8 staff members and 53 inmates—in assaults committed by prisoners. Nine inmates were killed by unknown persons, all in jurisdictions having the death penalty. Fifty-two persons were killed by 59 known prisoners. *The eight staff members were killed in death penalty states.*

Who were these 59 prison killers? Sixteen of them were serving a sentence for murder of the first or second degree, four of them in abolition states, Nineteen were serving terms for robbery. Altogether, 43 (73 per cent) were in prison for an aggressive crime against persons; 16 for property offenses. If we assume that the cases of inmates killed by unknown offenders involved nine perpetrators, 57 of the offenders were prisoners in death penalty states and 11 in abolition states.⁵

² Robert H. Dann, *The Deterrent Effect of Capital Punishment*. Philadelphia: The Committee of Philanthropic Labor of Philadelphia Yearly Meeting of Friends, 1935 (Bul. No. 29); Leonard D. Savitz, "A Study in Capital Punishment," *Jour. of Crim. Law, Criminology and Police Sci.*, 49: 338-41, Nov.-Dec., 1958.

³ Thorsten Sellin, "The Death Penalty and Police Safety," pp. 718-728 of Second Session, Twenty-Second Parliament, 1955. Appendix "F" of the *Minutes of Proceedings and Evidence, No. 20, of the Joint Committee of the Senate and House of Commons on Capital . . . Punishment*. Ottawa: Queen's Printer, 1955.

⁴ Thorsten Sellin (ed.), *Capital Punishment*. New York: Harper & Row, 1967; pp. 152-153.

⁵ Thorsten Sellin, "Prison Homicides," *Ibid.*, pp. 154-160.

It is true, then, that murderers serving life sentences sometimes commit a homicide in prison, the victim being usually a fellow-inmate. But what is the remedy? Most of the killings occurred in states with the death penalty and 7 of the 11 offenders in abolition states were serving terms for crimes other than murder. The largest group of killers were robbers. Of course, all these prison homicides could have been prevented if the crimes for which the perpetrators were serving sentences had been capital crimes and the perpetrators executed, but this is idle speculation, for no legislature has contemplated any such radical program. Most states permit courts to make a choice of life imprisonment or death when a defendant has been convicted of a capital crime. No court can foresee which one of the many sentenced to life for murder may commit a homicide in prison, often under circumstances which if the deed had occurred in freedom would have resulted in acquittal on a plea of self-defense or in a conviction for manslaughter. In any case it would seem that the retention of the death penalty in order to prevent prison homicides would offer no solution to the problem.

An additional argument is usually made in favor of the death penalty. It is claimed that even if life sentences are imposed they are never served in full, because such prisoners can ultimately be released on parole and, therefore, may become a threat to the safety of people in communities to which they return.

Those who offer this argument usually are not acquainted with the fact that many lifers die in prison and thus serve their full sentences, that some have to be transferred to mental hospitals for permanent care and that some are given pardons. In the state of Ohio in 1957, for instance, when one prisoner was executed, 11 who were serving life sentences, some of them for murder, died of natural causes.

As for paroled murderers, evidence indicates that their conduct while on parole, a period which may range from five years to the end of their lives, is remarkably good, compared with the record set by paroled robbers or thieves.

During 1945-1954 a total of 342 male prisoners were paroled in California from first degree murder convictions. By the end of June, 1956, 37 had been declared parole violators (10.8 per cent). Six of these had simply disappeared, 11 had been returned to prison for technical violations, 11 after convictions of misdemeanors, and 9 on new sentences for felonies (2 for robbery, 2 for lewdness, 1 for a narcotics offense, 1 for abortion, 1 for sex perversion, 1 for assault to murder and 1 for second degree murder).

From July 1930 through 1961, 63 prisoners convicted of first-degree murder were paroled in New York; 61 of them had originally been sentenced to death. Their average age at parole was 51 years; 56 had no previous felony convictions. Three of the 63 became delinquent; 2 of them were returned to prison for technical violations and 1 after conviction for burglary.

From 1945 through 1965, a total of 273 first-degree murderers were paroled in Ohio. Fifteen became parole violators, but only two of these were returned to prison after a conviction of a new crime (one for robbery and the other for assault with intent to rob).

There exists no evidence to show that the parole record of murderers is poorer in abolition states than in states that have retained the death penalty.

In conclusion, then, no empirical data exist to show that the threat of death as a consequence of murder has had any beneficial effect on the incidence of that crime in the United States. Whether or not it could have such an effect is an academic question in view of what is actually happening today. A threat of execution could have no effect unless it is carried out. In spite of the often loudly voiced support of the death penalty in legislative halls and on public platforms, executions have nearly disappeared. In recent years prisoners have continued to enter prisons in the United States under sentences of death. At present over 440 are sitting on "death row", a figure double that of a decade ago. Yet there were but two executions in 1967. This is a clear sign of the reluctance to carry out the imposed penalty and places an intolerable burden on appellate courts and on the executive authorities entrusted with the power of pardon. Indeed, the whole process of administering justice is bedeviled by the existence of the death penalty. It is increasingly difficult to find persons acceptable as jurors in capital cases, the appellate procedure is becoming protracted, lengthening more and more the time between the date of sentence and the final disposition of the case until often five or even ten or twelve years may elapse, after which an execution would be a mockery of justice.

In its recent report, "The Challenge of Crime in a Free Society," the National Crime Commission appointed by President Johnson two years ago was unanimous in its opinion that if a state imposes death penalties but does not execute them, it should remove capital punishment from its statutes. There are encouraging signs that this will progressively happen in the American states, because the death penalty has become *impractical* in the light of present-day experience, is *outmoded* in the light of modern penology, *useless* as a deterrent, so *haphazard* is its execution as to be grossly inequitable, and so much like a *primitive rite* that it should have no place in a modern penal code. The removal of the death penalty from federal law would give a strong impetus to the abolition movement.

Mr. SELLIN. I begin it with a brief history of the abolition of the death penalty in the United States. I want to make a case that the penalty of death has almost disappeared in the United States.

Senator HART. Has almost?

Mr. SELLIN. Disappeared. When you sentence a man to imprisonment, the commitment to the institution to serve the sentence is the punishment, not the sentence which the judge imposed, because a sentence not executed is, no punishment. When you sentence a man to death, you simply order that a punishment be inflicted on him, and if it is not executed, then the penalty does not exist for him.

In 1966 there was one execution in the United States, in Oklahoma, and strange to say, that one execution was induced by the offender. He had previously been sentenced to death for murder, had pleaded with the jury and the judge to impose a death sentence. He was given a life sentence, and when he arrived in prison after a while, having tried to convince all authorities and the court the sentence should be changed to a death sentence, because he wanted to die, he killed a cellmate and went to the warden and said, "Now you have to execute me." This was the one execution in 1966.

There were two executions in 1967, one in Colorado and one in California.

I think I have made my case that the death penalty practically does not exist in the United States. We still sentence persons to death, yes, but we do not execute the punishment.

Therefore it is rather puzzling to find that there is so much resistance to any attempt to abolish the death penalty. People get terrifically excited about any movement in that direction. I have read so many debates on this subject. The arguments remain the same, from ancient times through the present. They are either of a dogmatic character which do not allow for proof or disproof, but only for conversion, or they are of an empirical character, which makes it possible at least to test whether or not the assertions which are made about the effectiveness of the death penalty can be examined.

We have a great deal of empirical evidence with respect to the problem of deterrence which is usually the argument which is brought up when the death penalty is discussed. I am never sure whether or not it is the real argument, I mean the real motive for using that argument. But we live in a scientific age, we like to be rational and like to have facts that will show whether or not a certain thing is true, and we do not like to admit that it really is not the facts that we want but that our emotions are really what is deciding us, we can hide this by claiming that we need facts.

But even facts sometimes are very, very difficult to present. There are some people who just don't accept facts. I mention in my paper

that during the debate in the British House of Commons in 1956, Sir Patrick Spens, a former Chief Justice of India, said, "I am absolutely convinced—I know—that fear of violent death is a deterrent, and no statistics, no argument whatever will convince me that it is not."

Well, people like that you cannot debate with. Their minds are closed.

Then there is the other recurring argument that it is easy to number the failures, but we cannot number the successes. No one can ever know how many people have refrained from murder because of the fear of being hanged. I don't quite understand that argument. To me it is a red herring. If no one knows and no one can know, it is a subject that should not be debated, because no one can debate it.

But on the other hand, the way the statement is phrased, it assumes the existence of deterrence which is the very thing that needs to be proved. And therefore I have no sympathy with that kind of argumentation.

Now, I think it is possible, by the use of the statistics that we have, to test whether or not the death penalty influences murder rate. I would be the first to admit that it is difficult to know how many capital murders there are among the murders that are known or are committed, because the very definition of murder in the first degree, which is punishable by death, requires the presence of certain items of knowledge which one cannot ascertain without catching the offender, in most instances. But we have to go on the assumption that the ratio of capital murder to general murder remains fairly constant from year to year. If we study the rate of willful homicide, we are also likely to be showing what has happened to capital murder over a period of time.

Now, if a State has the death penalty for murder, and then abolishes it, those who are freed from fear of execution should presumably, some of them, be added to those who might otherwise also commit murder, and the murder rate or the homicide rate should rise.

Well, all studies that have been made of comparable States, and I want to stress comparability here, because I don't think it is quite right to compare the abolition States with the nonabolition States without reference to the type of States involved. Our Southern States all have higher homicide rates, the highest homicide rates in the Nation will be found in some of the Southern States, and they all have the death penalty, while those States that have abolished the death penalty, most of them have relatively low homicide rates. So it would be natural that the abolition States would therefore have lower rates than the death penalty States, if they were all lumped together into two categories.

But if we compare the abolition States with the adjoining death penalty States, and therefore comparable States within the same cultural region and reasonably similar in population and so on, then we can find no difference between the homicide rate of the abolition States and the death penalty States, but they are practically identical, and the trends over a period of years are identical.

I have made diagrams of the homicide rates of groups of States compared in this manner, and I would challenge anyone who did not know what particular graph or line belonged to the abolition State and the ones that belonged to the death penalty States to pick out the aboli-

tion State. It cannot be done. Therefore, there is no unique power that the death penalty has to affect the homicide rates.

The police have been mentioned. Police authorities are generally opposed to abolition. They believe in the death penalty except in the States that have abolished the death penalty. There the majority of the police chiefs do not believe that the existence of the death penalty protects the police. The vast majority of the police chiefs, not all, in the death penalty States defend the death penalty, because they believe it affords a protection.

Now, a few years ago I acquired from the FBI Xeroxed copies of all of the offense reports on policemen killed during the period of 1961, 1962, and 1963, and we made a very careful analysis of those police homicides.

When we compared, on the same basis that I have mentioned earlier, the abolition States with adjoining death penalty States, we found that the rate of policemen killed during those 3 years per 10,000 police officers was the same in the abolition States and death penalty States. There is no evidence whatsoever to suggest that the police are correct in their assumption that the death penalty gives them special protection.

There is the problem of prison homicides. As you know, there are two or three States in the Union that have abolished the death penalty for ordinary murder, but have retained it for the killing of prison personnel in the belief that the existence of the death penalty will afford greater protection for prison personnel, inmates or staff.

Well, we have never had very much information about that except general statements made by wardens about the character of prisoners who have been committed to prison for murder. But last year I made a study, in which all of the State penitentiaries and Federal institutions cooperated, in a study of the killings that occurred in these institutions, in all but five States, and they were very small, except for Mississippi, but Maine, for instance, and Idaho would not be likely to have many events of that type.

Now, that information is rather interesting from many points of view. There were 61 homicide victims during the year 1965, eight staff members and 53 inmates in assaults committed by prisoners. Nine inmates were killed by unknown persons, all in jurisdictions having the death penalty. Fifty-two persons were killed by 59 known prisoners, and the 8 staff members were all killed in death penalty States.

Who were these killers who were known? Fifty-nine prison killers were known. Sixteen of them were serving a sentence for murder of the first or the second degree, four of them in abolition States. Nineteen were serving terms for robbery. Altogether 43 were in prison for an aggressive crime against persons, 16 for property offenses. If we assume that the cases of inmates killed by unknown offenders involved nine perpetrators, then, of the offenders, were prisoners in death penalty States, and 11 in abolition States.

Therefore it is true that sometimes a killing by someone who has been committed for murder occurs in prison, and there is no way of preventing it, because first of all the State courts or the courts have decided that these persons should not be sentenced to death, but should be sentenced to life in prison. Executive authorities may have com-

mutated sentences, on the assumption that life imprisonment would be a more proper punishment than execution. And when you consider the unnatural character of prison institutions, unisexual institutions, throwing together sometimes thousands of men, usually men in close confinement, within walls, exposing them to all sorts of situations in which personal aggression might be invited or might result, it is perhaps amazing that there are no more such events, no more such assaults committed in prison.

After all, such assaults do occur in freedom by people who are not confined in that manner, because of circumstances in which they find themselves.

Now, what about the question of the length of sentence, the length of time spent in institutions. Here again statistics may take a little beating if they are not properly dealt with.

How long is a life sentence? Well, unless you segregate at least those who die in prison, having been sentenced to life, from those who are able to be discharged from prison, you are going to lower the rate.

The study that we made some years ago on the basis of five or six States showed that about 20 percent of the prisoners sentenced for murder to life die in the institution, and they had only served on the average about 5 years.

At the present time those who are paroled from a life sentence in Pennsylvania serve about 20 years.

In California, so far as I remember, if my memory does not deceive me, it is more around 10 or 11 years. But I don't have sufficient information to go beyond these two items of data, unless I were to do some hunting and maybe submit it to the committee later if the committee so wishes.

Senator HART. If such data is developed, it will be added to the record.

Mr. SELLIN. Now, with regard to the protection of the public, I think there are a few items that I have included in this paper because I was confining myself to a certain period of time, but I think it is very telling, take particularly New York. I have cited data from California.

In New York, from July 1930 through 1961, 63 prisoners convicted of first degree murder were paroled in New York. Sixty-one of them had originally been sentenced to death, and their sentences commuted. Their average age at parole was 51 years. Fifty-six had no previous felony convictions. This I imagine also suggests to you that the parole board had used some pretty fair selective process.

Three of the 63 became delinquent. Two of them were returned to prison for technical violations, and one after conviction for burglary. And you notice what I have cited about the situation in Ohio. From 1945 through 1965, there are even more recent figures, 273 first degree murderers were paroled in Ohio. Fifteen became parole violators. But only two of them were returned to prison after a conviction of a new crime, one for robbery and one for an attempt to rob.

In other words, while a second homicide sometimes occurs, I know a few instances, they are very rare, and if you take the information simply on the basis of the statement in a statistical table, you may be fooled.

The most recent case of that kind that I know of was a man who was convicted of murder in the first degree, sentenced to death, the sentence commuted. He served a long time in prison, was paroled, and after a time, I forget whether it was 6 months or more, was again charged with murder in the first degree, and again sentenced. I forget whether it was to death or imprisonment. This man had never killed anybody. He had never even had a gun or a weapon. This was a felony murder situation, where he was with two or three others holding up a gas station or something like that, and in the process someone was killed by one of the other members of the gang, but all of them under the law would have to be sentenced to death.

So, as I say, statistics may sometimes deceive unless one knows the facts.

Now, if I may, I am not going to bother to read anything except the last paragraph of my paper, if you will permit me.

In its recent report "The Challenge of Crime in a Free Society," the National Crime Commission appointed by President Johnson 2 years ago was unanimous in its opinion that if a State imposed death penalties but does not execute them, it should remove capital punishment from its statutes.

There are encouraging signs that this will progressively happen, because the death penalty has become impractical in the light of present-day experience. Look at the 400-odd persons on death row, the time being lengthened more and more between commitment after sentence and the possibility of execution or at least final decision. We are throwing the burden which the legislature should assume on the appellate courts and executive, and compelling them to face the issue, and that they are declining now is obvious. They are deferring, permitting appeals, upholding appeals, demanding new trials, et cetera, resulting in the fact that no one gets executed, and if anyone is executed after so many years of waiting, I consider it immoral.

I regard the Chessman execution as one of the most immoral acts that any State could perpetrate, after 11 or 12 years of waiting.

So it is impractical, in the light of present day experience, it is outmoded in the light of modern penology, it is useless as a deterrent, so haphazard in its execution as to be grossly inequitable, and so much like a primitive rite that it should have no place in a modern penal code.

I hope that the Federal Congress will remove the death penalty from its statutes, and thereby approve what is perfectly obvious, the modern trend even in the United States, and thereby also spur the movement of abolition in the States of the Union.

Thank you very much, Senator Hart, for being patient.

Senator HART. Thank you, Professor. You, as well as you have, inasmuch as you are the concluding witness for this set of hearings, called attention to something that Mr. Bennett emphasized, but because it is so lacking in emotion is apt to get overlooked.

As you approach your conclusion you reminded us again that the whole process of administering justice is bedeviled by the existence of the death penalty, the burden shifting to the executive, endless appellate procedures that are involved, 400-odd on death row and two executed.

In the study of individuals, there is the excitement that attaches and we get swept away by the description of executions. But also, and I think a very persuasive reason for us to eliminate capital punishment is the fact that it snarls up the administration of justice, and to the degree that that can be improved, we have contributed to the advance in an area where our security is affected just as greatly really in the long haul as whether we execute two more next year under State orders.

Thank you.

Mr. Paisley.

Mr. PAISLEY. Professor, the fact that States like Michigan and other States that have abolished capital punishment, that is, capital offenses, murders have not increased is about as convincing evidence as you can get that it really does not deter; capital punishment does not deter crime.

Perhaps I didn't make myself clear. The fact that Michigan has abolished it for years, and there are no more murders in Michigan than there are in other States, that is about the best evidence you can get, isn't it, that capital punishment is not desirable, is not necessary. It has been brought out but I want to emphasize it.

Mr. SELLIN. The nature of the offense, I am now speaking of murder, the nature of that crime is such that the problem of deterrence is likely to be on its face practically nil. Most victims are wives, husbands, paramours, drinking acquaintances, and there are only a relatively small number of victims that occur in the so-called felony murder type.

The last report of the Uniform Crime Reports, for instance, indicates that of the homicides they knew of for 1965, only about 15 per cent were actually known to be in the felony murder category, in other words associated usually with robbery. Otherwise the victims were all in the categories that I mentioned, and the murders occur under an emotional strain or a situation in which the thought of consequences does not appear.

The one who thinks that he is so skillful that he is going to get away with it, no punishment affects him, because nobody is ever going to discover him. That is what he thinks, and there is no deterrent effect there possible.

As Professor Radzinowicz said, this whole problem of deterrence is a very difficult one to investigate, especially in connection with certain other offenses, but I think that when it comes to the taking of a human life, which runs up against the strongest barriers of norms and mores that we have in our society, we can imagine that the circumstances are very special for this type of crime, and that therefore deterrence cannot operate as it might be able to operate in certain other types of offenses.

Mr. PAISLEY. Thank you very much.

Senator HART. Thank you, Professor.

Mr. SELLIN. Thank you, Senator.

Senator HART. As we close this set of hearings, I would suggest and I would ask counsel to review the great number of letters that other members of the committee and I have received, and those which he feels add, either because of the background of the writer or the subject matter contained, to the testimony that we have had, both for and

against, because I note a number of letters are from persons opposed to the bill, add them to the record. I notice a letter here from Austin McCormack which is typical of the type of letters which would be helpful.

There are letters from attorneys who have had trial experience. There are letters from teachers, who reflect the point of view of their classroom I find disturbingly. There is a high school in Illinois that does not encourage me to think that maybe the youth movement will be always in the direction of abolition, but in any event, I think the record for balance should have that material in it.

To Governor DiSalle and all of you who have attended these hearings, which I think have been productive, I want to again express thanks.

The record therefore will remain open for these purposes.

Additionally, we will have further hearings, and I repeat at that time the Attorney General of the United States will respond both to the broad question and specifically with respect to the Senate bill that we are studying.

We are adjourned.

(Whereupon, at 12:45 p.m. the subcommittee adjourned.)

ABOLISH THE DEATH PENALTY UNDER ALL LAWS OF THE UNITED STATES, AND FOR OTHER PURPOSES

TUESDAY, JULY 2, 1968

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10 a.m., in room 2228, New Senate Office Building, Senator Philip A. Hart, presiding.

Present: Senator Hart (presiding).

Also present: Terry Segal, legal counsel, and Betty Stiverson, staff assistant.

Senator HART. The committee will be in order. And I welcome warmly the Attorney General of the United States. All the good things I say about the Attorney General would not persuade those who are a threat to the security and serenity of the country at all, but I think you are a great Attorney General, and I am delighted to hear you this morning.

Mr. Attorney General, you have a brief statement, and if you would be good enough you may read it.

STATEMENT OF HON. RAMSEY CLARK, ATTORNEY GENERAL OF THE UNITED STATES

Attorney General CLARK. I will be very happy to do that, Senator Hart.

I appreciate this opportunity to appear before you on a matter that should concern all Americans at this very difficult time in our history. We live in days of turbulence. Violence is commonplace: murders occur nearly every hour.

In the midst of anxiety and fear, complexity and doubt, perhaps our greatest need is reverence for life—mere life: our lives, the lives of others, all life. Life is, as Justice Holmes said, after all an end in itself. A humane and generous concern for every individual, for his safety, his health and his fulfillment, will do more to soothe the savage heart than the fear of State-inflicted death which chiefly serves to remind us how close we remain to the jungle.

“Murder and capital punishment are not opposites that cancel one another, but similars that breed their kind,” Shaw advises. When the State itself kills, the mandate “thou shalt not kill” loses the force of the absolute.

Surely the abolition of the death penalty is a major milestone in the long road up from barbarism. There was a time when self-preservation

necessitated its imposition. Later inordinate sacrifices by the innocent would have been required to isolate dangerous persons from the public. Our civilization has no such excuse.

Today more than 70 nations and 13 of our States have generally abolished the death penalty. While most States and the Federal system reserve the ultimate sanction, it has been rarely used in recent years. There were 199 executions in the United States in 1935. There was only one in 1966; two in 1967. Only one person has been executed under any of the 29 Federal statutes authorizing death in the past 10 years. He can be the last.

Our history shows the death penalty has been unjustly imposed, innocents have been killed by the State, effective rehabilitation has been impaired, judicial administration has suffered, crime has not been deterred. Society pays a heavy price for the penalty of death it imposes.

Our emotions may cry vengeance in the wake of a horrible crime. But reason and experience tell us that killing the criminal will not undo the crime, prevent other crimes, or bring justice to the victim, the criminal, or society. Executions cheapen life. We must cherish life.

Extensive studies show that the death penalty does not deter crime. A comprehensive study by Prof. Thorsten Sellin concludes, "it has failed as a deterrent." A United Nations report finds from all available information that abolition of the death penalty has no effect on murder rates. With, or without, they are much the same. Why should we expect a deterrent value? Most capital crimes are committed on impulse in a moment of passion without thought of gain or loss. No punishment deters unpremeditated crime. Premeditated crime is committed by people who generally believe they will not be caught, no matter what the penalty. The best deterrent is swift apprehension, prosecution, and conviction. The need is to build better law enforcement—to professionalize police, to bring science and technology to criminal justice. The death penalty is considered by some to be an incentive for mentally unstable persons to commit capital crime.

The death penalty's impact on the administration of justice has been malign. Mr. Justice Frankfurter strongly opposed it for this reason. "When life is at hazard in a trial," he said, "it sensationalizes the whole thing almost unwittingly." He regarded as "very bad" the effect on juries, the bar, the public, and the judiciary. President Johnson's Crime Commission found that the sensationalism "destroys the factfinding process." In a capital case, realization of the consequences of error permeates the entire proceedings. A jury might acquit because of its fear of the death penalty rather than the weight of the evidence. Mr. Justice Jackson observed that appellate courts in capital cases "are tempted to strain the evidence and even, in close cases, the law, in order to give a doubtfully condemned man another chance."

Fear of mistake produces excruciating delays in executions. Of the 435 men now on death row, who range in age from 16 to 68, half have been waiting death more than 29 months since they were sentenced. Such delays add immeasurably to the inhumanity of capital punishment. Combined with the infrequency of actual imposition, delay eliminates a deterrent effect the penalty might otherwise be thought to have. Moreover, as the American Bar Foundation found in a 1961

study, it weakens public confidence in the law. The President's Crime Commission noted:

The spectacle of men living on death row for years while their lawyers pursue appellate and collateral remedies tarnishes our image of humane and expeditious justice.

The death penalty is irrevocable. For this reason, LaFayette vowed to oppose capital punishment until "the infallibility of human judgment" was demonstrated to him. Innocent persons have been executed. Mental defectives and incompetents have been executed. A judicial determination that a person is legally responsible for his act is not yet precise.

A small and capricious selection of offenders have been put to death. Most persons convicted of the same crimes have been imprisoned only. Experienced wardens know many prisoners serving life or less whose crimes were equally, or more atrocious, than those of the men on death row.

Death has been visited in a discriminatory fashion. Clarence Darrow observed that, "from the beginning, a procession of the poor, the weak, the unfit, have gone through our jails and prisons to their deaths. They have been the victims." It is the poor, the weak, the ignorant, the hated who are executed. Racial discrimination occurs in the administration of capital punishment. Since we began keeping records in 1930, there have been 2,066 Negroes and 1,751 white persons put to death, although Negroes made up only one-eighth of our population. Of the 455 men executed for rape, 405 were during all of these years Negroes.

As a people, we are committed to the rule of law. We obey the law, not because we are forced to or fear not to, but because we want to. The law, therefore, must be just. It must offer hope to all of our people. When it suggests vengeance or inhumanity, it loses the respect that is necessary if a free people are to fix it in their hearts.

Modern penology offers effective methods of protecting society. We are at last beginning to realize what can be accomplished through rehabilitation, achieved in confinement and in limited custody or supervision in open society. Community treatment centers, halfway houses, and work-release programs are evidence of the thrust toward community programs. Their potential is immense. They are the future of corrections. It is a sad commentary on how much we care that this wealthy Nation spent 95 percent of all funds for corrections on pure custody, the remaining 5 percent on education, therapy, and other rehabilitation techniques—while still killing those who offend us the most.

If an offender cannot adapt to community programs, he need not be a burden on society. Through employment in industries within the prison he can be productive. If he is unable or unwilling to work, he can be treated humanely, allowed to live, and society can simultaneously be fully protected. We do not need to kill from fear.

Murderers, the most likely candidates for execution, generally make well-behaved prisoners. There is nothing to indicate that the death penalty is needed to protect prison personnel from murderous assaults by life termers. The last two heads of the Bureau of Prisons have opposed the death penalty. One study covered 121 assaults with intent

to kill in the prisons of 27 States during the 1940's found only 10 were committed by prisoners serving life for murder.

The death penalty is inconsistent with the purposes of modern penology. It is a costly substitute for the effort and money needed to develop correctional knowledge and skills.

Our difficult days call for rare courage: the willingness to disenthral ourselves, to think anew and to act anew. There is no justification for the death penalty. It cheapens life. Its injustices and inhumanity raise basic questions about our institutions and purpose as a people. Why must we kill? What do we fear? What do we accomplish besides our own embitterment? Why cannot we preserve life and in so doing create in the hearts of our people a love for mankind that will finally still violence?

The death penalty should be abolished.

Senator HART. Mr. Attorney General, I've heard many eloquent pleas to the conscience of America and this Congress to abolish the death penalty. Others have, too. And, I suspect that they would agree with me that there has never been a more reasoned and yet moving statement, brief though it is, than the one you have just made to us.

Indeed it is so eloquent that I am almost ashamed now to get into what seems to be nit-picking kind of comment and questions.

But for the reader of the record and for those interested here in the room, we understand that the bill before us would reach only the Federal Government and would eliminate from Federal statutes those instances where execution for a particular crime is permitted. Your statement is directed to and in support of that bill, S. 1760, is that not correct?

Attorney General CLARK. That is correct.

Senator HART. I note that there is a rather long history of Federal criminal violations which authorize the death penalty. Let me cite one or two which I think most people would agree seem completely unrelated to a crime of such character as to even suggest that a death penalty would be in order, and then let me go to the other end of the line and indicate one or two where, for reasons of history or tradition or prejudice, many people argue that you and I are wrong in this position.

The Federal statute makes the sale of heroin to juveniles a crime and authorizes as a penalty execution of the person found to be guilty of that crime. Now, is there any experience in the Department of Justice of which you are aware that would explain why Congress when it enacted the law to prohibit the sale of heroin to juveniles should have even thought about making capital punishment a sanction.

Attorney General CLARK. I am not familiar with the particular history. I would assume that at the time of the consideration of that statute there was very grave concern about the use of heroin and particularly about the sale of heroin to minors. That is a particularly vicious thing to do. It can destroy a young life in the very real sense. Our history through the years would indicate, however, that about 86 percent of all people executed by our States and Federal Government since 1930 were executed for the crime of murder, about 12 percent for rape, and less than 2 percent for all other crimes combined. This indicates quite clearly that this extreme sanction has not been used to any appreciable degree in the narcotics field.

Senator HART. Well, then, let me get to the other end, to an area where as you say the application of capital punishment generally is found, and where at the moment there is a very high emotional level in this country. The Federal statute that makes it a crime to assassinate a President of the United States authorizes the execution of the one found guilty of that crime. Do you have any—you indicated in your statement that you would abolish capital punishment without exception. You would retain it for no crime. I invite your attention specifically to the Federal statute which makes it a crime to assassinate a President of this country and ask if you have any doubt that the elimination of capital punishment as a sanction would weaken the protections available to society and the protection of the life of the President.

Attorney General CLARK. It took this country a long time to make it an offense against the United States to assassinate or attempt to assassinate its President. I testified in favor of the law that you cite. At that time there were a number of comparable and lesser crimes in the Federal statutes that called for the imposition of the death penalty. In urging the enactment of the statute making it a crime against the United States to assassinate the President of the United States, we felt it was wise in the interest of uniformity to include the ultimate sanction of the death penalty. However, we feel, as I have testified, that the death penalty should be completely abolished in Federal law, and I have no doubt that it should be abolished as well in this new law which has been on the books scarcely 3 years.

Senator HART. The committee had, as you indicated, testimony from the two most recent heads of the Federal Bureau of Prisons, and they spoke of another crime which even among those who figure generally that capital punishment should be abolished have some reservations. A lot of people feel that in order to protect prison guards, it is essential that capital punishment be made available in the event an inmate already under life sentence attacks and kills a prison guard. Both Mr. Bennett and I know Warden Duffy spoke to this subcommittee and said there was no basis for it, no need for it, and urged the across-the-board abolition of capital punishment. You make a reference to this particular crime in your prepared statement. I do not ask you to repeat your prepared comment on it, but I do want by my question expressly to raise it, because I find from some of us who are interested in the abolition of capital punishment as wrong, frequently, they reserve as an exception the need for capital punishment in these cases, which, as they say, bear on prison discipline. You have no doubt that the retention of capital punishment for this purpose is not needed, is that correct?

Attorney General CLARK. I have none whatsoever. I think our experience in penology, our experience in State and Federal institutions shows that this sanction is not necessary to control the prison population. Certainly the effectiveness of our techniques of control and protection must depend on more effective than a mere sanction that those who violate them will be punished by death or any other penalty. The agreement of such eminent penologists, as Jim Bennett and Myrl Alexander, who span the better part of this century in their experience and leadership of the Federal Bureau of Prisons, speaks volumes. I have visited many Federal prisons and talked with wardens and offi-

cers there and I have never had them express a concern about this to me. I do not believe they feel it.

Senator HART. You make a comment here that reminds me of the testimony of Governor DiSalle of Ohio. Ohio had capital punishment. He described the agony which was his as Governor in reviewing applications of the men on death row. He later wrote a book that describes very vividly the burden a Governor carries in this area. He made the point, and I think you make it here, too, that he visited scores of men in the death row in Ohio, and he said there was a common denominator among them all: generally they were friendless and always they were poor. You make the same point in different fashion. Just to underscore it, because really the purpose of your testimony today in these hearings is to give Americans an opportunity to think about this problem, to hear from you, and in earlier hearings from others of the reasons that are assigned in support of the proposal we eliminate it, let me ask this question. To your knowledge, has capital punishment ever been visited upon, have we ever executed a felon who by anybody's standards would be labeled rich?

Attorney General CLARK. I do not recall the case, if there has been one. On the other hand, it seems clear that nearly all of the people who are executed are poor. Most are not well educated. They are ignorant people. For those who believe in equal justice under the law, we have to be deeply concerned about this, as we have to be deeply concerned about the fact that such a greatly disproportionate number have been Negroes. The figures in this area must cause us real concern. Why is it that this ultimate sanction is applied so much more frequently to the poor, to the ignorant, to the weak, and to the minority? And as a people, do we really believe that the wealthy, the educated, and the advantaged are ever likely to suffer the death penalty whatever their crime? Our history would indicate it does not happen.

Senator HART. Well, I would only hope, Mr. Attorney General, that a good many Americans, if they have not heard you on television and radio, will read what you have just said and think about it.

There is one last point that you make here that I would like to underscore. And this, also, the people of this country should think about, too. You tell us that 90 percent of all the money that this country spends for correction is spent on custody, building a building and putting on a heavy door and turning the key, 95 percent of all the money we spend for correction is spent on custody. And we spend five cents of every dollar on the other rehabilitation techniques. You make the point that that balance is out of proportion, has no relationship to the benefit that could be obtained from the money. Would you comment just in a little more detail on that aspect of the problem?

Attorney General CLARK. This is an area of great concern to me in crime control. We have an immense amount of crime in this country, and much of it can be controlled. We believe that four out of five of all serious crimes committed in the United States are committed by people with a previous conviction of a crime, usually a misdemeanor, usually committed at a young age. If we really cared, if we really applied our knowledge and our resources, we know from present methods that have been tested, that we could return at least half of these people to decent, law-abiding, constructive lives. And if that is 80 percent of

all crime in this country we can cut it in half, we have made an immense difference. But we do not care enough to do anything about it. We spend 95 cents of every dollar on iron bars and stone walls and gray uniforms and wardens and keys, and food necessary to keep prisoners alive. We spend only about \$1.1 billion a year in our Federal, State, and local jurisdictions for all of our correctional activities. If we would just double that and spend the increase in rehabilitation, in vocational training, in education, in therapy, in careful community supervision where we can safely work people back into a normal, decent life, we would do more to reduce crime, to improve public safety than any other thing that I know that we could do.

Now, we have got to work with our kids and we have got to work with them before they fall into patterns of delinquency and before they are identified as criminals and before they have been convicted. We could also do so much with those who have already fallen into the cycle of recurring criminal conduct. And it is urgent that we do so, because all through history most people who have offended government and been in prison have returned to open society. And if, when they return, they retain the capability and the will to commit crime, there will be no safety. It is our burden, it is our duty as a government and as citizens to do all that can be done and to do what we know can be done to reduce crime. It is an urgent piece of business for this country. The death penalty is inconsistent with that general purpose and tends to undermine and impair our opportunity to realize it.

Senator HARR. Well, I repeat again, Mr. Attorney General, I wish that this visit this morning is one that you could make with everybody in this country, that each American would have an opportunity to listen, to hear your point of view, because there is no need to kid ourselves. There are those who say to me, for example, you put this bill in at a crazy time. Have you not sense enough to know that the crime rate in this country is increasing dramatically? Why talk about abolishing capital punishment? If it is a good idea at all, this is the worst time of all to suggest it.

As I look back on the history of congressional concern about capital punishment, it seems that no time is a good time to suggest it. And if the idea is sound, it is sound in good days and bad. But do you as the chief law enforcement official of this country feel that discussing the abolition of capital punishment weakens law enforcement, your own efforts. Is there any relationship between the crime rate and the proper time to suggest the abolition of capital punishment?

Attorney General CLARK. I think that in the long run the abolition of the death penalty strengthens law enforcement, because you cannot police people by fear. The time to do what is right is always now. The abolition of the death penalty is important. It is never easy to do an important thing. If it were, it would be done before it became important. It takes more courage to face this issue now, but if we address ourselves to it, if we act with candor and without hypocrisy and recognize the fact that we rarely impose the penalty with which we threaten people anyway, we will act now, and it will be beneficial to the public safety.

Senator HART. Well, Mr. Attorney General, I wish I could speak as eloquently my appreciation for your testimony as you have presented your point.

Courage is the correct adjective, among others, to use to describe your testimony, indeed your whole career as the Attorney General of the United States. And you make an appeal through this committee this morning to reason. I hope that there will develop an understanding across the country which will support the appeal that you voice.

I hope everybody that has a concern that we conduct ourselves as a people that can make a legitimate claim to being a civilized people, I hope that your words will have very broad reading. I know that you have lived through a rather hurly-burly period as Attorney General, and notwithstanding the sometimes emotional currents that have flooded the country, you have come up to this Hill and testified in support of a good many things which, if you had tested their popularity, you would not have shown up. And I suspect that in the long run, to use your expression, there will be no position that you have taken nor which the administration, President Johnson, supported which will get higher credit in history for courage and reason than support of the abolition of the death penalty. We are very grateful to you.

Attorney General CLARK. Thank you, Senator.

Senator HART. Thank you. I know you have other chores.

Attorney General CLARK. Thank you very much.

Senator HART. The next witness is the director of the Washington office of the American Civil Liberties Union, Lawrence Speiser.

Mr. Speiser also is found on the Hill often, rarely testifying for anything that is very popular. And thank God for the American Civil Liberties Union is all I have to say.

Mr. SPEISER. Thank you, Mr. Chairman.

Senator HART. You are very welcome.

STATEMENT OF HON. LAWRENCE SPEISER, DIRECTOR, WASHINGTON OFFICE, AMERICAN CIVIL LIBERTIES UNION

Mr. SPEISER. Thank you. It is good to be here, although I cannot think of a more difficult act to follow than the Attorney General.

I think that the compassion, the intelligence, the courage, the perception with which he discussed this subject set a standard for congressional hearings that I think will be extremely difficult to match at any future time.

Senator HART. I agree.

Mr. SPEISER. However, I did come to talk about capital punishment and the reason that the American Civil Liberties Union opposes it. My testimony, I think, may even sound coldly legalistic compared to the statement the Attorney General made so persuasively, but we do oppose it on three constitutional grounds. We believe that capital punishment is a denial of equal protection of the laws, that due processes are frequently denied by the existence of the death penalty, and that the death penalty itself is cruel and unusual punishment. The first of these grounds, denial of equal protection, is evident from the most cursory examination of the death penalty statistics. The death penalty is the special privilege of the poor, the friendless, and the Negro.

Warden Clinton T. Duffy has testified before this body that he has never known of a person of means to have suffered the death penalty.

By any statistical reckoning, the poor are the victims of the death penalty. In Pennsylvania, to pick an example at random, those who cannot afford their own legal counsel have been executed in the ratio of 4 to 1, compared with those who can afford private counsel.

The statistics about Negro executions are even more compelling. Since 1930, 53.7 percent of those executed have been Negroes, who represent 10 percent of our population. In Ohio, in 1 year 1958-59, 78 percent of the Negroes convicted of murder were executed, while only 51 percent of the whites convicted received the ultimate penalty. Eighteen States impose the death penalty for rape. In a 14-year period, 444 persons were executed in these States for rape, of this total, 399 were Negro and 2 were Indian. No white man has ever been executed for raping a Negro woman. Six States have executed only Negro defendants for rape.

The statistics are the same, rolling on with monotonous regularity bringing home their lesson to our minority populations.

The second ground—denial of due process—permeates the conduct of capital cases. Defendants are frequently coerced into pleading guilty and waiving jury trials because of the threat that they will be executed if they do not. Prosecutors commonly press for a capital charge in order to get a conviction-minded jury, reducing the charge only when they are assured a jury in favor of capital punishment and thus more likely to be harsh in sentencing. And, of course, the ultimate denial of due process is the cutting short of the postconviction appeal process by the execution of the defendant. There is no way to rectify error once that has happened.

Finally, the concept that capital punishment is cruel and unusual punishment has been proven from many points of view. Our prison chaplains, correctional officials, and psychologists have eloquently described the mental torture of the victim awaiting death for months, sometimes for years. They have clinically described the aberrations, the withdrawal from life, the regression into infantilism that frequently accompanies the stay on death row, the prisoner suspended between false hopes and black despair.

This body has heard a graphic account of the physical torture of the execution itself which turns its victims into a writhing mass of pain.

But more than this, capital punishment takes a cruel toll of the collective conscience of all Americans. Having been taught to reverence life, we are forced to be collaborators in official killings. By themselves, these three points loom large with any thoughtful American. What makes them decisive is that there is no counterbalance of social utility or wisdom to bolster the position in favor of retaining the death penalty. The chief argument of death penalty proponents is that it deters crime. But there is not a scintilla of evidence to support it. Every single study done proves that the death penalty does not have the slightest effect on lowering the crime rate. In fact, the violence of the death penalty seems to march hand in hand with the violence of murder. Thus, Georgia, which has executed more prisoners than any other State also has the highest murder rate.

Death penalty advocates state their position on deterrence as follows: "The death penalty is invoked less and less, and the number of murders is increasing every year. The increase in murders is the direct

result of the decrease in executions." So say the advocates of the death penalty.

This argument has a surface illusion of logic which vanishes on the most cursory examination, because these two facts bear no relationship to each other. As already noted, Georgia has executed more people than any other State in the Union, and it has the country's highest murder rate. The nearby States of Alabama and Mississippi also rank high on both executions and murder rate. In the New England States—several of which have abolished capital punishment—the execution rate is the lowest in the country and so is the murder rate.

In many cases, the murder rate in this country is not increasing in proportion to the population; it has in fact declined in the past 35 years. But violent crime in our midst provides many signposts which direct us to reexamine our way of life: increasing urbanization with its overcrowding and poverty; neglect of our rural poor in the fields of education and employment; the growing army of privately armed citizens; police and government practices in which the individual is reduced to a number and which create the impression that human life is cheap. All of these and many, many more factors may contribute to our crime rate. But the one signpost which is not present, and which has no validity, is that capital punishment is a deterrent to murder.

The new weapon of capital punishment adherents is the catch phrase "crime in the streets." They are much given to expostulating that "crime in the streets" has got to be stopped and that the way to stop it is harsher sentences in general and the more widespread use of the death penalty in particular. But "crime in the streets" is merely a misleading, emotional slogan. According to the FBI uniform crime reports, at least 80 percent of all homicides are "crime in the bedroom," between members of a family or "crime in the living room and kitchen" between acquaintances and friends. Less than 15 percent of homicides are felony murders. What is more, according to the FBI, these percentages have not varied significantly in the past decade.

More and more, the American people have rejected the death penalty as a solution to social problems. Only 4 years ago, when the American Civil Liberties Union adopted its position opposing capital punishment, we were one of a handful of organizations opposed—a small current against a tide of public opinion. Today, that tide has turned and is rising steadily and irreversibly. The Gallup poll shows that only four out of 10 Americans now favor keeping the death penalty.

Equally significant, Americans in their policymaking roles, speaking through their organizations, are solidly opposed to capital punishment. The major religious bodies: The American Baptist Convention, the Disciples of Christ, the American Lutheran Church, the Methodist Church, the United Presbyterian Church, the Protestant Episcopal Church, the United Church of Christ, the National Council of Catholic Women, the Union of American Hebrew Congregations—all these and many, many more have stated their opposition to the death penalty on theological grounds. Correctional associations, with their direct experience in prisons, reject capital punishment, as do associations of lawyers, social workers, psychologists, and others who work in this field.

Add to these the leading voluntary associations and most of organized labor, and the total is an impressive mandate to the Congress and the Government to end capital punishment now.

There is no doubt that one day capital punishment will be outlawed in Federal crimes and in each State. Thirteen States have already abolished it, and, in at least six others, the last legislative vote was so close to retain it that we can believe the next time around will see a reversal.

In addition, the judicial system is recognizing the validity of the constitutional arguments against the death penalty. In the *Witherspoon* case, the Supreme Court ruled that since the majority of Americans are now opposed to the death penalty, it was a denial of an impartial jury to exclude those with scruples against capital punishment from serving on juries in capital cases. In the *Lindbergh Law* case, the Court found that the threat of execution frequently made prisoners sign away their rights to a jury trial by pleading guilty in the hope of getting only a life sentence before a judge.

What is happening then, is a slow undermining of the system of justice in capital cases. Prodded by district attorneys, jurors composed exclusively of people who believe in the death penalty continue to sentence individuals to death, secure in the knowledge that they are free to act irresponsibly since very few will actually be executed. And the number of people waiting on death row mounts—now up to 457 men, some of whom have been there for 6, 10, and even up to 13 years. The fact is that this impasse will not be broken by court decision. It is up to the Congress, representing the American people, to give leadership and voice to our desire to have this medieval practice abolished as it is in every other Western democracy.

We have heard it said that after all, abolishing the death penalty should be a minor effort since relatively few people are affected by it. And it is true. Less than 500 people are facing execution now; only two have been executed in the past 2 years. But capital punishment has a significance far greater than the numbers directly affected by it. If we can abolish it, our society will have taken a giant step toward the day when we can mete out rehabilitation to criminals, not revenge; treat social disorders from their root causes, not by repression, and make the phrase "equal justice under law" a reality.

Senator HART. Mr. Speiser, that statement does not suffer by comparison with the very eloquent one of the Attorney General we just heard at all.

Mr. SPEISER. Thank you.

Senator HART. Indeed that last paragraph, or a point made in the last paragraph responds to something that I have heard voiced as a criticism against the bill that we are considering. People say, well, you know, there are an awful lot of other problems around loose in this country, and hardly nobody is actually executed under the death sentence; you are really fiddling around with a very peripheral problem.

The next time I am hit with that criticism, I am going to try to remember the words of your last paragraph.

Mr. SPEISER. It probably has an even broader effect than that, Mr. Chairman. As one of the few Members of the Senate who voted against the omnibus crime bill, the heart of the pressure for that bill was a

reaction against some Supreme Court decisions, and this has been one of the effects of capital punishment, on forcing the courts to look carefully when they consider the fact that they have a human life at stake, in the decisions. And I think that if that factor were removed, it would perhaps remove some of the criticism of the court, unjustified criticism as it may be, but it would at least remove the emotionalism of a capital case from the context of court decisions.

Senator HART. I was going to thank you off the record, but I wish now to do it on the record, since you made reference to my being one of the four who voted against that so-called safe-streets bill. I appreciate the letter you wrote me afterward.

Mr. SPEISER. It was little enough, I think, for a vote of that kind.

Senator HART. Turning around now to look at this thing another way, to wind this up, I think you can make a fair argument that continuing capital punishment, whether you execute the sentence or not, may itself contribute to violence in this country. I know this strains a little, but I would appreciate your reaction to this line of reasoning.

In the last few years we have seen national figures shot down, our President, a nonviolent voice appealing to decency, and finally a committed Senator of the United States. Everybody the next morning is expressing regret and is surprised, shocked. And I have suggested, and maybe while it is quite right that we express regret, revulsion. I am not so sure that we honestly can say we ought to be surprised, because our society itself applies violence and kills people when it says there is justification for it. We are treated every night of the week to a body count in our own living room when the news comes on with how many were killed in Vietnam, but we say that is justified killing, society justifies that. And then occasionally, there is reported to us the killing of somebody, generally some—always apparently—some ignorant, poor fellow, quite often black, under the execution of a guilty finding and the application of capital punishment. But we say that is justified. Now, whatever else there is in common among those who themselves execute a death sentence on a President or a Dr. King or a Senator Kennedy, one thing is they feel they are justified in doing it; for some twisted reason they feel that society is better off as a result of their action. Could we not argue that the mere existence on the books of capital punishment, and the occasional execution of one found guilty of some heinous crime just contributes to and feeds violence at least in the minds of these sick people who run around engaging in cutting public figures down? Could you not make it a legitimate argument?

Mr. SPEISER. It certainly seems that is a legitimate argument, that to the extent Government engages in killing of the human body, that erodes the concept of the sanctity of human life. And I think it was Justice Brandeis who said that for good or ill the Government is the most omnipresent teacher of us all; how the Government acts affects the way society acts. And it would seem to me that the Government by continuing to have capital punishment does in effect promote the idea that there can be such things as justified killing when people feel strongly enough about it.

And there is the additional factor, it seems to me, that when you come down to—if you get all the arguments away as to whether it deters—and it does not—that you finally end up with revenue which is not a very governmental-like activity. If, for example, Oswald had

lived and had been tried and had, under the laws of Texas been executed, can it actually be said in any way that his death matched or satisfied society's need for revenge to satisfy, to match the death of a President. It just does not in any scale of values and it demeans society to engage in revenge-like activities. And I think that the same thing is true for any people who commit crimes that are subject to punishment.

For example, as far as political assassination is concerned, as far as I know, every individual who has assassinated a President has been executed or killed during the capture. And yet, even at this late stage we have political assassination existing in this country. So it does not deter what we all would like to see deterred. And to the extent that the Government says, well, we can justify executing a human being in cold blood, even though we, the Government do not know that individual, that it seems to me lends credence to individuals who think that political assassination is justified at some time, and they feel strongly enough and they think they have the country at heart. And it does seem to me there is a carryover.

Senator HART. Maybe we ought to conclude this way. The death penalty, capital punishment does not deter, as you point out, and as the Attorney General reminded us, as all of the documentation in this record establishes, capital punishment does not deter. There is just no playing around with the figures that can prove that the death penalty does not deter. This in my mind is beyond debate. We are all of us covered by acts of geography. The explanation of the Georgia figures you cite is history. But geography, too, has its influence. Michigan was the first state to abolish capital punishment. We abolished it in 1847.

Mr. SPEISER. I think it was the first jurisdiction in the Western World to abolish capital punishment. You even have a greater role than just being the first State in the Union.

Senator HART. I did not realize that. I can say all these things without appearing immodest. I did not get to Michigan until I got out of law school. So I did not have anything to do with it. It happened in 1947. But our murder rate is substantially lower than Ohio's, and we are both of us in the Great Lakes Basin. We are basically the same people. We have our rural regions, and we have our highly urbanized areas. Our murder rate is much lower than Illinois in the same Great Lakes Basin with the same population. It is lower than Indiana, in the same composition of population. But Ohio has capital punishment. Indiana does have the death penalty. Illinois does have the death penalty. You just cannot sell the idea that the death penalty has a deterrent effect.

Mr. SPEISER. Governor DiSalle gave an example of that, where there was a gangland killing in which they took their victim only a few miles from the border, and if they had gone over the border into Michigan, they would not have been subject to capital punishment, but they did not bother to. They killed their victim in Ohio. Their idea was that they really did not think they would be caught, which is generally true for that kind of premeditated murder. They are not thinking in terms of capital punishment versus noncapital punishment. But it just required a couple of minutes' effort to go over the border.

Senator HART. That is right. Toledo is almost Michigan. And that is where that killing occurred.

Well, then, if it does not deter, if that is not the reason, then the point you make overwhelms us. It is revenge. Unless you are—and I am not—you know, an anthropologist or something like that, this does not get through to you. But this must be the—this must be the explanation for us as a people hanging on to this earlier barbarism. It is revenge. It must be.

Mr. SPEISER. And we stand out in such stark contrast to the Western civilized countries, all of whom have abolished capital punishment, and yet we have not.

Senator HART. And yet we always admit we are the good guys.

Mr. SPEISER. That is right. And we claim to be civilized. We cannot make that claim unless we abolish capital punishment.

Senator HART. All right. Well, I hope we do abolish capital punishment. We are going to. This is one of these things that the current of history is very clear on. We are going to. We are going to get right. But let us do it now, not hem and haw and find the reasons for the next 25 years not to do it. As you say, it is up to the Congress representing the American people to give leadership and voice to our desire to have this medieval practice abolished as it is in every other Western democracy.

One of the troubles is that the voices from the American people in Congress here in connection with this proposal usually do not represent the attitude of the majority of the people. Usually it is the person who is confused about this proposition for deterrence. Too often, it is the person who in so many words makes it clear that revenge is his motive, who writes us. Its always good that the American Civil Liberties Union is here in Washington to speak to reason, to make the appeal to conscience. This time it is in a position that is supported by the majority.

Mr. SPEISER. It is an uncomfortable feeling, but I am delighted to have it.

Senator HART. But you are still right, even though you speak for the majority.

Thank you very much.

Mr. SPEISER. Thank you, Mr. Chairman.

Senator HART. I will order printed in the record a number of statements that have been filed by those who have not been able to be present to testify.

(The statements follow:)

REMARKS OF THEODORE R. MCKELDIN

The pardoning power entrusted to the Governor of a State is a trust and not a gift. The Governor, if he is a conscientious man, exercises it in accordance with what he believes to be the will of the sovereign, that is to say, the people of the commonwealth. His own opinions and preferences have, of right, nothing to do with his decision in any specific case. No doubt every Governor is influenced by them sub-consciously; but if he knowingly allows them to determine his course he is not faithful to his oath of office.

Hence when I was Governor of Maryland, I did not urge some of the most profoundly important reasons for abandoning the policy of capital punishment, because those reasons are philosophical and theological, rather than political. They belong to the realm of morals; and while I believe that statecraft, to be permanently successful, must be moral, I do not believe that morality is identical with statecraft. Therefore as a Governor I did not argue the sanctity of human life either in the eyes of God or in the eyes of man. I confined myself strictly to

the political aspects of the question, meaning by "political" those arguments that apply to the affairs of this world, without reference to the world to come.

It is enough. My experience as Governor has reinforced my belief that the strictly mundane reasons, which I have called the political reasons, for abolishing capital punishment are sufficient without considering the Ten Commandments or any other Biblical or theological teaching. They are sufficient without even considering the prisoner under sentence. The arguments against capital punishment are innumerable, but in the final analysis they can be reduced to two: first, the policy of capital punishment does not produce the good effects that the law intends; and, second, it does produce evil effects that the law does not intend.

In an earlier stage of civilization revenge was frankly accepted as a function of the law, but in theory we gave that up centuries ago. The old *lex talionis*, "an eye for an eye and a tooth for a tooth", was repealed by the Sermon on the Mount; and if it seems at times to have been re-enacted, it was in defiance not only of religion but also of wise jurisprudence.

The function of all legal punishment, including capital punishment, is to assure the safety of the law-abiding by deterring the lawless from criminal acts. Long ago men realized that the most effective deterrence is the reformation of the criminal, and modern penology works steadily toward that end. Next to reformation is restraint, which may take any form from mere probation to life imprisonment. Infliction of the death penalty is a confession that the better methods have failed, which means that in the specific case society has failed.

But long experience has proved that the extreme penalty does not deter. Quite recently Arthur Koestler reviewed the record in a short book called "Reflections on Hanging", based on English experience but applicable to this country. He quotes a writer of just a century ago, when hangings were public in England, and picking pockets was a hanging crime. Charles Phillips, writing in 1858, says the public executions were known to be the occasions on which pickpockets reaped their richest harvests among the crowds, and explains why: "The thieves selected the moment when the strangled man was swinging above them as the happiest opportunity, because they knew that everybody's eyes were on that person and all were looking up."

Six American states have abolished the death penalty, and in not one of them has the murder rate increased appreciably. If the penalty had really been a deterrent, its abolition should have been followed by a marked increase in that crime; but nothing of the sort occurred. Penologists have an explanation. They point out that murder is practically always committed under very unusual circumstances, giving rise to an emotional stress unlikely to be repeated; and if the emotional stress is violent enough, nothing will deter the act.¹

In short, there is no convincing evidence that the execution of one murderer ever deterred another from committing the same crime. The effect that the law intended is not achieved.

On the other hand the law imposes upon society and especially on those who enforce the will of society a responsibility that no human being ought to assume. The death penalty is the one legal punishment that is completely irrevocable and irretrievable; therefore it ought not to be inflicted by any authority except the one that is incapable of making a mistake. With regard to any other punishment a mistake can be at least partially amended, but not with this one.

It is my considered opinion that nothing can be worse for a man in high office than for him to cherish the delusion that he cannot make a mistake. It is bad for the man and it is worse for the people who live under the law that he enforces, for it tends to make him tyrannical. If it is bad for the individual, I cannot believe it is good for organized society. I believe in democracy. I believe in the political principle that the will of the majority is in all cases to prevail. But I do not believe that the people of Maryland should ever assume that it is impossible for them to be mistaken. Yet when the people, through their agents, the officers of the law, put a man to death they are making that assumption, for it is an act of finality that can never be corrected.

One of the last acts of the late Jerome Frank, one of our great federal judges, was to correct the final draft of a book which has been published under the title of "Not Guilty". In it he cites thirty-six instances in which an innocent man was convicted in an American court. These are not guesses. These are all instances in which the man's innocence was later proved so conclusively that the state released him and in many cases paid him a sum of money by way of amends.

¹ As of 1958.

In a few of these cases the state itself was the victim of a fraud by perjured testimony or some other kind of crooked work. But in the great majority no deliberate fraud was involved; the witnesses intended to tell the truth and thought they were telling the truth; but their identifications were mistaken, their memories failed, or their observation was at fault. Without intending to do so, they lied an innocent man into jail, and the truth was discovered, sometimes many years later, by persons interested enough to re-examine the case.

If we know that it has happened thirty-six times we have every reason to believe that it has happened in other cases in which the truth never was brought out. But once a man has been put to death, who is going to waste time re-examining his case? Occasionally a man confesses having committed a murder for which another man was executed, but such instances are exceedingly rare. As a rule, once a man is executed all interest in his case ceases; therefore we have no reliable means of forming even an intelligent guess as to how often we have executed the wrong man. The existence of thirty-six proved cases in which justice miscarried, although the sentence was not death, is horribly suggestive that the state has sometimes legally murdered innocent men.

Since there is no convincing proof that the death penalty does anything to protect law-abiding people, and since there is very convincing evidence that it can be, and sometimes has been wrongfully inflicted, the case against it would seem to be proved without mentioning the philosophical and theological arguments against it. But there is further evidence to be found in one of the arguments that advocates of capital punishment constantly use.

This is the argument that when an atrocious crime is committed, the public excitement is such that nothing less than the penalty of death will allay it, and any milder sentence would tend to create disrespect for the law.

The truth is the reverse. It is already existing disrespect for the law that demands the death penalty and the penalty tends to perpetuate and encourage that form of disrespect. It is not showing respect for the law to assume that it is an instrument of revenge. That principle is well recognized in civil cases. If it can be proved that a plaintiff brought suit merely out of spite against the defendant, the plaintiff's case is instantly thrown out and he stands in danger of being penalized for having attempted to use the courts for such a purpose.

The function of the criminal law is to protect the law-abiding, not to state society's lust for revenge. Only as the protector of the lives and property of honest men does it deserve the respect and support of honest men. Hence anything that tends to associate it with the idea of vengeance impairs its dignity and subtracts from the respect that intelligent people accord it. The argument that the death penalty is needed to allay public excitement is an argument against capital punishment, not in its favor.

For these reasons, which have nothing to do with philosophy or religion, I, speaking as a former Governor of Maryland, advocated abolition of capital punishment. But I would have been less than candid if I had tried to conceal that speaking as a man, I had other reasons. I believe that the words, "Vengeance is mine, I will repay, saith the Lord", are solemn truth. I believe that the words, "Render unto God the things that are God's" are a command that has never been withdrawn. Protection of the blameless and correction of the evil-doer are our responsibility, for they are activities that belong strictly to this world; but ultimate vengeance, the vengeance that sends a man out of this world into eternity, is the Lord's: and as a private citizen, not as a public official, I am in favor of rendering it into His Hands.

WILLIAM R. MOORS, ASSOCIATE MINISTER, CEDAR LANE UNITARIAN CHURCH,
BETHESDA, MD., AND EXECUTIVE DIRECTOR FOR THE MARYLAND COUNCIL TO
ABOLISH CAPITAL PUNISHMENT

The following data and experience from our various states regarding the use of capital punishment should be considered as evidence for abolition in our federal jurisdiction:

1. Capital crimes, particularly murder, are dependent upon factors other than the mode of punishment or threatened punishment. The use or disuse of the death penalty has little relation, if any, to the incidence of criminal homicide. There is no evidence that the abolition of capital punishment leads to an increase in willful killings or that its retention reduces or deters. The homicide

rate of our various states are obviously dependent upon demographic, cultural, economic, political, and factors other than the vague threat of death. (See Chart 1 attached)

2. Our abolition states have among the lowest homicide rates in the country. If capital punishment were a deterrent, the principal excuse for its retention, then our capital punishment states should have the lowest homicide rates. This clearly is not the case. Our southern states all of which are capital punishment states and use the death penalty most frequently have the highest homicide rates in the country (See Chart 2) Georgia, e.g., has executed more people than any other state (366 out of the 3,859 total executions since 1930) and has consistently one of the highest homicide rates in the country (11.3 per 100,000). Again, it is obvious that regional factors determine this high rate and not the presence or absence of capital punishment.

3. As we have used the death penalty less frequently in our country the homicide rate has dropped (See Chart 3) In 1935 when we executed 199 people, the rate was 8.3 per 100,000 population (In 1933 the rate was 9.7) Last year we executed 2 persons and the homicide rate was 5.8. There has been a marked drop in the use of the death penalty since 1949 when we executed 120 people. Since that year the homicide rate has remained consistent ranging from 5.8 to 4.5. A state by state analysis indicates no discernible correlation between executions and the homicide rate. One thing seems to be clear the homicide rate is not a function of the mode of punishment.

4. It is recognized by law enforcement agencies that capital punishment has no deterrent effect for crimes of passion. Approximately 80% of our homicide are of such nature. The enraged, jealous, vengeful, drunk or mentally unstable do not deliberate the crime or any punishment. There is no reflection on future consequences. The threatened penalty is irrelevant in impulsive killing. Those who kill with malice aforethought are obviously not being deterred by the threat of possible punishment. For one thing, they do not plan to get caught. It is not the vague threat of death but certainty of apprehension and conviction which tend to deter. (See Chart 4)

We might note here that far more felons are killed by the police, the intended victim and bystanders than by the state. The felon takes a calculated risk. Furthermore, more people guilty of criminal homicide take their own lives than does the state.

5. Capital punishment is far more costly to the state than is life imprisonment for capital crimes. Some appeals have gone on for over a decade and have cost states over ½ million dollars. The Chessman case is a good example. Furthermore, it is much cheaper to incarcerate a man for life than to have capital punishment. According to Warden McGee in California "the actual costs of execution, the cost of operating the supermaximum security units, the years spent by some men in condemned status, and a pro-rata share of top level prison official's time spent in administering the unit add up to a cost substantially greater than the cost to retain them in prison the rest of their lives. When you add to this the longer trials, sanity proceedings, the automatic and other appeals, the time of the Governor and his staff—then there seems no question but that economy is on the side of abolition." At the end of 1966 there were 406 men on death row. This is not an unusual year in this respect. Several men have been there for more than 13 years! (Louisiana and Chicago) Furthermore these men are in isolation and are not doing productive work in the industries in our institutions as are other inmates.

6. Those convicted of capital crimes can be and are being rehabilitated. (See chart 5.)

7. Capital punishment is a hindrance to the judicial process. There is first the dilemma regarding plea which is placed upon the judge. With capital punishment on the books and the presiding judge realizing the extraordinary expense coupled with appeal, he often feels responsible to the citizenry to accept the second degree murder plea. Furthermore, Justice Cardozo once said that although he had studied for a life time first and second degree murder he still found them difficult to distinguish.

Secondly, there is the time and cost of impaneling a jury. Last May, e.g., in Edwardsville, Illinois, all 255 prospective jurors called during the first 9 days were dismissed, most of them because they opposed the death penalty.

Thirdly, the above example which is repeated many time each year throughout the country indicates that the accused is not being tried by a jury of his peers as

guaranteed in the 7th amendment. Since a sizable segment of the American public is eliminated from jury duty in such cases, the jury is stacked with persons of a bias now representing a minority in our country. Harris, Roper and Gallup polls show that over 50% of the American public are opposed to the death penalty. Such a sentence and its execution are repugnant to the evolving standards of decency that indicate progress in a maturing society.

Fourthly, capital punishment states place an undue moral burden on a judge and a governor regarding sentencing and commutation.

8. Those closest to our courts and correctional systems are opposed to capital punishment. Leading Wardens, such as Lawes and Duffy and Jack Johnson of the Cook County Jail in Illinois are opposed to its use. The Department of Justice is opposed. I am submitting a statement by Ramsey Clark.

9. Finally, it is the inequity of its use that unquestionably militates against any state ever using capital punishment. It is slow, uncertain, uneven and unpredictable in its application. Since 1930, 53.7% of those executed have been Negroes who represent 10% of our population. But it is those who actually get the ultimate penalty after conviction that demonstrates its capricious nature. For example, in Pennsylvania a study of the records of all those executed show that all Negroes in the 15 to 19 age group sentenced to the chair were executed while only 22% of the whites in the same age group so sentenced were executed.

In Ohio during the year 1958-59 78% of the Negroes convicted of murder were executed while only 51% of the whites convicted received the ultimate penalty. Between 1914 and 1958 439 persons were on death row in Pennsylvania. Seventeen percent of the whites were commuted, while only 6% of the Negroes were commuted. Furthermore, it is those of the lower socio-economic class who actually receive the death penalty. Few people of means ever get executed. In the state of Pennsylvania those who cannot afford their own legal counsel are executed in the ratio of 4 to 1 compared to those who can afford expert council. In the State of Ohio 44% of those who had private counsel have been commuted while only 31% of those with a court appointed attorney have been commuted. In some states no man who could afford his own attorney has ever been executed.

But it is the sporadic taking of a life here and there which is the greatest inequity regardless of race and class prejudice. Capital punishment has not been and never will be consistently and justly administered. California, e.g., which is among the top five states in number of executions until 1963 had about 600 homicides annually. Of these there were some 100 convictions for first degree murder. About one fifth of these were sentenced to death. About one tenth of these were ultimately executed. In 1963 in California there were 656 homicides. There were 208 convictions. Of these 24 were condemned to die and only one was executed. Is this the even hand of Justice? Nationally we have the same inequity. Between 1960 and 1964 there were 43,890 homicides. One hundred and forty-five men were executed! In 1962 there were 8,404 homicides, 99 were condemned to die that year. Six were executed. In 1963 there were 8,500 homicides. Eighty-one were condemned. Three committed from the courts that year were executed. In 1964 there were 9,250 homicides, 5,956 were indicted, 2,620 convicted, 89 were sentenced to death and only two committed from the courts that year were executed. In 1965 out of 9,850 homicides only 60 were sentenced to die. None of these have yet been executed. Who will dare pick the one or two who may actually receive the ultimate penalty and say they are the ones most deserving to die?

(See chart 6.)

Even those who want retribution are not being satisfied because it is obvious that all convicted do not get the death penalty and that the most guilty or brutal do not necessarily die. Gentlemen, the destruction of an occasional murderer does not protect our society. Even if it were proved that capital punishment is a deterrent it would have to be applied consistently, immediately and inexorably—which it is not. It is correction and rehabilitation that will protect us not this kind of "Russian Roulette" and the vague threat of capital punishment. The ultimate deterrent will be to get at causes and have individuals feel and believe that murder is wrong. A state can best achieve a deterrent for capital crimes through getting at causes, correcting and rehabilitating and not by legalizing murder. It is obvious that you do not teach people not to kill by killing sporadically in return. Anyway, a state cannot ask of its citizens a morality higher than that which it can practice itself. People refrain from killing not because of a threatened penalty but because their society encourages behavior which opposes the taking of life.

CHART 1.—YOU CANNOT TELL FROM THE FOLLOWING HOMICIDE RATES ALONE, IN CONTIGUOUS STATES, WHICH ARE ABOLITION AND WHICH ARE RETENTION STATES; THIS INDICATES THAT CAPITAL CRIMES ARE DEPENDENT UPON FACTORS OTHER THAN THE MODE OF PUNISHMENT

	1920-58	1962	1963	1964	1965	1966
Ohio ¹	9.4-3.3	3.2	3.0	3.5	3.6	4.5
Michigan.....	10.5-2.8	3.3	3.3	3.0	4.4	4.7
Indiana.....	7.3-2.8	3.5	2.7	3.0	3.5	4.0
Massachusetts.....	2.5-7	1.8	1.9	2.0	2.4	2.4
Connecticut.....	3.9-1.4	1.3	1.8	1.8	1.6	2.0
Rhode Island.....	2.8-.8	.8	1.4	1.2	2.1	1.4
Iowa.....	3.0-1.0	1.1	1.3	1.3	1.3	1.6
Minnesota.....	4.3-1.0	.9	1.2	1.4	1.4	2.2
Wisconsin.....	3.7-1.0	.9	1.7	1.5	.9	1.9
New Hampshire.....	3.2-.9	2.4	3.2	.9	2.7	1.9
Maine.....	3.0-.9	1.4	1.9	1.5	2.1	2.2
Vermont.....	3.0-.2	.3	.5	.5	.5	1.5
North Dakota.....		1.2	2.1	.9	.9	1.8
South Dakota.....		3.3	1.2	1.3	1.6	1.5
Montana.....		2.1	2.0	2.7	1.7	2.8

CHART 2.—MURDER AND NON-NEGLIGENT MANSLAUGHTER

[Rate per 100,000 population]

	1962	1963	1964	1965	1966
United States.....	4.5	4.5	4.8	5.1	5.6
Alabama.....	9.4	10.2	9.2	11.4	10.9
Alaska ¹	4.5	6.5	10.4	6.3	12.9
Arizona.....	5.7	6.0	5.2	5.0	6.1
Arkansas.....	7.9	7.4	7.6	5.9	7.1
California.....	3.9	3.8	4.1	4.7	4.6
Colorado.....	5.0	4.8	4.2	3.5	4.0
Connecticut.....	1.3	1.8	1.8	1.6	2.0
Delaware.....	3.8	4.6	4.3	5.1	8.2
Florida.....	7.7	8.2	8.6	8.9	10.3
Georgia.....	10.3	9.4	11.7	11.3	11.3
Hawaii ¹	2.9	1.7	2.1	3.2	2.9
Idaho.....	3.0	2.5	4.0	2.0	3.0
Illinois.....	5.3	5.1	5.5	5.2	6.9
Indiana.....	3.5	2.7	3.0	3.5	4.0
Iowa ²	1.1	1.3	1.3	1.3	1.6
Kansas.....	2.8	2.6	3.4	2.7	3.5
Kentucky.....	6.5	5.6	5.2	5.3	7.0
Louisiana.....	6.8	6.9	8.3	8.1	9.9
Maine ¹	1.4	1.9	1.5	2.1	2.2
Maryland.....	5.7	6.3	6.7	6.7	7.0
Massachusetts.....	1.8	—1.9	2.0	2.4	2.4
Michigan ¹	3.3	3.3	3.3	4.4	4.7
Minnesota ¹	0.9	1.2	1.4	1.4	2.2
Mississippi.....	7.3	7.2	10.1	8.9	—9.7
Montana.....	5.5	5.2	5.4	6.7	5.4
Montana.....	2.1	2.0	2.7	1.7	2.8
Nebraska.....	1.5	2.0	2.3	2.4	1.8
Nevada.....	8.1	7.9	7.8	8.4	10.6
New Hampshire.....	2.4	3.2	.9	2.7	1.9
New Jersey.....	3.0	2.8	3.3	3.2	3.5
New Mexico.....	6.1	5.4	5.4	6.1	6.1
New York ²	3.6	3.8	4.6	4.6	4.8
North Carolina.....	7.5	7.8	7.6	7.9	8.7
North Dakota ¹	1.2	2.1	.9	1.9	1.8
Ohio.....	3.2	3.0	5.5	3.6	4.5
Oklahoma.....	5.1	5.2	4.5	4.4	5.5
Oregon ³	2.9	3.0	1.8	3.4	2.7
Pennsylvania.....	2.7	2.3	3.3	3.5	3.2
Rhode Island ¹.....	.8	1.4	1.2	2.1	1.4
South Carolina.....	10.1	10.0	8.1	9.6	11.6
South Dakota.....	3.3	1.2	1.3	1.6	1.5
Tennessee.....	6.1	6.5	5.9	8.0	7.8
Texas.....	7.2	7.3	7.5	7.5	9.1
Utah.....	3.2	2.4	1.5	1.5	2.0
Vermont ².....	.3	.5	.5	.5	1.5
Virginia.....	7.0	5.8	6.8	6.6	6.5
Washington.....	2.5	2.5	2.4	2.2	2.5
West Virginia ²	3.7	5.3	3.7	4.0	4.2
Wisconsin ¹.....	.9	1.7	1.5	1.5	1.9
Wyoming.....	3.3	3.6	5.5	2.9	4.9

¹ Abolition States.

² Abolished in 1965.

³ Abolished in 1964.

CHART 4.—ANALYSIS OF KINDS OF HOMICIDE

[In percent]

	Mutual participation		Felony
	Within family	Among acquaintances	
1962.....	29	44	13
Lovers' quarrels.....		19	
Drinking involved.....		15	
Revenge.....		3	
Over property.....		6	
1963.....	31	51	12
Lovers' quarrels.....		17	
Drinking involved.....		14	
Over property.....		5	
1964.....	31	49	15
Lovers' quarrels.....		22	
Drinking involved.....		17	
1965.....	31	48	16
Lovers' quarrels.....		21	
Drinking involved.....		17	
1966.....	29	49.4	14.8

Note: We see that almost 80 percent of our homicides are crimes of passion resulting from blind rage, jealousy, arguments over property, revenge, drinking arguments, etc.

Source: Taken from FBI uniform crime reports.

CHART 5.—RECORD OF PERSONS CONVICTED OF FIRST DEGREE MURDER

	Paroled	Second conviction for murder	Violations
California 1945 to 1960.....	¹ 342	1	37
Connecticut 1947 to 1960.....	60	0	7
Maryland 1936 to 1961.....	37	0	9
Massachusetts 1900 to 1958.....	10	0	² 2
Michigan 1930 to 1959.....	164	0	³ 4
Ohio 1945 to 1960.....	169	0	⁴ 10
New York 1950 to 1959.....	375	⁵ 0	
Rhode Island 1915 to 1958.....	19	0	2
New Jersey.....	117	0	

¹ 398 already on parole, or 920.

² Indiscretions.

³ 1 a felony.

⁴ 2 were felonies.

⁵ Man paroled in 1960 committed murder.

Note: of these 1,871 persons paroled after being sentenced for murder only 2 committed another murder and only 9 committed a felony. The other violations were for indiscretion or misdemeanors. Persons serving time for murder have been the best parole risks and the best of prisoners.

Chart 6.—Example of inequity in application of capital punishment in recent years and subsequent custodial problem arising from death sentence.

1960-1964: 43,890 homicides; 145 executed.

1962: 8,404 homicides; 99 condemned; 6 committed from courts that year executed. 47 executed that year (median elapsed time from sentence to execution 20.5 months); 57 disposed of by other means; 267 awaiting execution at end of year.

1963: 8,500 homicides; 91 condemned; 3 executed. Of the 21 executions that year, 6 were sentenced in 1962, 9 in 1961, 1 in 1960, and 2 in 1959, median elapsed time, 16 months; 48 disposed of by other means; 297 awaiting execution at end of year.

1964: 9,250 homicides; 98 condemned; 3 executed (5,956 indicted; 2,620 convicted); of the 15 executed that year, 4 were sentenced in 1963, 2 in 1962, 2 in 1961, and 4 in 1960, median elapsed time 20.5 months; 68 disposed of by other means; 315 awaiting execution at end of year.

1965: 9,850 homicides; 67 condemned; 1 executed. Of the 7 executed that year, 1 was sentenced in 1962, 3 in 1961, and 2 in 1960, median elapsed time 44.5 months; 62 disposed of by other means; 331 awaiting execution at end of year.

1966 : 10,920 homicides ; 114 condemned ; none executed. The 1 execution in 1966 had been under sentence of death for 47 months ; 53 disposed of by other means ; 406 awaiting execution at end of year.

1967 : 2 executions. Colorado—Luise Monge : Sentenced Dec. 18, 1963 ; executed June 2, 1967 (1,261 days). California—Aaron Mitchell : Sentenced Sept. 28, 1964 ; executed Apr. 12, 1967 (926 days).

CAPITAL PUNISHMENT

Text of General Resolution adopted by the Organizing Meeting of the Unitarian Universalist Association, held in Syracuse, New York, on May 13, 1961.

Whereas respect for the value of every human life must be incorporated into our laws if it is to be observed by our people ; and

Whereas modern justice should concern itself with rehabilitation, not retribution ; and

Whereas it has not been proved that fear of capital punishment is a deterrent to crime ; and

Whereas human judgments are not infallible, and no penalty should be used which cannot be revoked in case of error ; and

Whereas capital punishment has not always been used impartially among all economic and racial groups in America ; therefore be it

Resolved, That the Unitarian Universalist Association urges its churches and fellowships in the United States and Canada to exert all reasonable efforts toward the elimination of capital punishment ; and be it further

Resolved, That copies of this resolution be sent to the Governors of all states in which capital punishment has not yet been eliminated, and to the Canadian Minister of Justice.

(Passed by voice vote, no count requested.)

Text of General Resolution adopted by the Fifth Assembly of the Unitarian Universalist Association, held at the Diplomat Hotel, Hollywood, Florida, on May 21, 1966.

Resolved, That the Unitarian Universalist Association urges the complete abolition of capital punishment in all United States and Canadian jurisdictions ; and be it further

Resolved, That the Unitarian Universalist Association seek to encourage the governors of the states and the Canadian cabinet to pursue a policy of commuting death sentences until such time as capital punishment is abolished throughout the United States and Canada, and be it further

Resolved, That the Unitarian Universalist Association urges its member churches and fellowships to work for the formation of state councils affiliated with the American League to Abolish Capital Punishment, or work with such state councils where they already exist and to support the Canadian Society for the Abolition of the Death Penalty.

(Adopted by greater than a two-thirds majority vote.)

STATEMENT ON THE DEATH PENALTY BY FRANK ROSENBLUM, AMALGAMATED CLOTHING WORKERS

Capital punishment survives today as one of the last vestiges of a discredited approach to the problem of how to deal with offenders against society. It is the hallmark of an attitude which confuses justice with vengeance and rehabilitation with retribution. As such, to the extent that the death penalty still exists (and thankfully it is falling more and more into disuse), we are victims of our own worst instincts as a society.

There is no question that the death penalty is on its way out throughout the world. Some nations discovered long ago that they could survive without resorting to the executioner. Luxembourg has been without executions since 1822, Finland since 1826, the Netherlands since 1860—in all, 33 nations have abolished the death penalty. In our own country nine states have done away with capital punishment outright ; four others have limited the application of the penalty to very few crimes—killing a policeman or murder by a prisoner serving a life sentence.

One of the major justifications put forth for capital punishment has been its deterrent value. Almost every study that is known indicates that this simply is not the case. The fear of the death penalty apparently has no effect on the

prospective murderer. Indeed, all the evidence seems to point to a lower murder rate in nations and state that have abolished executions.

I would like to refer to the 1965 statistics on the murder rate and death penalty. The source is the U.S. Statistical Abstract (1967).

The murder rate for entire country for 1965 was 5.1 per 100,000 population.

The murder rate for 11 states which had abolished the death penalty was 2.5 per 100,000 population.

The highest murder rate in the country: Alabama 11.4 (death penalty state).

The lowest murder rate in the country: Vermont 0.5 (abolition state).

The comparison between similar states having the death penalty and those that had abolished it is as follows:

No death penalty:

- (a) Michigan-4.4
- (b) Rhode Island-2.1
- (c) Wisconsin-1.5
- (d) North Dakota-0.9
- (e) Iowa-1.3
- (f) Maine-2.1
- (g) Oregon-3.4

Death penalty State:

- (a) Illinois-5.2
- (b) Connecticut-1.6
- (c) Indiana-3.5
- (d) South Dakota-1.6
- (e) Nebraska-2.4
- (f) New Hampshire-2.7
- (g) Washington-2.2

NOTE.—Only in pairings (b) and (g) do abolition states show a higher rate than death-penalty States. Pairings are by what are considered similar socioeconomic and population factors.

Murder rates for all other abolition states: Alaska 6.3, Hawaii 3.2, Minnesota 1.4 and Vermont 0.5 Note: Of all abolition states only Alaska has higher rate than national rate of 5.1

1965 executions: Only four states had executions in 1965—Kansas (four), Missouri (one), Alabama (one) and Wyoming (one). Combined murder rate for these states is 8.4 per 100,000. Without Alabama's 11.4, the combined rate for remaining three states is 4.1, well above the 2.5 rate for combined abolition states.

It would seem that the kind of enlightenment that leads to eliminating capital punishment also leads to the kind of social programs that produce fewer criminals.

As a labor representative, I cannot help but refer to the well-known fact that it is the poor who suffer most from the death penalty. The late Sing Sing Warden Lewis E. Lawes, who was only one of the many prison officials and wardens who have overwhelmingly testified against capital punishment, stated that the common factor among all who died in his institution's electric chair was that they were "the poor, the friendless and the foreign born." Today we could add that more often than not they are from among our racial minorities.

The professional murder can afford a high-priced lawyer to maneuver him out of the death house; the penniless offender who kills in a passionate rage or in a deep panic is much more likely to end up the executioner's victim.

It has been the tradition of the labor movement to speak out against any law that discriminates against the poor. In 18th Century England when 200 crimes (including petty theft) were punishable by death and executions provided public amusement on Tyburn Hill, the chief victims of the hangman were the poor. Today when we have sharply limited the number of offenses punishable by death and executions are carried out in semi-secrecy bordering on shame, the victims are still the poor. This injustice must come to an end.

It is time that the United States abolished the death penalty. Then perhaps we could proceed to the positive and difficult work of devising programs for the treatment of offenders that would serve to protect the public while genuinely striving to rehabilitate the criminal.

THE EFFECT OF THE ABOLITION AND RESTORATION OF THE DEATH PENALTY IN DELAWARE DURING 1956 AND 1966

(A Research paper prepared by Dr. Glenn W. Samuelson, associate professor of sociology, West Chester State College, West Chester)

ACKNOWLEDGMENTS

Words of appreciation are in order to thank those who have kindly assisted me in this study.

To the Honorable Herbert L. Cobin, Judge of the Family Court of the State of Delaware in and for New Castle County, I want to express my gratitude for his encouragement to engage in this interesting and provocative research and for his guidance.

To Dr. William Nardini, Commissioner of the Department of Correction, State of Delaware, I am grateful for his interest and for his permission to analyze the commitment records at the New Castle Correctional Institution.

To Supervisor John L. Boyd of Records and Statistics of the Department of Correction, State of Delaware, and his statistical clerks Frank A. Marinelli, Henry H. McDonald and Raymond V. Yarnall, I appreciate the splendid cooperation and assistance in reviewing the commitment records and other data at the New Castle Correctional Institution.

INTRODUCTION

Retention of the death penalty as an instrument for punishment and as a deterrent to crime has been continuously debated in private and public arenas and on the printed page.

Arguments for and against capital punishment have centered around such issues as deterrence, religious and moral grounds, sanctity of life, protection of society, alternative penalties and the risk of error.¹

It is not the purpose of this study to extend this debate but to examine certain evidence to ascertain whether the restoration of the death penalty in the State of Delaware has deterrence value.

The death penalty was abolished for all capital crimes on April 2, 1958, and three years, eight months and 16 days later, it was restored on December 18, 1961. The interesting account of the passing of the bill, known as the Melson Bill, to abolish the death penalty and the events which resulted in its reinstatement is adeptly reported in the article, "Abolition and Restoration of the Death Penalty in Delaware," by Judge Herbert L. Cobin of the Family Court of Wilmington, Delaware.²

This investigation may be viewed as a continuation of the study made by Judge Cobin. There was an updating of the reporting of the number of persons charged with criminal homicide. The focus of this study was geared to the securing, examining, and evaluating of data from original sources.

Prior to April 2, 1958, the date when the abolition of the death penalty went into effect, there were five crimes which could be punished by death; namely, rape,³ kidnapping,⁴ treason,⁵ willful or malicious wounding or poisoning where death ensued within one year,⁶ and murder in the first degree.⁷

In Delaware, legal execution prior to abolition and following restoration to the present date of this study is by hanging.⁸ The last execution in Delaware took place in Sussex County in 1946 when a 34 year old male was hanged for the crime of murder in the first degree.⁹

The law abolishing the death penalty for all capital crimes passed on April 2, 1958 states, "Punishment by death for any crime in this State is hereby abolished."¹⁰

On December 18, 1961, capital punishment was reinstated for only one crime, that of murder in the first degree. The new law reads:

"Punishment by death for any crime in this State is abolished, provided, however, that this section shall not apply to murder in the first degree."¹¹

¹ For a comprehensive discussion of the death penalty controversy, read Hugo Adam Bedau (ed.) *The Death Penalty in America* (Garden City, N.Y.: Doubleday & Company, 1955) and Thorsten Sellin (ed.) *Capital Punishment* (New York: Harper & Row, 1957).

² Bedau, *op. cit.*, pp. 359-379.

³ *Delaware Code Annotated*, Title 11, Volume 7, "Crimes and Criminal Procedures" (Brooklyn: Edward Thompson Co., 1953), § 781. Rape; carnal knowledge and abuse of female seven.

⁴ *Ibid.*, § 623. Kidnapping.

⁵ *Ibid.*, § 861. Treason.

⁶ *Ibid.*, § 573. Wounding or poisoning causing death within year.

⁷ *Ibid.*, § 571. Murder in the first degree.

⁸ *Ibid.*, § 3909. Infliction of capital punishment. Amended December 18, 1961.

⁹ I. M. H. Bradner, *Legal Executions in Delaware*, a mimeographed report distributed by the Correctional Council of Delaware, Inc., 1956.

¹⁰ *The State Laws of Delaware*, Volume LI (Milford: Del. Milford Chronicle Publishing Co., 1957), Chapter 347, Section 1. Approved April 2, 1958.

¹¹ *Delaware Code Annotated*, *op. cit.*, § 107. Capital punishment abolished; exception, Amended December 18, 1961.

"Whoever commits the crime of murder with express malice aforethought, or in perpetrating, or attempting to perpetrate the crime of rape, kidnapping or treason is guilty of murder in the first degree and of a felony and shall suffer death."¹²

A conviction of murder in the first degree, however, may result in a sentence of life imprisonment when the jury brings a verdict of guilty with a recommendation of mercy. This provision is stated as follows:

"In all cases where the penalty for crime prescribed by the laws of this state is death, if the jury, at the time of rendering their verdict, recommends the defendant to the mercy of the Court, the Court may, if it seems proper to do so, impose the sentence of life imprisonment instead of death."¹³

Conviction of murder in the second degree is a mandatory life sentence plus a possible fine. The law reads:

"Whoever commits the crime of murder, other than murder in the first degree, is guilty of murder in the second degree and of a felony, and shall be imprisoned for life, and may be fined in such amounts as the Court, in its discretion, may determine."¹⁴

HYPOTHESES STATED

Restoration of the death penalty in the State of Delaware was based on the assumption that the death penalty acted as a deterrent to criminal homicide. The three following hypotheses were formulated to test this assumption based on the effect of the annual rate of murder commitments occurring prior to abolition, during abolition and after the restoration of the death penalty in Delaware during a ten year period, July 1, 1956 to June 30, 1966:

1. The annual rate of persons charged with murder and committed by a magistrate or, in Wilmington, by a judge of the Municipal Court to one of the three Delaware Correctional Institutions (Kent, New Castle, and Sussex) to be held for inquest by the grand jury prior to the abolition of the death penalty was less than the annual rate during abolition.

2. The annual rate of persons who were charged with murder and committed to one of the Delaware Correctional Institutions during abolition of the death penalty was more than the annual rate before abolition or after its restoration.

3. The annual rate of persons charged with murder and committed to one of the Delaware Correctional Institutions after the restoration of the death penalty was less than the annual rate during abolition.

One can note that no distinction is made in the three hypotheses for murder in the first or second degrees. There is an awareness among criminologists that the differences between a person who is charged, committed, and convicted on first or second degree murder is rather tenuous. This being the case, this research includes those who were committed either for first or second degree murder charges.

PROCEDURE EXPLAINED

The securing of the data to test the three hypotheses presented a number of problems. The use of the official police arrest records were unobtainable because of certain legal restrictions. Also they would have to be gathered separately from the City Police Departments of Wilmington, Newark, Dover and the State Police located at Dover.

Although the court records for all persons indicted for murder could have been studied in the Offices of the Prothonotary in the three county seats of Delaware, it was decided to examine the commitment records for the three county correctional institutions to secure the needed data.

The commitment records are composed of printed sheets in two sizes, the short sheet (10 $\frac{13}{16}$ " x 11") and the long sheet (14" x 11"). These records have been kept in hard cover binders for the three counties in the Records and Statistics Department at the New Castle Correctional Institution since July 1, 1956, when the new State Board of Corrections formally went into operation.

The commitment record sheets are composed of 24 horizontal lines for the listing of each person committed to the correctional institutions. With the use of both sides of the long and alternate short sheets, 142 vertical columns may be checked or filled in with numbers or other information.¹⁵

¹² *Ibid.*, § 571. Murder in the first degree. Amended December 18, 1961.

¹³ *Ibid.*, § 3901. Recommendation of mercy. Amended December 18, 1961.

¹⁴ *Ibid.*, § 572. Murder in the second degree.

¹⁵ *Evening Journal*, Wilmington, Delaware, February 9, 1966, p. 25.

The data secured for this study from the commitment records consisted of the number (Reg. No.), name, and date for those committed for manslaughter and murder who were being held for inquest by the grand jury, and if indicted, to be tried in Superior Court.

The fiscal year of July 1 to June 30 used by the Department of Correction, the new name as of July 8, 1964, was also adopted in this analysis. The period, therefore, covers a ten-year period; namely, July 1, 1956, to June 30, 1966.

The number of the combination murder-suicides was not included in this study since it was difficult to obtain this information. These cases are apparently very rare. Furthermore, the law regarding the death penalty for murder would have no deterrent effect on a person who would end someone else's life as well as his own.

The study does not involve itself with unsolved murders, only to indicate that during July 1, 1956, to February 9, 1966, there were seven homicides in Wilmington in which the offender has not been determined.¹⁵

This study deals with the participants involved in a homicide or homicides. Other studies may analyze the homicide events or the number of victims who have died. In this research, every participant who was charged and committed was included, whether the homicide event consisted of one participant and one victim, one participant and more than one victim, more than one participant involving only one victim, or possibly more than one participant and more than one victim.

The participants, therefore, who have the potential of being charged, committed, tried and sentenced to die as guilty of first degree murder are a primary concern for this study.

The date of commitment is the date which is used in this study and not the date of the homicide event. The date of commitment may coincide with the date of the offense or any time thereafter. In most cases the person involved is apprehended, charged, and committed within a short time following the homicide.

RESULTS PRESENTED

In examining the commitment record sheets of the Delaware Department of Correction, the inmates' number, name, date of commitment for those who were committed for manslaughter and murder were recorded. Table I discloses an annual accounting of the number who were originally charged with manslaughter or murder.

After a separate list of those charged with manslaughter was made and another for murder was listed, a careful check was made to eliminate duplication. For example, when a person was charged and committed to the Sussex Correctional Institution for murder and given a "S" number, ("S" for Sussex) and three days later was recommitted to the New Castle Correctional Institution with a new "N" number, ("N" for New Castle) the original commitment would be used and not the second.

In a similar manner, when a person who was charged and committed to prison for murder and later was indicted by the grand jury and recommitted on a manslaughter charge, only the murder charge was used.

Since this study is concerned with the only crime now punishable by death; namely, murder in the first degree, a further analysis will be made of the figures regarding murder and not manslaughter. The annual number of manslaughter commitments in Table I are included only for comparison purposes.

TABLE I.—NUMBER OF COMMITMENTS TO DELAWARE CORRECTIONAL INSTITUTIONS FOR MANSLAUGHTER AND MURDER

Year, July 1 to June 30	Manslaughter	Murder	Total
1956 to 1957	11	28	39
1957 to 1958 (abolition, Apr. 2, 1958)	7	17	24
1958 to 1959	8	12	20
1959 to 1960	4	14	18
1960 to 1961	7	15	22
1961 to 1962 (restoration, Dec. 18, 1961)	4	14	18
1962 to 1963	8	14	22
1963 to 1964	6	15	21
1964 to 1965	5	23	28
1965 to 1966	21	19	40
Total	81	171	252

Table II indicates a breakdown of those who have been originally committed to one of the three correctional institutions on a charge of murder according to the county in which the homicide took place.

TABLE II.—NUMBER OF COMMITMENTS TO DELAWARE CORRECTIONAL INSTITUTIONS FOR MURDER

Year, July 1 to June 30	Kent	New Castle	Sussex	Total
1956 to 1957.....	2	23	3	28
1957 to 1958.....	2	9	6	17
1958 to 1959.....	1	7	4	12
1959 to 1960.....	1	10	3	14
1960 to 1961.....	2	7	6	15
1961 to 1962.....	2	8	4	14
1962 to 1963.....	4	8	2	14
1963 to 1964.....	4	10	1	15
1964 to 1965.....	4	14	5	23
1965 to 1966.....	1	13	5	19
Total.....	23	109	39	171

Note: The population of the 3 counties for the 1950 and 1960 census is shown in table III.

TABLE III.—1950 AND 1960 POPULATION OF DELAWARE COUNTIES AND POPULATION PERCENTAGE INCREASE

County	1950 ¹	1960 ²	Percentage Increase ³
Kent.....	37,870	65,651	73.4
New Castle.....	218,879	307,446	40.5
Sussex.....	61,336	73,195	19.3
Delaware.....	318,085	446,292	40.3

¹ Bulletin Almanac, 1959, (Philadelphia, the Evening and Sunday Bulletin, 1960) p. 183.

² Edwin D. Goldfield, director, County and City Data Book, 1962 (Washington, D.C., U.S. Government Printing Office, 1962), p. 52.

³ Ibid.

The estimated population as of July 1, 1956, for the State of Delaware was 402,000 ¹⁹ and for July 1, 1965, 505,000. ²⁰

Table IV reveals a consistent comparison of the percentage of the total number of murder commitments during 1956 to 1966 with the population percentage for each county as of 1950 and 1960.

TABLE IV.—COMPARISON OF PERCENTAGE OF MURDER COMMITMENTS BY COUNTIES DURING 1956 AND 1966 WITH PERCENTAGE OF THE 1950 AND 1960 POPULATION

County	Murder commitments— July 1, 1956-June 30, 1966		Population percentage	
	Number	Percent	1950	1960
Kent.....	23	13.5	12.0	14.7
New Castle.....	109	63.7	68.8	68.9
Sussex.....	39	22.8	19.2	16.4
Totals.....	171	100.0	100.0	100.0

To test the three hypotheses, the three mean or average number of participants committed to the Delaware Correctional Institutions each year will be used. The annual rate for the ten-year period under study is 17.1. This figure was arrived by dividing the total number of murder commitments of 171 by 10, the number of years.

If the three hypotheses were confirmed by this study, the results should indicate that a higher than 17.1 annual rate of murder commitments would occur during the abolition period than before or after.

¹⁹ Bulletin Almanac, 1959, *op. cit.*, p. 183.

²⁰ Bulletin Almanac, 1966 (Philadelphia, The Evening and Sunday Bulletin, 1967), p. 202.

TABLE V.—ANNUAL RATE OF MURDER COMMITMENTS BEFORE, DURING, AND AFTER ABOLITION OF THE DEATH PENALTY

	Before abolition (July 1, 1956, to Apr. 2, 1958)	During abolition (Apr. 3, 1958, to Dec. 18, 1961)	After restoration (Dec. 19, 1961, to June 30, 1966)	Totals
Number of months.....	21	44.5	54.5	120
Number of murder commitments.....	40	51	80	171
Rate of murder commitments per month.....	1.90	1.15	1.46	1.42
Rate of murder commitments per year.....	22.8	13.8	17.5	17.1

During the 21 months before abolition, 40 murder commitments occurred or a rate of 22.8 per year, 5.7 above the 10 year rate of 17.1. The annual rate prior to abolition was also 9.0 higher than the rate during abolition (22.8—13.8=9.0). The first hypothesis is therefore unconfirmed.

The 44.5 months during abolition involved 51 participants or an average of 13.8 murder commitments or 3.3 below the 10 year rate. The second hypothesis is likewise unconfirmed.

During the 54.5 months after the restoration of the death penalty, 80 murder commitments occurred or a rate of 17.5 per year, .4 per year higher than the 10 year rate and 3.7 higher than the rate during abolition (17.5—13.8=3.7). The third hypothesis which states that the annual rate of those charged and committed for murder after restoration would be less than the annual rate during abolition is also not confirmed.

The restoration of the death penalty to deter murder cannot be supported by this study.

From the study made by Judge Cobin and this research, it appears that the restoration of the death penalty occurred primarily as a reaction to several incidents when persons of the out-group committed brutal murders to respectable citizens of the in-group and not because of the increase of the rate of murders committed in the state of Delaware during abolition.

The adjudication of the 171 persons who were originally charged and committed for murder is found in Table VI.

TABLE VI.—ADJUDICATION OF PERSONS COMMITTED TO DELAWARE CORRECTIONAL INSTITUTIONS FOR MURDER, JULY 1, 1956—JUNE 30, 1966¹

	Sentence		Awaiting trial	Committed, department of mental health	Total
	Life	Death			
Murder, 1st degree:					
Indicted.....			4	2	6
Indicted, tried, and sentenced.....	7	2			9
Murder, 2d degree:					
Indicted.....			4		4
Indicted, tried, and sentenced.....	17				17
Total.....	24	2	8	2	36
Not indicted, reduction from original murder charge to lesser charges, acquittal, awaiting trial, etc.....					135
Total originally charged and committed for murder.....					171

¹ From analysis of commitment records and sheets compiled by Records and Statistics of the Department of Corrections, State of Delaware.

As of June 30, 1966, of the 171 murder commitments, nine or 5.3% were found guilty of murder in the first degree and sentenced; seven for life imprisonment and two to death. The two who were sentenced to die by hanging have had stays of execution since May 13, 1965, in the first case and since March 18, 1966 in the second.

It is rather significant that out of the 171 murder commitments, 26 or 15.2% were convicted and sentenced for first or second degree murder to life imprisonment or death, 10 or 5.9% were awaiting trial or committed to the Department of Mental Health, while 135 or 78.9% were disposed of in a number of possible

ways; not being indicted, acquitted, reduction to a lesser charge such as manslaughter or dismissal due to defendant's death.

Table VII describes the length of time from the date of commitment to the date of sentence for the 26 who were convicted on the first and second degree murder charges and sentenced to death and life imprisonment.

TABLE VII.—LENGTH OF TIME HELD FOR 26 MURDER COMMITMENTS FROM DATE OF COMMITMENT UNTIL DATE OF SENTENCE, JULY 1, 1956, TO JUNE 30, 1966

Commitment No.	Date of commitment	Date of sentence	Days held from commitment to sentence
Convicted of 2d degree murder and sentenced to life imprisonment:			
N128.....	July 11, 1956	Nov. 26, 1956	138
N193.....	July 17, 1956	Jan. 14, 1957	168
N629.....	Aug. 30, 1956	Nov. 13, 1956	75
N1661.....	Dec. 17, 1956	Apr. 10, 1957	117
N8372.....	July 28, 1957	Oct. 16, 1958	445
N5911.....	Oct. 6, 1957	Jan. 21, 1958	107
N4907.....	Oct. 8, 1957	June 23, 1958	278
N5540.....	Dec. 7, 1957	Sept. 26, 1958	293
S4738.....	July 22, 1958	Nov. 20, 1958	121
N9300.....	Dec. 2, 1958	June 9, 1959	189
N10986.....	May 19, 1959	Oct. 9, 1959	113
N12065.....	Aug. 24, 1959	June 8, 1960	288
S7570.....	Aug. 5, 1960	Jan. 27, 1961	175
N17162.....	Jan. 10, 1961	Oct. 27, 1961	290
K13939.....	Sept. 9, 1963	Sept. 17, 1964	373
K14239.....	Nov. 29, 1963	Feb. 7, 1964	70
N24814.....	June 27, 1963	Jan. 22, 1964	209
Convicted of 1st degree murder and sentenced to life imprisonment:			
N9909.....	Feb. 6, 1959	Sept. 9, 1960	218
N18653.....	June 13, 1961	Sept. 27, 1961	107
N18950.....	July 16, 1961	May 16, 1962	304
N19983.....	Nov. 2, 1961	Sept. 14, 1962	316
N25417.....	Sept. 6, 1963	Apr. 24, 1964	230
N24104.....	Mar. 29, 1963	Jan. 13, 1964	116
N25805.....	Oct. 19, 1963	Jan. 22, 1965	460
Convicted of 1st degree murder and sentenced to death:			
S13007.....	Feb. 1, 1964	May 13, 1965	439
N29989.....	Mar. 18, 1965	Mar. 18, 1966	365

Of the 26 sentenced on a murder charge, 17 or 65.4% were convicted of murder in the second degree and sentenced to life imprisonment. The mean or average time held in prison from the date of commitment to the date of the sentence was 201.7 days or 6.6 months.

The seven or 26.9% who were sentenced to life imprisonment for the first degree murder spent an average 250.14 days or 8.2 months in detention awaiting sentence.

The two who were convicted to die by hanging for murder in the first degree served an average length of 352 days or 11.1 months before being sentenced.

From Table VII two apparent conclusions can be reached. In this study, the greater the severity of the sentence, the fewer the number of inmates involved. This can be seen by noting that there were 17 (65.4%) sentenced with second degree murder and life imprisonment, seven (26.9%) with first degree and life imprisonment and two (7.7%) were sentenced to die for murder in the first degree.

The second observation is that the greater the severity of the sentence, the greater the average length of time spent in detention from the date of commitment to the date of sentence. The 17 second degree murder-life commitments spent an average of 6.6 months, the seven first degree murder-life commitments spent an average of 8.2 months, and the two first degree murder-death commitments spent an average of 11.1 months in detention awaiting trial and sentence.

A question may be raised as to whether the two men, Norman B. Parson and Thornton A. Jenkins sentenced to die, will ever be executed because of the present stays of executions and retrials. A brief summary of both cases may give credence to this query.

On February 1, 1964, Norman B. Parson, a 24-year-old Negro male trash collector, was committed to Sussex County Correctional Institution (S13007) on the charge of the murder in a sexual assault of a 16-year-old white female who was babysitting when the homicide occurred. After the indictment of the murder

in the first degree, the trial was held in Superior Court. On January 19, 1965, the petit jury returned a verdict of guilty of the charge. On May 13, 1965, Parson was sentenced by the trial judge to death by hanging to take place on July 16, 1965. However, a stay of execution was ordered by the judge on the same day of the sentencing, May 13, 1965.

An appeal by Parson's attorneys to the State Supreme Court has been rejected and the United States Supreme Court has refused to review the case. However, on June 1, 1967, the attorney general's office indicated that they will not oppose a request by Parson's attorneys to ask the court to order an examination to determine whether Parson is mentally capable of assisting in a habeas corpus petition for his release.²²

On March 18, 1965, Thornton A. Jenkins, a 38-year-old Negro male, and Clifford Warner, a 34-year-old Negro male were committed to the New Castle Correctional Institution (Jenkins, N29989 and Warner, N29987) on a charge of the murder by beating of a white night watchman in a junkyard in Wilmington, of burglary, and of night prowling. Both men were indicated by the grand jury on two counts, murder in the first degree and burglary in the fourth degree.

On January 13, 1966, the petit jury returned a verdict of guilty for Jenkins of murder in the first degree with the recommendation of mercy²³ and guilty of burglary in the fourth degree.

Although the jury recommended mercy, on March 18, 1966, the trial judge disregarded the recommendation and sentenced Jenkins to death by hanging for the first degree murder conviction and to five years imprisonment for the burglary conviction. The date of execution was set as April 15, 1966; however, on March 28, 1966, a stay of execution was ordered by the Supreme Court pending a review of the case.

Warner was sentenced to life imprisonment for the second degree murder conviction and to five years imprisonment on the burglary conviction.

On March 27, 1967, the Supreme Court of the State of Delaware after reviewing these two cases upon appeals from Supreme Court judgments of conviction of burglary and murder, reversed the murder convictions but affirmed the burglary convictions.

Apparently Jenkins will not be executed nor will Warner serve a life sentence unless a retrial and new convictions are instituted.

CONCLUSION

The main purpose of this study was to determine if in the State of Delaware, from the analysis of those committed to one of the three correctional institutions on a murder charge during a ten year period, that a decrease in the rate of criminal homicides would occur after restoration of the death penalty than during its abolition. This conclusion was not confirmed. The rate of murder commitments was higher before and after the abolition period.

This study supports the position of those who favor abolition of the death penalty that the presence of the death penalty does not serve as a deterrent to criminal homicide.

One wonders if the State of Delaware will ever have to prepare the gallows for another hanging after 20 years of nonuse. Those convicted of murder received a sentence of life imprisonment with the exception of the two men sentenced to die. One of these two men has had his conviction reversed and the other has had delays due to various court actions.

In conclusion, this study tends to verify the statement of Professor Thorsten Sellin regarding capital punishment, "It is an archaic custom of primitive origin that has disappeared in most civilized countries and is withering away in the rest."²⁴

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²² *Morning News*, Wilmington, Del., June 2, 1967, p. 16.

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STATEMENT OF REV. CHARLES E. SHEEDY, C.S.C., S.T.D., DEAN, COLLEGE OF ARTS AND LETTERS, UNIVERSITY OF NOTRE DAME, ON CAPITAL PUNISHMENT

In opposing the death penalty, I do not represent the Catholic Church. I am speaking only for myself, one Catholic priest, but I hope reasonably trustworthily in moral theology. I intend to adhere mainly to moral and ethical considerations with the sole purpose of persuading some who share my moral views that they can safely vote against the death penalty without violation of conscience. I would like everybody to vote for abolition.

We no longer discuss the question of the right of the state to inflict torture, or of the right of persons to own other persons in slavery.

By reason of his spiritual nature, the individual person, though also a member of society, has an inalienable and personal dignity of his own. The spiritual dignity of the human person gives man being and status as a whole, not as a part, as an end in himself, not as a means to the social good. Man is a political being and as political is part of society. But as man, as person, he is beyond politics and beyond society.

If you consider the moral order from God's point of view, as the order imposed on the world by divine law, then it is impossible for any act of man to reverse, or disturb, or violate that order. To say that man's action can disturb the eternal serenity of God's plan would be to make God dependent on finite human causality. The eternal tranquillity of God's moral order cannot be disturbed by crime. The thought of a moral order disturbed by sin is useful and valid from purely human point of view, for repentance and amendment; but no amount of punishment can set things right with God's plan, because no amount of sin or crime can set things wrong.

For this reason, I would hold that no legislator need think he ought to vote for the death penalty on the ground that a lesser penalty would bring about a subversion of the moral order or entail a defeat of the goodness of God.

We do not think of the death penalty as revenge. The thoughts of retribution and of retaliation are surely present, and they have a certain human validity. But considered in itself the retribution theory is thought outmoded and barbarous. That is the reason why retribution, though present in everyone's thinking, is invariably supported by arguments relating to consequences, such as deterrence of potential offenders and moral education of the public.

What is to be said about punishment as the payment of a debt to society?

A crime is a violation of legal justice, the obligation of the citizen to observe the law. Crimes, unlike individual debts, do not carry with them the obligation to make precise and mathematically exact repayment. Moral theology, even where it supports capital punishment, does not at all regard the death penalty

as a payment of life for life. The value of a human life is not measurable. Punishment, whether death or some lesser penalty, is not the exaction of a debt, but the rightful action of society for its own protection, to express moral condemnation of crime, and so far as possible to defeat crime and annul its evil effects.

As for the death penalty as the payment of a debt to society: it is nothing but a metaphor, and legislators might disregard this phrase.

The basic and most fundamental purpose of punishment is the self-defense of society against crime. Beyond this, the good consequence of punishment are said to be deterrent, reformatory, and preventive. If I take up here briefly the tired question of deterrence, I do this not as an expert on the criminology of the thing, but as a moralist going to the question of reasonableness, which is the ethical and moral norm.

In an excellent and beautifully reasoned book (A. C. Ewing, *The Morality of Punishment*), neither for nor against capital punishment, indeed not dealing with this subject, the author makes the following statements about deterrence: "For the end of deterrence to be achieved it is necessary in the first place, that punishment should be at least likely to follow the crime. However severe punishments were, their deterrent effect would be comparatively slight if an offender had, say, a ten-to-one chance of escaping conviction" (p. 49). "The best way of deterring is not by severity but by making conviction almost certain" (p. 58). "The extreme severity of a penal code may easily make people unwilling to co-operate in carrying it out, so that the deterrent effect of the extra severity is quite outweighed by the increased hope of immunity" (p. 59).

These statements apply to the American experience. We might have as many as ten thousand non-negligent homicides in a given year, prosecution for murder in the hundreds, and as few as fifty (and growing fewer) death sentences carried out. The sentences are not for crimes of *that* given year, of course, but the crimes go back five, ten, or even twenty years, while the convicts wait in the condemned cells and their apapals shuttle between the state and federal courts. But the proportion of murder to execution is not ten-to-one, as in the statement quoted above, but more like two-hundred-to-one.

Certainty and quickness are lacking. The American people and the appellate system clearly do not want quickness. An advocate of the death penalty might say that the thing to do is to speed it up, make it more effective, kill more, instead of abolishing it; but I would consider this view unreasonable at the very least, as opposed to the clear and legitimate preference of the people and the courts.

A similar objection might be made to a proposal to keep the penalty in the criminal code, for the purpose of deterring whom it will, with full knowledge that it will be rarely executed. This solution leaves the penalty as a rock of stumbling, it increases the notion of arbitrariness and blind chance, and it places an inequitable burden on juries, judges, and governors.

Now I come to the close of my argument by discussing a central thesis in the ethical theory of the philosopher Jacques Maritain. It is this, that the moral law and our knowledge of the moral law are not one and the same thing. The law of human nature exists whole and entire in the mind of God, and God communicates His law to human reason. But at no time do we possess it fully: we learn the prescriptions of the moral law gradually, with danger of decline as well as certainty of progress. Governments are obligated by the law of human nature, or rather the persons who have the care of governing are so obligated; and the principle of gradual enlightenment applies to officials as well as to private persons.

"The knowledge of these moral laws is a light acquired slowly and with difficulty, if we make exception of the general principle that good is to be done and evil avoided" (Maritain).

There is nothing astonishing in the fact that knowledge of the moral law should come slowly. "Is it not evident that the laws which regulate the whole of nature are understood wholly only by the Author of nature?"

These thoughts are applicable to the death penalty. We see clearly a history of progressive mitigation, in the elimination of the more barbaric cruelties, in the reduction in number and kind of capital offenses, in the greatest possible humanization consistent with the terrible fact, even in the growing reluctance of people to inflict the penalty where it exists in law. But at the same time we may think that progressive mitigation shows a grouping of mankind towards a better realization of the moral law, of what God actually wants us to do.

"But the stain on the origin of our moral science has caused our knowledge of good and evil to be not the best possible."

This stain lies all about the death penalty. Not sinful, not evil, the history of the death penalty is however stained with evil and evil-connected. We recall the brutal comments attributed to the notorious hanging judges, we have heard of the demoralization of prisons at execution times, and we know from observation and the press of the evil sensation of the vengeful public. On these grounds, if abolition gives us one good chance to get the good of punishment and get rid of these evils, it is worth the try.

Jesus Christ, the most pure, the Founder of our faith, was a victim of the death penalty. I am not closing with this image with the intention of softening or sentimentalizing the moral issue. I realize quite well that the good often requires tough decision and stringent action. But I want to raise the question as to our view of His approval. So much slaughter has been done in the name and under the cover of religion that it is time the goodness and mildness of Jesus had their say. The cloak of religion has covered both the just and the unjust. The false priests buzzed about the martyrs; the prison chaplain hears the last confession of the condemned murderer. I can see where a person might hold the view reluctantly, regretfully, sorrowfully, that the miserable state of society requires the penalty of death for crime. But to put this under God, to connect it up with His will and His law, is intolerable. I think God wants it out.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE &
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW,
Washington, D.C., July 22, 1968.

HON. JOHN L. MCCLELLAN,
*Chairman, Subcommittee on Criminal Laws and Procedures,
Senate Office Building, Washington, D.C.*

DEAR SENATOR MCCLELLAN: On behalf of the International Union UAW, I am submitting the attached statement relative to S. 1760—a bill to abolish the federal death penalty.

We appreciate the opportunity to submit our statement to your subcommittee.
Sincerely yours,

PAUL A. WAGNER,
Community Action Department.

STATEMENT OF INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)

The UAW support S. 1760, a bill to abolish the federal death penalty. We support it because capital punishment is nothing more than a cruel anachronism in today's civilized world.

THE UAW INTEREST

The UAW represents more than a million and a quarter industrial workers in many states. It has been mandated by its membership at successive conventions to concern itself with the great issues of our time and to work in every way to improve the quality of American life. We believe this bill offers the Congress a unique opportunity to contribute significantly to the realization of the American ideal, "equal justice under law". That is why a labor union joins the distinguished church leaders, humanitarians and penologists who urge you to act favorably on this bill.

THE WORLD TREND

More than thirty nations have abolished capital punishment. The last country to take this humanitarian action was Great Britain, which abolished the death penalty in 1965. Eight states have passed laws eliminating capital punishment. It is time for the United States to join the ranks of progressive nations of passing S. 1760 which will stop the killing of citizens by the Federal Government.

CAPITAL PUNISHMENT DOES NOT DETER CRIME

The record shows that the deterrent effect popularly ascribed to the death penalty is, in all probability, an utter fiction. Many homicides are committed in a rage, others in the course of a commission of another crime and, perhaps, most

murderers are mentally or emotionally unstable. Patently, those who commit crimes of passion and spur-of-the-moment murders do not consider the penalty before they act. Neither do those who are psychopathic or psychoneurotic. A British Royal Commission of 1886 found that 164 of 167 persons scheduled to be executed had previously witnessed executions and were not deterred. The truth is that executions do not deter crimes.

CAPITAL PUNISHMENT IS UNJUST

Capital punishment is not only barbaric and perhaps "cruel and unusual punishment" under the Constitution in the light of contemporary values; it is often a tool of oppression. The death penalty falls heaviest on the poor and is, therefore, in practice, uneven justice, offensive to the egalitarian values of a free society. James V. Bennett, former Director of the Federal Bureau of Prisons, has written:

"Today, it is chiefly the indigent, the friendless, the Negro and the mentally ill who are doomed to death." (Harpers, April 1964)

The late Warden Lawes of Sing Sing stated that:

"The defendant of wealth and position never goes to the electric chair or to the gallows."

The UAW urges that the time has come for America to say that it cannot live with a system of the administration of justice which is in application, essentially unjust. Moreover, injustice is compounded by the impossibility of the correction of error when the occasional innocent man is executed. This government should *never* execute an innocent man, and the only way to make sure that this can never happen is to eliminate the death penalty.

Finally, our society has moved away from the philosophy of vengeful punishment toward the more civilized approach of rehabilitation and crime prevention. Capital punishment is completely inconsistent with the civilized idea of redemptive justice. The Federal Government should move now to abolish the federal death penalty by passing S. 1760. To refuse to act now would be to say to the world that the United States is not yet ready to adopt as humane a penology as Australia, Great Britain, Italy, the Federal Republic of Germany and many other countries. Our heritage is such that we should be in the forefront of the progressive nations in the field of penology as well as every other field.

THE UNIVERSITY OF OKLAHOMA MEDICAL CENTER,
Oklahoma City, Okla., August 22, 1966.

The PRESIDENT, LYNDON BAINES JOHNSON,
The White House, Washington, D.C.

MY DEAR MR. PRESIDENT: Recently I discussed several issues of national concern with people who are among your most dedicated supporters. They have encouraged me to communicate directly with you.

In the past, physical scientists have written to Presidents on matters that might be termed explosive. For a behavioral scientist to offer suggestions on explosive problems in the field of human relations is surely appropriate today.

My first suggestion, the subject of this letter, is timely, vital, and will cost not a cent. Yet, if you act upon it, the day may come when that action will be cited as a prime example of your greatness as a President.

At a time—and in a world—when there are many who cry that the United States of America shows callous unconcern for human life and is sick with destructiveness and violence, the President could make one public statement that would have an enormous impact for the good. He could say:

"There is no country that is more concerned with the sanctity of each human life than this one, and no person who has greater reverence for human life than the President of the United States.

"In an age when the killing of people for a variety of purposes is still held to be the prerogative of governments, our democracy—like many others—has been turning increasingly away from the death penalty. Last year there were only seven executions in the United States, and during the last few months four more of our states have abolished capital punishment making a new total of thirteen.

"We know that those nations and our own States that have set aside the firing squad, the electric chair, the gas chamber, and the gallows, have been rewarded by a *decrease* in crimes of violence compared with their neighbors.

"I believe the time has come that the American people no longer want to take the life of a helpless captive in cold blood, no matter what the provocation.

"Therefore I am calling upon the Congress to pass necessary legislation to abolish the death penalty for any cause under Federal law, and it is my sincere hope that some day soon all of the fifty United States shall have eliminated this ancient ritual of vengeance."

Enclosed for your interest is a paper I recently prepared for professional people, urging them to exercise leadership on this issue. If you will provide such leadership now, it not only will provide a splendid example for others, but also it will mark you as a man who tempers power with mercy, righteousness with wisdom, and civic responsibility with scientific enlightenment.

Very respectfully yours,

LOUIS JOLYON WEST, M.D.,
Professor of Psychiatry, Head of the Department.

MEDICINE AND CAPITAL PUNISHMENT¹

(Louis Jolyon West, M.D.)²

According to the Gallup Poll the majority of Americans no longer favor capital punishment (1). Yet only 13³ of our 50 States have essentially eliminated it (four in the last year). The Federal Government and the District of Columbia still retain it. Meanwhile, although the death penalty is widely used in Communist countries, it has been virtually abandoned by most of the Western democracies except for the United States and France.

Most people in this country know very little about the death penalty. They are likely to have strong opinions about it—for or against—but few facts (2). Moreover, it is uncommon for someone to seek spontaneously to inform himself on the subject. In fact, there is a puzzling resistance to enlightenment, for which an explanation will be proposed.

When experience requires someone to deal with capital punishment directly, he is likely to become opposed to it. Thus approximately 90% of prison wardens come to support indictments of it by such leaders among them as Lewis E. Lawes of Sing-Sing and Clinton T. Duffy of San Quentin (3).

The man ultimately responsible for an execution possesses a terrible and hateful power, which has been analyzed and condemned by former Governor Michael V. DiSalle of Ohio (4). Governor Edmund G. Brown of California (himself a former district attorney and attorney general) in 1960 told the California legislature:

"The naked simple fact is that the death penalty has been a gross failure. Beyond its horror and incivility, it has neither protected the innocent nor deterred the wicked. The recurrent spectacle of publicly sanctioned killing has cheapened human life and dignity without the redeeming grace which comes from justice meted out swiftly, evenly, humanely."

I went through a war (including periods of service in the infantry and the military police), a medical education, and a psychiatric residency with no particular opinion on capital punishment. If asked I would probably have replied that I was for vigorous law enforcement and prompt justice, including the death penalty wherever the law specified. However, an experience as medical examiner at an execution transformed me into a student of the problem.

In one hour on a hot Iowa morning in 1952 I learned that a typical chronic schizophrenic man can qualify for hanging; that those who came to watch are likely to have a strange and unhealthy glitter in their eyes; that a man hits the end of a rope with a terrible crack; that he doesn't just dangle there but is likely to writhe for some time; and that the heart stops reluctantly, as the medical examiner discovers, listening with a stethoscope all the while. As I listened (for an interminable 12 minutes and 23 seconds) there was time for me

¹ Submitted for publication to The Journal of the American Medical Association.

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³ Several of these will nominally retain it for special circumstances, ranging from the murder of a policeman or prison guard to "treason."

to ask myself a host of troublesome questions. For the past 14 years I have been seeking some answers. This paper might be considered a progress report on the search.

I now believe that any physician who objectively studies the subject will be likely to arrive at the firm conclusion that the death penalty should be abolished. True, he will be shocked at the horrors that violent criminals are capable of perpetrating; and he will be filled with concern and sympathy for their victims. He will ask himself, "Suppose *my* daughter were raped and butchered?" The very question fills me with the passion of vengeance, and acquaints me with the power of my own potentialities for murder!

But the prisoner convicted of a capital crime is confined; he is safe from vengeful personal retaliation; and society is safe from him. Should society exterminate him, now, deliberately and righteously? When the scholar considers this question in depth, the weight of evidence makes itself felt. It moves him to the viewpoint held by the vast majority, not only of wardens and Governors, but of criminologists, jurists, and those social and behavioral scientists who have surveyed the same ground (5). Briefly this viewpoint is as follows:

The death penalty should be abolished because it is: (1) *Out-dated*. It is clear that we are rapidly moving toward *de facto* abolition despite the existing laws, since the number of executions tends to decline year after year. Last year there were more than 7000 capital crimes in the United States, and only seven executions. The Attorney General of the United States recently stated that the death penalty is passé. (2) *Immoral*. No murder is as cold-blooded as legal execution. It poses a constant example of violence, and violates the modern teachings of most major religions. Most of the Protestant churches, the Orthodox and Reformed Jews, and many Roman Catholic officials have passed resolutions condemning capital punishment. (3) *Wasteful*.

The cost of the apparatus and maintenance of the procedures attending the death penalty, including death row and the endless appeals and legal machinery, far outweighs the expense of maintaining in prison the tiny fraction of criminals who would otherwise be slain. One man's execution recently cost California more than \$500,000. And many of those whose lives might be spared, like "The Bird-man of Alcatraz" who was a double murderer, can be useful even though they spend their lives in prison. (4) *Cruel*. Everyone must die, but only the condemned prisoner is subjected to the terrible agony of prolonged waiting—sometimes for years, tormented by hope—to be deliberately slaughtered by a self-righteous society. This torture is harsher than the thumbscrew and rack. (5) *Inhuman*. The killing of a helpless captive is a brutally degrading experience. If those alone who have participated in an execution could vote on the death penalty, it would be abolished tomorrow. (6) *Unfair*. Of all the uncertain manifestations of justice, capital punishment is the most inequitable. It is primarily carried out against the destitute, forlorn, and forgotten. A rich white Protestant is practically safe from it. A complicated insanity plea may save the well-heeled, while the penniless psychotic goes to the gallows. Members of racial and cultural minority groups suffer most. The hundreds of extraneous factors, including geography, that decide whether a convicted man will actually live or die, makes capital punishment a ghastly, brainless lottery. (7) *Irrevocable*. Justice can miscarry.

At least two states were shocked into outlawing the death penalty only after executing men later shown to be innocent. A prisoner discovered to be blameless can be freed; but neither release nor restitution is possible for a corpse. (8) *Obstructive*. Proved a failure, capital punishment now undermines attempts to apply modern criminology to our society's needs. Professor Sheldon Glueck of Harvard has stated, "The presence of the death penalty as the keystone of our penal system bedevils the administration of criminal justice all the way down the line and is stumbling block in the path of general reform and of the treatment of crime and criminals." (9) *Useless*. After seeing 150 executions one prison warden said, "I have yet to meet the man who let the thought of (execution) stop him from committing murder." Its failure as a deterrent to crime is highlighted by the fact that the murder rate (including fatal attacks on police officers) is actually lower in those states and countries that have eliminated it (10) *Dangerous*. The public fails to realize that today fewer than one murderer in a thousand will be executed. Meanwhile society feels protected, and fails to legis-

late indeterminate sentences and penal reforms. Dangerous criminals are thus more likely to make their way back into a society which retains the illusion of safety engendered by the death penalty's false promise.

There are some additional complexities of the problem of the death penalty that are particularly significant to physicians. Most of us are likely to find ourselves in the abolitionist camp by virtue of the arguments listed above. However there are five more factors which, if carefully considered by our profession, should serve to move us from passive disapproval to militant antagonism against capital punishment.

1. *The physician is sworn to preserve life.* There have been ironic occasions when physicians have worked long and hard to keep a man alive—for the hangman. Of course the rationale for this lies in the possibility of last-minute clemency. Furthermore, the doctor lives closer to the issue of life and death; he knows from personal experience how remarkable is the investment of cold flesh and bones with the vital spark; to preserve this spark he has put aside even euthenasia. As Dr. Karl Menninger has put it: "To a physician discussing the wiser treatment of our fellow men it seems hardly necessary to add that under no circumstances should we kill them. It was never considered right for doctors to kill their patients, no matter how hopeless their condition. True, some patients in state institutions have undoubtedly been executed without benefit of sentence. They were a nuisance, expensive to keep and dangerous to release. Various people took it upon themselves to put an end to the matter, and I have even heard them boast of it. The Hitler regime had the same philosophy. But in most civilized countries today we have a higher opinion of the rights of the individual and of the limits to the state's power." (6)

2. *Capital punishment breeds murder.* Philosophers and social scientists have long contended that the legal extermination of human beings in any society generates a profound tendency among the citizens to accept killing as a solution to human problems (7) No matter how ultimate that solution may seem, or how rarely it is employed, its official existence symbolizes the fact that it is permissible—even desirable—to resolve issues by murder; it is only necessary to define the criteria for justification. The late Albert Camus steadfastly held that it would be necessary for mankind to eliminate the death penalty before we could ever hope to eliminate war (8) and it is remarkable that no nation which has wholly and permanently abolished capital punishment has ever started a war.

But there is an even more specific way in which the death penalty breeds murder. It becomes more than a symbol. It becomes a promise, a contract, a covenant between society and certain warped mentalities who are moved to kill. These murders are discovered by the psychiatric examiner to be, consciously or unconsciously, attempting *suicide by homicide*.

Recently an Oklahoma truck driver had parked to have lunch in a Texas roadside cafe. A total stranger—a farmer from nearby—walked through the door and blew him in half with a shotgun. When the police finally disarmed the man and asked why he had done it, he replied, "I was just tired of living."

In 1964 Howard Otis Lowery, a life-term convict in an Oklahoma prison formally requested a judge to send him to the electric chair after a District Court jury found him sane following a prison escape and a spree of violence. He said that if he could not get the death penalty from the jury he would get it from another, and complained that officials had failed to live up to an agreement to give him death in the electric chair when he pleaded guilty to a previous murder charge in 1961.

Another murderer, James French, asked for the death penalty after he wantonly killed a motorist who gave him a ride while hitch-hiking through Oklahoma in 1958. However he was "betrayed" by his Court-appointed attorney who pleaded him guilty and got him a life sentence instead of the requested execution. Three years later French strangled his cell-mate for no obvious reason: a deliberate, premeditated slaying. He has been convicted three times for that crime, declared legally sane and sentenced to death each time. This sentence he deliberately invites in well-organized, literate epistles to the Courts and in provocative challenges to the jurors. During a psychiatric examination in 1965 French admitted to me that he had seriously attempted suicide several times in the past but "chickened out" at the last minute, and that a basic motive in his murdering

another prisoner was to force the State to deliver the electrocution to which he feels entitled and which he deeply desires.

Many other examples may be found in which the promise of the death penalty consciously or unconsciously invites violence. Sellin reviewed a number of them (9). Wertham's analysis of Robert Irwin, who attempted suicide by murder, is a classic (10). Some who seek execution even borrow somebody's else's murder! A few months ago Joseph Shay in Miami admitted that he had falsely confessed to an unsolved murder "because I wanted to die." The intimate connection between murder and suicide was noted by Freud and has been treated extensively by Karl Menninger as well as Franz Alexander, Gregory Zilboorg, and other psychiatrists. In a recent book (11) West noted that in England nearly half of all murders are followed by suicidal attempts, of which two-thirds succeed. In Denmark, where there is no death penalty (and the murder rate is far lower than ours), 40% of all murderers subsequently commit suicide!

That the death penalty is a *failure* as a *deterrent* to murder has been demonstrated in many ways. That it is a *success* as an incentive to murder, either generally through its influence as symbolic representation of the acceptability of killing, or specifically in cases like those described above, is increasingly clear. It makes it easier to understand why, in the year following the re-establishment of capital punishment in formerly abolitionist Oregon in 1920, the State's homicide rate nearly doubled.

3. *The death penalty tends to pervert the professional identity of the psychiatrist.* The employment of psychiatrists in trials at law has gone far beyond what society expects from any other type of expert witness. This is manifest primarily in trials where the death penalty is involved. Here we find the anomaly of a physician, sworn to devote himself to the preservation of human life, dealing out opinions whereby the survival or destruction of another human being hinges on the turn of a word. Testifying for the defense, the psychiatrist's image is of either "a knight in shining armor" or a "bleeding heart." Testifying for the prosecution he is either "the conscience of society" or "an accessory to legal homicide." No matter how he may be seen on the witness stand, however, the psychiatrist who has been used this way is not functioning as a physician. Many psychiatrists refuse any longer to serve as expert witnesses, only to find themselves criticized for lack of social responsibility.

4. *Death sentences create a grisly laboratory: Death Row.* As a student of experimental psychopathology I have employed many techniques for inducing transient changes in the mood, thought, or behavior of normal subjects. In the scientist's laboratory such undertakings are always approached with the utmost caution and handled with many safeguards for the mental well-being of the research subject. But it seems to me that Death Row must constitute the ultimate experimental stress, in which he condemned prisoner's personality is incredibly brutalized.

Often prisoners deteriorate rapidly following the imposition of the death penalty. I have examined Jack Ruby a number of times since April 28, 1964, and by every objective medical criterion he has become grossly psychotic since he was sentenced to death. Yet the stress upon him has perhaps been rather less than that experienced by many condemned individuals who over the course of several years approach scheduled death down to the last month, or week, or minute; then live through a breath-taking reprieve only to face another horrible countdown.

Slovenko (12) points out that, while executions are decreasing in number, Death Row is growing. At the end of 1962, there were 275 prisoners under sentence of death. During 1963, 21 were executed and 91 more were sentenced to die, leaving a new total of 345 awaiting extermination.

A good many of these doomed men end up in the hands of the psychiatrist. The strain of existence on Death Row is very likely to produce behavioral aberrations ranging from malingering to acute psychotic breaks. In most States the warden will transfer such a person to the psychiatric unit of the prison or to the security area of a mental hospital. Here the prisoner is not unlikely to pass the rest of his days as a member of that vaguely defined population, "the criminally insane."

What is the psychiatrist to do with such a patient when he improves? Specify him as ready for death? In practice this almost never happens. As Menninger has put it, the psychiatrist is not likely to choose to serve as the executioner's assistant. Ironically, the ward personnel may develop the threat of sending the prisoner back to the Penitentiary for execution into a powerful restraining influence upon his behavior, thus making of him a model inmate.

Of course the question of the non-executability of the condemned man who becomes mentally ill points to the heart of the capital punishment issue. Why should he not be executed? Wouldn't it protect society as well? Wouldn't it deter others just as well? True, the psychotic prisoner is less likely to produce new evidence or participate knowledgeably in a last minute appeal, but it could well be said of a sane man, no matter how long the execution had been postponed, that he might eventually be able to devise a better defense or help his attorneys to develop new evidence—if he were kept alive. No, since the death penalty is now carried out in strictest privacy (like the loathsome act it is) there can be only one reason for sparing the condemned maniac. It is that he must not be executed unless or until he is in full possession of his mental faculties *so that he can appreciate what is being done to him!* This gives clear insight into the most basic motive for the execution: Revenge.

5. *The psychodynamics of resistance to abolition of the death penalty deserves scrutiny.* A formula might be proposed as follows:

$$\text{Conscious Resistance (to abolition)} = \frac{(\text{Ignorance} + \text{Rationalization} + \text{Indifference}) \times \text{Vengeance}}{\text{Enlightenment}}$$

The factors above the line are natural enough and to be expected in our society. When one asks why it is that enlightenment (which must develop if abolition is to come) should be growing so slowly, one discovers a trio of unconscious resistances which might be labelled, "The Scapegoat" (S), "The Sacrificial Lamb" (SL), and "The Secret Self-Deterrent" (SSD). Thus:

$$\text{Enlightenment} = \frac{\text{Objective Information}}{S + SL + SSD}$$

The Scapegoat phenomenon has been considered elsewhere at some length (7): a person whose misdeeds are discovered and punished serves through his death to expiate the guilt engendered by the crimes of all.

The Sacrificial Lamb on the other hand serves the purpose of warding off the powers of evil or danger in an uncertain universe. Society uses its occasional legal victim of the gas, the rope, or the electric chair, as a lightning rod to focus upon one outstanding sinner divine vengeance against general human sinfulness, while at the same time magically insinuating the survivors into the good graces of the Gods by the blood sacrifice. Logical arguments related to the unevenness of justice by death in this country will obviously have little effect upon such superstitious specifications. As Shirley Jackson's challenging story "The Lottery" so well reminds us, these requirements are just as well fulfilled randomly or by lot as by reason (13).

The dynamic forces involved in the *Secret Self-Deterrent* are related to the foregoing but have a structure of their own. Each individual must develop defenses against his own unconscious violent and destructive strivings. Into the effort he is likely to throw all of the resources that his culture provides. Developmentally, fear of punishment or retaliation plays a certain part. The average citizen senses, and strives to defend himself against, his basic instinctual kinship to the violent criminal; he fails to comprehend the significance of his own much healthier ego structure. Thus he whispers to himself, "Perhaps all that restrains me from an act of violence is fear of the talionic destruction I would bring upon myself. This must be all that restrains many others like myself. I become anxious at the prospect of eliminating the death penalty because it means I shall be forced to rely more upon my own controls and less upon expectation of punishment."

Obviously these more-or-less conscious factors will affect different individuals in different ways. From them may arise ambivalent feelings leading to all kinds of behavioral paradoxes. Thus we find on the one hand the passionate believer in capital punishment who readily admits he would never throw the switch himself and who shudders at the prospect of watching an execution. On the other hand there is the highly vocal abolitionist who cries incessantly about the horrors of legalized murder but is strangely apathetic when it comes to organized action that might bring about the desired end.

What can be done to hasten the inevitable abolition of the death penalty in America? Of course continuing public information is vital. However, the importance of influential leadership cannot be under-estimated, because of the role that unconscious fear plays in resistance to abolition of capital punishment. The increased sense of security that large groups of people may feel when ministers, judges, and great public figures take a positive stand can help to swing the balance toward abolition. Men like Governors DiSalle and Brown strike important blows against the death penalty in their states, even though so far without success.

But resistances are stubborn. Dr. Karl Menninger has been a colossus on the scent of American psychiatry for nearly half a century, yet his stirring appeals have been insufficient to move the people of Kansas on this issue where he has moved them successfully on so many others. Four of last year's seven executions were in Kansas! Nor have voices like Menninger's inspired notable action within the medical profession. The American Dental Association has officially supported the use of toothpaste containing fluorides. Other health organizations have formally and publicly endorsed various vaccinations, mass chest X-Rays, and other measures of significance to our nation's physical health. But what has organized medicine had to say on the subject of capital punishment?

Perhaps it would not be too much to propose that physicians should assume some responsibility—as individuals, as community leaders, and as members of powerful organizations—to rid our society of this ugly and dangerous anachronism. Locally, state by state, and nationally we should join systematically and vigorously with forces of enlightenment in the Law, in the Pulpit, in the Universities, and in the average American home, so that the United States might soon become one of that growing body of civilized countries which are committed by Statute to reverence for human life. In this effort the concerted influence of modern medicine, a profession which is wholly concerned with the human condition, should mobilize itself around the most basic of all human issues—the proposition that human life is so uniquely precious that it must never be needlessly destroyed.

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Senator HART. Incidentally and interestingly, the number of letters that have been received since our last hearing of about 2 months ago have run 21 against the bill, 21 against the abolition of capital punish-

ment, but 235 in support of the bill, in support of the abolition. I ask that these be made a part of the subcommittee's files. However, there are three I ask to have printed at this point in the record: A letter of May 7, 1968, from the Honorable John A. Burns, Governor of Hawaii; a letter of May 14, 1968, from Prof. Steven Duke of the Yale Law School; and a letter of July 9, 1968, from the Right Reverend Bartholomew Fox of New York City.

Senator HARR. And as we come to the close of these hearings, I would ask that the record remain open for another 20 days in order that there shall be received statements, responsible statements, from persons for and against the bill.

It happens that no witness has asked to be heard in opposition to the bill. No one has moved out from under the lights to say he wants to keep capital punishment, but this subcommittee would want to be certain that fairness applies. It is for this reason that I ask that the record be held open. This is the attitude of the chairman of the committee, Senator McClellan, who very much wants it to be fair. For this reason, we order the record to be held open for statements for and against, but most particularly those who oppose the abolition of the death penalty, to be made a part of the record, if there are any.

Thank you very much.

We are adjourned.

(Whereupon, at 11:15, the subcommittee was adjourned to reconvene subject to the call of the Chair.)

(The following documents were subsequently supplied:)

EXECUTIVE CHAMBERS,
Honolulu, May 7, 1968.

HON. PHILIP A. HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: It is my desire to submit the following written testimony in support of S. 1760 to abolish the Federal death penalty.

While my opposition to the death penalty is based on the philosophic concept that execution by law is entirely in contradiction to the declared purpose of all our correctional systems and the contradiction to the principles of an enlightened and humane society, what I wish to present to your Subcommittee is the experience of the area I know best, the State of Hawaii.

Prior to 1955, the (then) Territory of Hawaii provided that death by hanging be the penalty for murder, first degree; arson; train wrecking and for spying.

There had, in fact, been no execution in Hawaii since January 7, 1944, and juries had shown reluctance to return verdicts calling for the death penalty, and two appointed Territorial Governors had delayed and commuted death penalties during that period.

The Democratic majority of the Legislature in 1955 (the first Democratic majority in both Houses in Hawaii's history to that point) seriously considered the existing law and amended it to remove the death penalty from all offenses except murder, first degree. As it happened, the amendment neglected to provide any method of execution so that it was not possible to conduct an execution.

In 1955, I was Chairman of the Democratic Party of Hawaii and I am somewhat conversant with what went on, for I was able to present my views to key personnel in both Houses of the Legislature.

In 1957, when U.S. Representative Spark M. Matsunaga was serving as Chairman of the Judiciary Committee of the Territorial House of Representatives, Mr. Matsunaga introduced a bill to abolish capital punishment entirely from Hawaii's laws. At that time, I was Hawaii's Delegate to Congress and provided such as-

sistance as I was able from that distance. The bill passed both Houses, and capital punishment was eliminated from Hawaii's statutes once and for all.

There has been no effort at any moment to have the death penalty restored. Once or twice, after the publicizing of a brutal crime, there has been some temporary and emotional expression for the return of capital punishment, but such expression has found no reflection of strength among our people.

There has been no increase in crime other than that in proportion to the growth of our population and, in fact, the population of our penal institutions is lower than it has been for a number of years.

Our experience has strengthened my own belief, formed during my service of 11½ years as a police officer in Honolulu, that the death penalty serves no useful purpose and that it is an anachronism by the standards professed by our society. While I do not know the experience of mainland jurisdictions, I have never in my capacity as homicide officer, or before or since, known of an individual of means or of family being executed. The poor, the culturally deprived and the unacculturated were executed. In creating and continuing the disharmony of race relations, the injustice of the death penalty has been an unanswerable, ultimate factor.

Therefore, I unequivocally support the abolition of the Federal death penalty.

Warmest personal regards. May the Almighty be with you and yours always.

Sincerely,

JOHN A. BURNS.

YALE LAW SCHOOL,
New Haven, Conn., May 14, 1968.

Hon. PHILIP A. HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: I would like to add my name to those who support your bill to abolish the federal death penalty. I oppose the death penalty because (1) the possibility of a death penalty and the consequent reluctance of courts to permit its imposition, has produced, and will continue to produce, a number of decisions in the area of criminal procedure which would not, absent the death penalty, have been made; in other words, the mere possibility of the death penalty greatly distorts the decisional processes in criminal procedure generally; (2) the death penalty undermines that which it is designed to protect: respect for human life, and consequently has little or no deterrent impact; (3) the penalty is discriminatorily imposed upon persons with little money or political power; (4) the penalty is immoral.

None of the aforementioned reasons is the last bit novel or original. However, I can suggest a very practical consideration which may provide an additional prop for your bill, namely, that as presently enacted, the federal statutes authorizing the death penalty are unconstitutional. In *United States v. Jackson*, the Supreme Court on April 8, 1968, held that the death penalty provision of the Lindberg Act was invalid because the procedures for imposing it heavily favored a guilty plea or jury waiver. The Court's reasoning clearly invalidates the Federal murder statute and all or virtually all other federal provisions authorizing the death penalty. As I read *Jackson* (I was counsel for Jackson in that case), the only procedure which will permit the jury to participate in the death penalty decision yet which will pass Constitutional muster is a procedure whereby all persons charged with capital offenses have their penalties determined by a jury (probably, a jury other than that which determined guilt). There is no such procedure authorized in any federal statute (or any state statute either, for that matter).

In short, your bill is merely an effort to clear the Criminal Code of dead verbiage, and has no substantive implications whatever.

A copy of the *Jackson* opinion is enclosed.

Sincerely,

STEVEN DUKE, Professor of Law.

SUPREME COURT OF THE UNITED STATES

No. 85.—OCTOBER TERM, 1967.

United States, Appellant,	}	On Appeal From the United
v.		States District Court for
Charles Jackson et al.		the District of Connecticut.

[April 8, 1968.]

MR. JUSTICE STEWART delivered the opinion of the Court.

The Federal Kidnaping Act, 18 U. S. C. § 1201 (a), provides:

“Whoever knowingly transports in interstate . . . commerce, any person who has been unlawfully . . . kidnaped . . . and held for ransom . . . or otherwise . . . shall be punished (1) by death if the kidnaped person has not been liberated unharmed, and if the verdict of the jury shall so recommend, or (2) by imprisonment for any term of years or for life, if the death penalty is not imposed.”

This statute thus creates an offense punishable by death “if the verdict of the jury shall so recommend.” The statute sets forth no procedure for imposing the death penalty upon a defendant who waives the right to jury trial or upon one who pleads guilty.

On October 10, 1966, a federal grand jury in Connecticut returned an indictment charging in count one that three named defendants, the appellees in this case, had transported from Connecticut to New Jersey a person who had been kidnaped and held for ransom, and who had been harmed when liberated.¹ The District Court

¹ Count one:

“On or about September 2, 1966, CHARLES JACKSON, also known as ‘Batman,’ also known as ‘Butch’; and GLENN WALTER ALEXANDER DE LA MOTTE; and JOHN ALBERT WALSH, JR., the defendants herein, did knowingly transport in

dismissed this count of the indictment,² holding the Federal Kidnaping Act unconstitutional because it makes "the risk of death" the price for asserting the right to jury trial, and thereby "impairs . . . free exercise" of that constitutional right.³ The Government appealed directly to this Court,⁴ and we noted probable jurisdiction.⁵ We reverse.

We agree with the District Court that the death penalty provision of the Federal Kidnaping Act imposes an impermissible burden upon the exercise of a constitutional right, but we think that provision is severable from the remainder of the statute. There is no reason to invalidate the law in its entirety simply because its capital punishment clause violates the Constitution. The District Court therefore erred in dismissing the kidnaping count of the indictment.

I.

One fact at least is obvious from the face of the statute itself: In an interstate kidnaping case where the victim has not been liberated unharmed, the defendant's assertion of the right to jury trial may cost him his life, for the federal statute authorizes the jury—and only the jury—to return a verdict of death. The Government

interstate commerce from Milford in the District of Connecticut to Alpine, New Jersey, one John Joseph Grant, III, a person who had theretofore been unlawfully seized, kidnapped, carried away and held by the defendants herein, for ransom and reward and for the purpose of aiding the said defendants to escape arrest, and the said John Joseph Grant, III, was harmed when liberated, in violation of Title 18, United States Code, Section 1201 (a)."

* Count two, charging transportation of a stolen motor vehicle from Connecticut to New York in violation of 18 U. S. C. § 2312, has not been challenged and is not now before us.

² 262 F. Supp. 716, 718.

⁴ 18 U. S. C. § 3731.

⁵ 387 U. S. 929.

does not dispute this proposition. What it disputes is the conclusion that the statute thereby subjects the defendant who seeks a jury trial to an *increased* hazard of capital punishment. As the Government construes the statute, a defendant who elects to be tried by a jury cannot be put to death even if the jury so recommends—unless the trial judge agrees that capital punishment should be imposed. Moreover, the argument goes, a defendant cannot avoid the risk of death by attempting to plead guilty or waive jury trial. For even if the trial judge accepts a guilty plea or approves a jury waiver, the judge remains free, in the Government's view of the statute, to convene a special jury for the limited purpose of deciding whether to recommend the death penalty. The Government thus contends that, whether or not the defendant chooses to submit to a jury the question of his guilt, the death penalty may be imposed if and only if both judge and jury concur in its imposition. On this understanding of the statute, the Government concludes that the death penalty provision of the Kidnaping Act does not operate to penalize the defendant who chooses to contest his guilt before a jury. It is unnecessary to decide here whether this conclusion would follow from the statutory scheme the Government envisions,* for it is not in fact the scheme that Congress enacted.

* Even if the Government's interpretation were sound, the validity of its conclusion would still be far from clear. As the District Court observed, "even if the trial court has the power to submit the issue of punishment to a jury, that power is discretionary, its exercise uncertain." 262 F. Supp. 716, 717-718. The Government assumes that a judge who would accept the death penalty recommendation appended to a jury verdict of guilt is a judge who would exercise his discretionary power to convene a penalty jury if the defendant were to plead guilty or submit to a bench trial. But the mere fact that a judge would defer to the jury's recommendation hardly implies that he would take the extraordinary step of convening a penalty jury after accepting a plea of guilty or approving

At the outset, we reject the Government's argument that the Federal Kidnaping Act gives the trial judge discretion to set aside a jury recommendation of death. So far as we are aware, not once in the entire 34-year history of the Act has a jury's recommendation of death been discarded by a trial judge.⁷ The Government would apparently have us assume either that trial judges have always agreed with jury recommendations of capital punishment under the statute—an unrealistic assumption at best⁸—or that they have abdicated their statutory duty to exercise independent judgment on the issue of penalty. In fact, the explanation is a far simpler one. The statute unequivocally states that, "if the verdict of the jury shall so recommend," the defendant "shall be punished . . . by death" The word is "shall," not "may."⁹ In acceding without exception to jury recom-

a waiver of jury trial. Even if the Government's statutory position were correct, the fact would remain that the defendant convicted on a guilty plea or by a judge completely escapes the threat of capital punishment unless the trial judge makes an affirmative decision to commence a penalty hearing and to impanel a special jury for that purpose, whereas the defendant convicted by a jury automatically incurs a risk that the same jury will recommend the death penalty and that the judge will accept its recommendation.

⁷ One district judge has indicated that he would not feel bound by a jury recommendation of death in a kidnaping case, see *Robinson v. United States*, 264 F. Supp. 146, 151-153, but the question was not directly before him since the case involved a petition for post-conviction relief by a prisoner who had been tried by a jury and sentenced to life imprisonment. Although federal juries have recommended capital punishment in a number of kidnaping cases, counsel for the Government stated at oral argument in this Court that he was aware of no case in which such a recommendation had been set aside.

⁸ See Kalven & Zeisel, *The American Jury* 436-444 (1966).

⁹ The Government notes that the word "shall" precedes both alternative punishments: The offender "shall be punished (1) by death if the kidnaped person has not been liberated unharmed, and if the verdict of the jury shall so recommend, or (2) by imprisonment. . . ." But the notion that judicial discretion is thereby

recommendations of death, trial judges have simply carried out the mandate of the statute.

The Government nonetheless urges that we overlook Congress' choice of the imperative. Whatever might have been assumed in the past, we are now asked to construe the statute so as to eliminate the jury's power

authorized is dispelled by the qualification attached to the second alternative: "by imprisonment . . . *if the death penalty is not imposed.*" Although it is true that the judge rather than the jury is formally responsible for imposing sentence in a federal criminal case, those qualifying words would state a pointless truism unless they were meant to refer to the jury's recommendation: The offender "shall be punished (1) by death . . . if the verdict of the jury shall so recommend, or (2) by imprisonment" if the jury's verdict does *not* so recommend. To accept the Government's reading of the statute would make its final phrase a complete redundancy, anomalous indeed in a statute that Congress has twice pruned of excess verbiage. See 18 U. S. C. A. § 1201 (1966 ed.), p. 113, Historical and Revision Notes.

Nothing in the language or history of the Federal Kidnaping Act points to any such result. On the contrary, an examination of the death penalty provision in its original form demonstrates that Congress could not have intended the meaning the Government now seeks to attribute to it. For the statute as it stood in 1934 provided that the offender "shall, upon conviction, be punished (1) by death if the verdict of the jury shall so recommend, provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed, or (2) if the death penalty shall not apply nor be imposed the convicted person shall be punished by imprisonment in the penitentiary for such term of years as the court in its discretion shall determine . . ." 48 Stat. 781. In this form, the statutory language simply will not support the interpretation that the offender "shall be punished by death *or* by imprisonment" if the jury recommends the death penalty. For the statute in this form makes unmistakably clear that, if the death penalty applies—i. e., if the jury has recommended death—then the punishment *shall* be death unless, before the judge has imposed sentence, the victim has been liberated unharmed. There is absolutely no reason to think that the purely formal transformations through which the statute has passed since 1934 were intended to alter this basic penalty structure.

to fix the death penalty without the approval of the presiding judge. "[T]his reading," it is said, would conform "to the long tradition that makes the trial judge in the federal courts the arbiter of the sentence." And so it would. The difficulty is that Congress intentionally discarded that tradition when it passed the Federal Kidnaping Act. Over the forcefully articulated objection that jury sentencing would represent an unwarranted departure from settled federal practice,¹⁰ Congress rejected a version of the Kidnaping Act that would have left punishment to the court's discretion¹¹ and instead chose an alternative that shifted from a single judge to a jury of 12 the onus of inflicting the penalty of death.¹² To accept the Government's suggestion that the jury's sentencing role be treated as merely advisory would return to the judge the ultimate duty that Congress deliberately placed in other hands.

The thrust of the clause in question was clearly expressed by the House Judiciary Committee that drafted it: Its purpose was, quite simply, "to permit the jury to *designate* a death penalty for the kidnaper."¹³ The

¹⁰ See 75 Cong. Rec. 13288, 13295-13297 (1932).

¹¹ As originally drafted, the Kidnaping Act had provided for punishment "by death or imprisonment . . . for such term of years as the court in its discretion shall determine . . ." 75 Cong. Rec. 13288 (1932).

¹² A number of Congressmen feared that empowering judges to impose capital punishment might make some jurors unduly reluctant to convict. See 75 Cong. Rec. 13289, 13294 (1932). To the extent that this concern was responsible for the decision to require a jury recommendation of death as a prerequisite to the imposition of capital punishment, it is of course immaterial whether or not the jury's recommendation is binding on the trial judge. But, as the Government concedes, many of the Congressmen who favored jury determination of the death penalty did so largely because such a scheme would take from the judge the onus of inflicting capital punishment. See, e. g., 75 Cong. Rec. 13297.

¹³ H. R. Rep. No. 1457, 73d Cong., 2d Sess., 2 (1934) (emphasis added).

fact that Congress chose the word "recommend" to describe what the jury would do in designating punishment cannot obscure the basic congressional objective of making the jury rather than the judge the arbiter of the death sentence. The Government's contrary contention cannot stand.

Equally untenable is the Government's argument that the Kidnaping Act authorizes a procedure unique in the federal system—that of convening a special jury, without the defendant's consent, for the sole purpose of deciding whether he should be put to death. We are told initially that the Federal Kidnaping Act authorizes this procedure by implication. The Government's reasoning runs as follows: The Kidnaping Act permits the infliction of capital punishment whenever a jury so recommends. The Act does not state in so many words that the jury recommending capital punishment must be a jury impaneled to determine guilt as well. Therefore the Act authorizes infliction of the death penalty on the recommendation of a jury specially convened to determine punishment. The Government finds support for this analysis in a Seventh Circuit decision construing the Federal Kidnaping Act to mean that the death penalty may be imposed whenever "an affirmative recommendation [is] made by a jury," including a jury convened solely for that purpose after the court has accepted a guilty plea. *Seadlund v. United States*, 97 F. 2d 742, 743. Accord, *Robinson v. United States*, 264 F. Supp. 146, 153. But the statute does not say "a jury." It says "*the* jury." At least when the defendant demands trial by jury on the issue of guilt, the Government concedes that "the verdict of the jury" means what those words naturally suggest: the general verdict of conviction or acquittal returned by the jury that passes upon guilt or innocence. Thus, when such a jury has been convened, the statutory reference is to that jury alone, not to a jury impaneled after convic-

tion for the limited purpose of determining punishment.¹⁴ Yet the Government argues that, when the issue of guilt has been tried to a judge or has been eliminated altogether by a plea of guilty, "the verdict of the jury" at once assumes a completely new meaning. In such a case, it is said, "the verdict of the jury" means the recommendation of a jury convened for the sole purpose of deciding whether the accused should live or die.

The Government would have us give the statute this strangely bifurcated meaning without the slightest indication that Congress contemplated any such scheme. Not a word of the legislative history so much as hints that a conviction on a plea of guilty or a conviction by a court sitting without a jury might be followed by a separate sentencing proceeding before a penalty jury. If the power to impanel such a jury had been recognized elsewhere in the federal system when Congress enacted the Federal Kidnaping Act, perhaps Congress' total silence on the subject could be viewed as a tacit incorporation of this sentencing practice into the new law. But the background against which Congress legislated was barren of any precedent for the sort of sentencing procedure we are told Congress impliedly authorized.

The Government nonetheless maintains that Congress' failure to provide for the infliction of the death penalty upon those who plead guilty or waive jury trial was no more than an oversight that the courts can and should correct. At least twice, Congress has expressly authorized the infliction of capital punishment upon defendants convicted without a jury,¹⁵ but even on the assumption

¹⁴ If the jury's verdict of guilt includes no death penalty recommendation, the judge can impose no penalty beyond imprisonment. He cannot convene another jury to recommend capital punishment. See *United States v. Dressler*, 112 F. 2d 972, 980.

¹⁵ In a statute forbidding the wrecking of trains, Congress provided that "[w]hoever is convicted of any such crime, which has resulted

that the failure of Congress to do so here was wholly inadvertent, it would hardly be the province of the courts to fashion a remedy. Any attempt to do so would be fraught with the gravest difficulties: If a special jury were convened to recommend a sentence, how would the penalty hearing proceed? What would each side be required to show? What standard of proof would gov-

in the death of any person, shall be subject . . . to the death penalty . . . if the jury shall in its discretion so direct, or, in the case of a plea of guilty, if the court in its discretion shall so order." 62 Stat. 794 (1948), 18 U. S. C. § 1992 (1951 ed.) (emphasis added). And in a statute prohibiting the destruction of aircraft, Congress provided that violators whose conduct causes death "shall be subject . . . to the death penalty . . . if the jury shall in its discretion so direct, or, in the case of a plea of guilty, or a plea of not guilty where the defendant has waived a trial by jury, if the court in its discretion shall so order." 70 Stat. 540 (1956), 18 U. S. C. § 34 (Supp. 1966) (emphasis added).

The language of the aircraft-wrecking statute, 18 U. S. C. § 34, is of particular interest here because it reflects a congressional awareness of the precise problem the Government suggests Congress overlooked in the kidnaping area: In a letter addressed to the Chairman of the House Committee on Interstate and Foreign Commerce, William P. Rogers, then Deputy Attorney General, suggested on behalf of the Justice Department that the bill then under consideration should be amended by the addition of the phrase "or in the case of a plea of not guilty where the defendant has waived trial by jury." The letter stated:

"Under the present phraseology it is doubtful whether the court could invoke the death penalty in a situation where the defendant has entered a plea of not guilty, waived his right to a trial by jury, and asked to be tried by the court." 2 U. S. Code Congressional and Administrative News, 84th Cong., 2d Sess., 3149-3150 (1956).

Congress inserted the suggested language in the aircraft statute as enacted on July 14, 1956. Less than a month later, Congress reconsidered the Kidnaping Act and added a technical amendment, 70 Stat. 1043 (1956), but included no provision to authorize the imposition of the death penalty upon defendants who plead guilty or waive the right to jury trial.

ern? To what extent would conventional rules of evidence be abrogated? What privileges would the accused enjoy? Congress, unlike the state legislatures that have authorized jury proceedings to determine the penalty in capital cases,¹⁶ has addressed itself to none of these questions.¹⁷

It is one thing to fill a minor gap in a statute—to extrapolate from its general design details that were inadvertently omitted. It is quite another thing to create from whole cloth a complex and completely novel procedure and to thrust it upon unwilling defendants for the sole purpose of rescuing a statute from a charge of unconstitutionality. We recognize that trial judges sitting in federal kidnaping cases have on occasion chosen the latter course, attempting to fashion on an *ad hoc* basis the ground rules for penalty proceedings before a jury.¹⁸ We do not know what kinds of rules particular federal judges have adopted, how widely such rules have varied, or how fairly they have been applied. But one thing

¹⁶ See Cal. Penal Code § 190.1 (Supp. 1966); Conn. Gen. Stat. § 53-10 (Supp. 1965); Pa. Stat. Ann., Tit. 18, § 4701 (1963); N. Y. Penal Law §§ 125.30, 125.35 (1967).

¹⁷ The complex problems presented by separate penalty proceedings have frequently been noted. See, e. g., *Frady v. United States*, 348 F. 2d 84, 115-116 (Burger, J., concurring in part and dissenting in part); Note, The California Penalty Trial, 52 Cal. L. Rev. 386 (1964); Note, The Two-Trial System in Capital Cases, 39 N. Y. U. L. Rev. 50 (1964). See also Kuh, A Prosecutor Considers the Model Penal Code, 63 Col. L. Rev. 608, 615 (1963). It is not surprising that courts confronted with such problems have concluded that their solution requires "comprehensive legislative and not piecemeal judicial action." *State v. Mount*, 30 N. J. 195, 224 (concurring opinion). See also *People v. Friend*, 47 Cal. 2d 749, 763, n. 7. But see *United States v. Curry*, 358 F. 2d 904, 914-915.

¹⁸ The Government informs us that at least three of the defendants who pleaded guilty in cases arising under the Federal Kidnaping Act have been sentenced to death on the recommendation of special penalty juries convened to determine punishment.

at least is clear: Individuals forced to defend their lives in proceedings tailor-made for the occasion must do so without the guidance that defendants ordinarily find in a body of procedural and evidentiary rules spelled out in advance of trial.¹⁹ The Government notes with approval "the decisional trend which has sought . . . to place the most humane construction on capital legislation." Yet it asks us to extend the capital punishment provision of the Federal Kidnaping Act in a new and uncharted direction, without the compulsion of a legislative mandate and without the benefit of legislative guidance. That we decline to do.

II.

Under the Federal Kidnaping Act, therefore, the defendant who abandons the right to contest his guilt before a jury is assured that he cannot be executed; the defendant ingenuous enough to seek a jury acquittal stands forewarned that, if the jury finds him guilty and does not wish to spare his life, he will die. Our problem is to decide whether the Constitution permits the establishment of such a death penalty, applicable only to those defendants who assert the right to contest their guilt before a jury. The inevitable effect of any such

¹⁹ Even in States with legislatively established jury proceedings on the penalty issue, defense attorneys have not always been prepared to take advantage of those features of the penalty trial designed to benefit their clients. See Note, Executive Clemency in Capital Cases, 39 N. Y. U. L. Rev. 136, 167 (1964). If the relative novelty of penalty proceedings has thus impaired effective representation in jurisdictions where the contours of such proceedings have been fixed by statute, it seems clear that the difficulties for the defense would be even more formidable under the amorphous case-by-case system that the Government asks us to legitimize today. It is no wonder that the Second Circuit, while not foreclosing two-stage trials altogether, was "loath to compel unwilling defendants to submit" to them. *United States v. Curry*, 358 F. 2d 904, 914.

provision is, of course, to discourage assertion of the Fifth Amendment right not to plead guilty²⁰ and to deter exercise of the Sixth Amendment right to demand a jury trial. If the provision had no other purpose or effect than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it would be patently unconstitutional. But, as the Government notes, limiting the death penalty to cases where the jury recommends its imposition does have another objective: It avoids the more drastic alternative of mandatory capital punishment in every case. In this sense, the selective death penalty procedure established by the Federal Kidnaping Act may be viewed as ameliorating the severity of the more extreme punishment that Congress might have wished to provide.²¹

The Government suggests that, because the Act thus operates "to mitigate the severity of punishment," it is irrelevant that it "may have the incidental effect of inducing defendants not to contest in full measure."²² We cannot agree. Whatever might be said of Congress' objectives, they cannot be pursued by means that needlessly chill the exercise of basic constitutional rights. Cf. *United States v. Robel*, 389 U. S. 258; *Shelton v. Tucker*, 364 U. S. 479, 488-489. The question is not whether the chilling effect is "incidental" rather than intentional; the question is whether that effect is unnecessary and therefore excessive. In this case the answer to

²⁰ It is established that due process forbids convicting a defendant on the basis of a coerced guilty plea. See, e. g., *Herman v. Claudy*, 350 U. S. 116.

²¹ See *United States v. Curry*, 358 F. 2d 904, 913-914 and n. 8. See also *Andres v. United States*, 333 U. S. 740, 753-754 (Frankfurter, J., concurring).

²² See *McDowell v. United States*, 274 F. Supp. 426, 431. See also *Laboy v. New Jersey*, 266 F. Supp. 581, 585.

that question is clear. The Congress can of course mitigate the severity of capital punishment. The goal of limiting the death penalty to cases in which a jury recommends it is an entirely legitimate one. But that goal can be achieved without penalizing those defendants who plead not guilty and demand jury trial. In some States, for example, the choice between life imprisonment and capital punishment is left to a jury in *every* case—regardless of how the defendant's guilt has been determined.²³ Given the availability of this and other alternatives, it is clear that the selective death penalty provision of the Federal Kidnaping Act cannot be justified by its ostensible purpose. Whatever the power of Congress to impose a death penalty for violation of the Federal Kidnaping Act, Congress cannot impose such a penalty in a manner that needlessly penalizes the assertion of a constitutional right. See *Griffin v. California*, 380 U. S. 609.²⁴

It is no answer to urge, as does the Government, that federal trial judges may be relied upon to reject coerced pleas of guilty and involuntary waivers of jury trial. For the evil in the federal statute is not that it necessarily *coerces* guilty pleas and jury waivers but simply that it needlessly *encourages* them. A procedure need not be inherently coercive in order that it be held to impose an impermissible burden upon the assertion of a constitutional right. Thus the fact that the Federal Kidnaping Act tends to discourage defendants from insisting upon

²³ See, e. g., Rev. Code Wash. Ann. §§ 9.48.030, 10.01.060, 10.49.010 (1956 ed.). Cf. Cal. Penal Code § 190.1 (Supp. 1966).

²⁴ In an opinion by Justice Zenoff, *Spillers v. State*, 436 P. 2d 18, 22-23, the Supreme Court of Nevada has recently held unconstitutional a state penalty scheme imposing capital punishment for forcible rape resulting in great bodily injury "if the jury by their verdict affix the death penalty." Nev. Rev. Stat. § 200.360 (1) (1963 ed.).

their innocence and demanding trial by jury hardly implies that every defendant who enters a guilty plea to a charge under the Act does so involuntarily.²⁸ The power to reject coerced guilty pleas and involuntary jury waivers might alleviate, but it cannot totally eliminate, the constitutional infirmity in the capital punishment provision of the Federal Kidnaping Act.

The Government alternatively proposes that this Court, in the exercise of its supervisory powers, should simply instruct federal judges sitting in kidnaping cases to reject all attempts to waive jury trial and all efforts to plead guilty, however voluntary and well-informed such attempted waivers and pleas might be. In that way, we could assure that every defendant charged in a federal court with aggravated kidnaping would face a possible death penalty, and that no defendant tried under the federal statute would be induced to forego a constitutional right. But of course the inevitable consequence of this "solution" would be to force all defendants to submit to trial, however clear their guilt and however strong their desire to acknowledge it in order to spare themselves and their families the spectacle and expense of protracted courtroom proceedings. It is true that a defendant has no constitutional right to insist that he be tried by a judge rather than a jury, *Singer v. United States*, 380 U. S. 24, and it is also true "that a criminal defendant has [no] absolute right to have his guilty plea accepted by the court." *Lynch v. Overholser*, 369 U. S.

²⁸ See *Laboy v. New Jersey*, 266 F. Supp. 581, 584. So, too, in *Griffin v. California*, 380 U. S. 609, the Court held that comment on a defendant's failure to testify imposes an impermissible penalty on the exercise of the right to remain silent at trial. Yet it obviously does not follow that every defendant who ever testified at a pre-*Griffin* trial in a State where the prosecution could have commented upon his failure to do so is entitled to automatic release upon the theory that his testimony must be regarded as compelled.

705, 719. But the fact that jury waivers and guilty pleas may occasionally be rejected hardly implies that all defendants may be required to submit to a full-dress jury trial as a matter of course. Quite apart from the cruel impact of such a requirement upon those defendants who would greatly prefer not to contest their guilt, it is clear—as even the Government recognizes—that the automatic rejection of all guilty pleas “would rob the criminal process of much of its flexibility.” As one federal court has observed: “

“The power of a court to accept a plea of guilty is traditional and fundamental. Its existence is necessary for the . . . practical . . . administration of the criminal law. Consequently, it should require an unambiguous expression on the part of the Congress to withhold this authority in specified cases.”

If any such approach should be inaugurated in the administration of a federal criminal statute, we conclude that the impetus must come from Congress, not from this Court. The capital punishment provision of the Federal Kidnaping Act cannot be saved by judicial reconstruction.

III.

The remaining question is whether the statute as a whole must fall simply because its death penalty clause is constitutionally deficient. The District Court evidently assumed that it must, for that court dismissed the kidnaping indictment. We disagree. As we said in *Champlin Rfg. Co. v. Commission*, 286 U. S. 210, 234:

“ . . . The unconstitutionality of a part of an Act does not necessarily defeat . . . the validity of its remaining provisions. Unless it is evident that the legislature would not have enacted those provisions

²² *United States v. Willis*, 75 F. Supp. 628, 630.

which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law." ²⁷

Under this test, it is clear that the clause authorizing capital punishment is severable from the remainder of the kidnaping statute and that the unconstitutionality of that clause does not require the defeat of the law as a whole. See *McDowell v. United States*, 274 F. Supp. 426, 429. Cf. *Spillers v. State*, 436 P. 2d 18, 23-24.

The clause in question is a functionally independent part of the Federal Kidnaping Act. Its elimination in no way alters the substantive reach of the statute and leaves completely unchanged its basic operation. Under such circumstances, it is quite inconceivable that the Congress which decided to authorize capital punishment in aggravated kidnaping cases would have chosen to discard the entire statute if informed that it could not include the death penalty clause now before us.²⁸

²⁷ The appellees correctly note that *Champlin* was a case where Congress had included a clause expressly authorizing the severance of any invalid provision, a fact upon which this Court relied in recognizing "a presumption that, eliminating invalid parts, the legislature would have been satisfied with what remained . . ." 236 U. S. 210, 235. But whatever relevance such an explicit clause might have in creating a presumption of severability, see *Electric Bond Co. v. Comm'n*, 303 U. S. 419, 434, the ultimate determination of severability will rarely turn on the presence or absence of such a clause. Thus, for example, the Court in *Champlin*, after stating the basic test quoted above, cited cases in which invalid statutory provisions had been severed despite the absence of any provision for severability. *Pollock v. Farmers' Loan & Trust Co.*, 153 U. S. 601, 635; *Reagan v. Farmers' Loan & Trust Co.*, 154 U. S. 362, 395-396; *Field v. Clark*, 143 U. S. 649, 695-696.

²⁸ As this Court observed in *Reagan v. Farmers' Loan & Trust Co.*, 154 U. S. 362, 396, "it is not to be presumed that the legislature was legislating for the mere sake of imposing penalties, but the penalties . . . were simply in aid of the main purpose of the statute. They may fail, and still the great body of the statute

In this case it happens that history confirms what common sense alone would suggest: The law as originally enacted in 1932 contained no capital punishment provision.²⁹ A majority of the House had favored the death penalty but had yielded to opposition in the Senate as a matter of expediency.³⁰ Only one Congressman had expressed the view that the law would not be worth enacting without capital punishment.³¹ The majority

have operative force, and the force contemplated by the legislature in its enactment."

²⁹ The original Federal Kidnaping Act, 47 Stat. 326, provided:

"That whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward shall, upon conviction, be punished by imprisonment in the penitentiary for such term of years as the court, in its discretion, shall determine"

³⁰ The Senate Judiciary Committee had opposed capital punishment and had reported the kidnaping law in a version that authorized no penalty beyond "imprisonment . . . for such term of years as the court, in its discretion, shall determine." S. Rep. No. 765, 72d Cong., 1st Sess., 2 (1932); 75 Cong. Rec. 11878 (1932). In the ensuing debates, some members of the House opposed the death penalty on principle. 75 Cong. Rec. 13285, 13289-13290, 13294 (1932). Others argued that the threat of capital punishment would encourage kidnapers to kill their victims lest their testimony lead to conviction and execution. *Id.*, at 13285, 13304. Most favored the death penalty in some form, see *id.*, at 13283-13284, 13286-13287, 13295, but feared that efforts to persuade the Senate to accept a capital punishment provision would occasion further delay and might cause ultimate defeat. *Id.*, at 13288, 13299, 13303. The majority therefore compromised their views and accepted the Senate version of the bill. *Id.*, at 13304. See Bomar, *The Lindbergh Law*, 1 Law and Contemp. Prob. 435, 440 (1934).

³¹ Congressman Dyer of Missouri had stated that without the death penalty "the legislation would not be worth anything, because every State now has a kidnaping law and few of them provide the death penalty." 75 Cong. Rec. 13287 (1932).

obviously felt otherwise."²² When the death penalty was added in 1934, the statute was left substantially unchanged in every other respect."²³ The basic problem that had prompted enactment of the law in 1932—the

²² Congressman Cochran of Missouri, who had introduced the original bill (H. R. 5657) with a death penalty clause, stressed that his objective was the prompt enactment of a federal kidnaping law; to that end, he was "willing to go along and strike out the death penalty." 75 Cong. Rec. 13296 (1932); see also *id.*, at 13284, 13299, 13304. Congressman LaGuardia of New York put the matter succinctly: "[I]f what Congress is looking for is a headline, leave the death penalty in; but if we are looking for a real bill that will be a deterrent to kidnaping, take the Senate bill. [Applause.]" *Id.*, at 13299. Shortly thereafter, the House passed the Senate version of the Act. *Id.*, at 13304.

²³ By 1934, the Senate's attitude toward capital punishment had changed markedly. In that year the Senate passed a bill (S. 2841) authorizing punishment "by imprisonment for not less than 10 years, or by death" for killing or kidnaping in connection with a bank robbery. 78 Cong. Rec. 5738 (1934). The House Judiciary Committee amended the Senate provision to its present form, see 18 U. S. C. § 2113 (e) (1951 ed.), limiting the death penalty to those cases where "the verdict of the jury shall so direct." H. R. Rep. No. 1461, 73d Cong., 2d Sess., 1 (1934).

The House Judiciary Committee had not forgotten that its attempt to include similar language in the Kidnaping Act of 1932, see H. R. Rep. No. 1493, 72d Cong., 1st Sess., 1 (1932), had been defeated "in the rush to draft and enact a [kidnaping] bill suitable to both houses before adjournment." Finley, *The Lindbergh Law*, 28 Geo. L. J. 908, 914, n. 24 (1940). Taking its cue from the bank robbery legislation, the House Committee found an ideal opportunity to reassert its 1932 position in a Senate Bill (S. 2252) that had begun as a technical amendment to the 1932 Kidnaping Act. See 78 Cong. Rec. 5737 (1934). In S. 2252, the Senate retained the basic punishment of "imprisonment in the penitentiary for such term of years as the court, in its discretion, shall determine," see n. 29, *supra*, but the House Judiciary Committee added the alternative penalty of "death if the verdict of the jury shall so recommend, provided that the sentence of death shall not be imposed by the

difficulty of relying upon state and local authorities to investigate and prosecute interstate kidnaping"—had not vanished during the intervening two years. It is therefore clear that Congress would have made interstate kidnaping a federal crime even if the death penalty provision had been ruled out from the beginning. It would

court if, prior to its imposition, the kidnaped person has been liberated unharmed" H. R. Rep. No. 1457, 73d Cong., 2d Sess., 1 (1934); 78 Cong. Rec. 8127-8128 (1934).

After initial disagreement in the Senate, *id.*, at 8263-8264, and a conference, *id.*, at 8322; H. R. Rep. No. 1595, 73d Cong., 2d Sess. (1934), the Senate accepted the House addition to S. 2252 without debate, 78 Cong. Rec. 8767, 8775, 8778, 8855-8857 (1934), and the resulting statute, 48 Stat. 781 (1934), employed substantially the same language as that now appearing in 18 U. S. C. § 1201 (a). As amended in 1934, the Federal Kidnaping Act, 48 Stat. 781, thus provided:

"Whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, shall, upon conviction, be punished (1) by death if the verdict of the jury shall so recommend, provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed, or (2) if the death penalty shall not apply nor be imposed the convicted person shall be punished by imprisonment in the penitentiary for such term of years as the court in its discretion shall determine"

³⁴In late 1931 the American public became seriously concerned about the mounting incidence of professional kidnaping and the apparent inability of state and local authorities to cope with the interstate aspects of the problem. See Fisher & McGuire, Kidnaping and the So-Called Lindbergh Law, 12 N. Y. U. L. Q. 646, 652-653 (1935). Because of its geographical position, the city of St. Louis "had experienced numerous kidnappings in which the handicap of state lines had hindered or defeated her police officers."

be difficult to imagine a more compelling case for severability.

In an effort to suggest the contrary, the appellees insist that the 1934 amendment "did not merely increase the penalties for kidnaping; it changed the whole thrust of the Act." They note that Congress deliberately limited capital punishment to those kidnapers whose victims are not liberated unharmed. Such a differential penalty provision, the appellees argue, is needed to discourage kidnapers from injuring those whom they abduct.³³ The

Bomar, *The Lindbergh Law*, 1 *Law & Contemp. Prob.* 435 (1934). Largely in response to this experience, Senator Patterson and Congressman Cochran, both of Missouri, introduced identical bills (S. 1525, H. R. 5657) in the House and Senate, 75 Cong. Rec. 275, 491 (1931), forbidding the transportation in interstate or foreign commerce of any person "kidnaped . . . and held for ransom or reward, or . . . for any other unlawful purpose." Several months after the kidnaping of the Lindbergh baby in March 1932, Congress enacted the first Federal Kidnaping Act, see n. 29, *supra*, a slightly modified version of the bills introduced by Patterson and Cochran.

³³ See Bomar, *The Lindbergh Law*, 1 *Law & Contemp. Prob.* 435, 440 and n. 36. One might legitimately doubt the ability of the death penalty clause to achieve this supposed objective. In that regard, it has been observed that "[t]he advantage to the kidnapper in killing his victim is obvious and immediate, for the [Government's] best witness, perhaps its whole case, will be put out of the way. Thus a sentence of life imprisonment instead of death may not suffice to induce a kidnapper to refrain from killing his victim, even if the kidnapper is aware of the mitigation provision—itself a supposition not always true." Note, *A Rationale of the Law of Kidnapping*, 53 *Col. L. Rev.* 540, 550 (1953).

Moreover, as this Court has interpreted the statute, the death penalty may be imposed so long as "the kidnapped person . . . was still suffering from . . . injuries when liberated." *Robinson v. United States*, 324 U. S. 282, 285. As a result, "[o]nce [an] injury has taken place, the inducement held out by the statute necessarily is either to hold the victim until cure is effected or to do away with him so that evidence, both of the injury and of the kidnapping, is destroyed." *Id.*, at 289 (Rutledge, J., dissenting).

appellees contend that, without its capital punishment clause, the Federal Kidnaping Act would not distinguish "the penalties applicable to those who do and those who do not harm or kill their victims." Stressing the obvious congressional concern for the victim's safety, they conclude that "it is doubtful that Congress would intend for the statute to stand absent such a feature." This argument is wrong as a matter of history, for Congress enacted the statute "absent such a feature."³⁶ It is wrong as a matter of fact, for the length of imprisonment imposed under the Act can obviously be made to reflect the kidnaper's treatment of his victim. And it is wrong as a matter of logic, for nothing could more completely obliterate the distinction between "the penalties applicable to those who do and those who do not harm or kill their victims" than the total invalidation of *all* the penalties provided by the Federal Kidnaping Act—the precise result sought by the appellees.

Thus the infirmity of the death penalty clause does not require the total frustration of Congress' basic purpose—that of making interstate kidnaping a federal crime. By holding the death penalty clause of the Federal Kidnaping Act unenforceable, we leave the statute an operative whole, free of any constitutional objection.

³⁶ Congress was certainly aware when it passed the original Kidnaping Act of 1932 that "[t]he victim may be murdered or slain" if the kidnaper "has nothing to gain by [keeping] the victim . . . alive." 75 Cong. Rec. 13285 (1932). Such considerations might have been influential in the omission of any death penalty provision in 1932, see *Robinson v. United States*, 324 U. S. 282, 289, n. 4 (Rutledge, J., dissenting), but not a single member of Congress even hinted that the anti-kidnaping law should be defeated altogether in the interest of the victim's safety. Given the law's fundamental objective of preventing interstate kidnaping in the first instance, any such suggestion would have been unthinkable.

The appellees may be prosecuted for violating the Act, but they cannot be put to death under its authority.

The judgment is reversed and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

MR. JUSTICE MARSHALL took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 85.—OCTOBER TERM, 1967.

United States, Appellant,	|	On Appeal From the United
v.		States District Court for
Charles Jackson et al.	|	the District of Connecticut.

[April 8, 1968.]

MR. JUSTICE WHITE, with whom MR. JUSTICE BLACK joins, dissenting.

The Court strikes down a provision of the Federal Kidnaping Act which authorizes only the jury to impose the death penalty. No question is raised about the death penalty itself or about the propriety of jury participation in its imposition, but confining the power to impose the death penalty to the jury alone is held to burden impermissibly the right to a jury trial because it may either coerce or encourage persons to plead guilty or to waive a jury and be tried by the judge. In my view, however, if the vice of the provision is that it may interfere with the free choice of the defendant to have his guilt or innocence determined by a jury, the Court needlessly invalidates a major portion of an Act of Congress. The Court itself says that not every plea of guilty or waiver of jury trial would be influenced by the power of the jury to impose the death penalty. If this is so, I would not hold the provision unconstitutional but would reverse the judgment, making it clear that pleas of guilty and waivers of jury trial should be carefully examined before they are accepted, in order to make sure that they have been neither coerced nor encouraged by the death penalty power in the jury.

Because this statute may be properly interpreted so as to avoid constitutional questions, I would not take the first step toward invalidation of statutes on their face because they arguably burden the right to jury trial.

NEW YORK, N.Y., July 9, 1968.

Senator PHILIP A. HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: Your last letter to me relative to S. 1760 had left me with the impression that you would have called me to testify before the hearings were closed.

However, I am submitting for the record the proposed policy statement on abolishing the death penalty which I sponsored in the National Council of Churches. (34 denominations; 40 million membership).

Having had its first reading before the General Board in June, we anticipated its formal adoption September 13th in Houston, Tex.

The statement encompasses all the familiar arguments in addition to offering a Christian rationale for abolition.

Reference is made to Our Savior's attitude to the death penalty in His protection of the woman taken in adultery, suggesting to the executioners to throw the first stone, if any be without sin.

We know He Himself was the victim of capital punishment.

Be guided by the September date in identifying the enclosed as "proposed", or "adopted" by the National Council.

Asking Almighty God's blessing on this undertaking for its success, and on you for your great charity in sponsoring this genuinely progressive legislation, I remain,

Faithfully,

Rt. Rev. BARTHOLOMEW FOX.

ABOLITION OF DEATH PENALTY

In support of national movements to abolish the death penalty and to be consistent with previously recorded positions of a substantial number of member communions, the National Council of Churches hereby declares its opposition to capital punishment in federal and state jurisdictions of the United States.

RELIGIOUS AND ETHICAL POSITIONS OF MEMBER COMMUNIONS

Member communions have set forth arguments for the abolition of the death penalty which are summarized as follows:

- (1) the belief in the inherent worth of human life and the dignity of human personality as gifts of God;
- (2) a Christian preference for redemptive rehabilitation in contrast to primitive and punitive retribution;
- (3) the frustration of God's redemptive power in the soul of the offender by prematurely killing him;
- (4) the lack of factual substantiation for claims that the death penalty serves as a deterrent to commission of capital crimes;
- (5) the brutalization of the society which exhibits its disregard for the sanctity of human life by imposing the death penalty;
- (6) agreement with Thomas Jefferson's eloquent comment, "I shall ask for the abolition of the punishment of death until I have the infallibility of human judgment presented to me;"
- (7) the observation that abolition of capital punishment has not led to an increase in the homicide rates in those states where it has been legislated;
- (8) evidence of de facto discrimination in imposition of the death penalty whereby poor defendants are executed because they cannot afford the legal talent which the wealthy can employ;
- (9) belief that the threat of death explicit in the judicial sentence is cruel and inhuman punishment and that making a target of the condemned militates against his peace of soul and his eventual reconciliation with God;
- (10) belief that the protection of society does not require the deliberate killing of an individual but that it is effectively assured by non-lethal penalties and a program of rehabilitation.

We find these arguments persuasive. In addition, further arguments can be cited.

HOPES FOR A HUMANITARIAN AMERICA

Seventy five nations of the world have abolished the death penalty. The United States should do likewise.

A long delay in execution of the death penalty once it has been imposed so often has subjected the convicted person to psychological, if not physical, cruelty of incredible proportions.

Once executed the death penalty is irreversible. Later discovery of new evidence which raises questions about the guilt of the convicted person, or in some instances proves his innocence, cannot restore to him the right to justice.

FURTHER CHRISTIAN CONSIDERATIONS

As Christians we acknowledge that one of the most crucial events in the history of our Faith, the execution of Jesus on the Cross, had its origins in capital punishment. As Christians we are inspired to proclaim the gospel of the subjugation of brutality. As Christ overcame death, mankind is liberated from that law which exacts a life for a life.

As members of a democratic society which tolerates capital punishment, we are collectively guilty of throwing the first stone by killing the offender in whose death we all participate, and all are culpable. Aware of our own frailties, we hesitate to throw any stones. It was on the occasion of the Woman Taken in Adultery, a capital offense under the law of His day, that Christ rendered His judgment on the death sentence.

ACTION

In view of the foregoing, the National Council of Churches urges abolition of the death penalty under Federal law and, more importantly, within the several states.

In addition, we note that while thirteen states have abolished the death penalty, thirty-seven have yet to enact such legislation. The National Council of Churches urges member denominations to promote the necessary legislation, and to work on all levels, particularly in the states, to effect eventual abolition of capital punishment from the American scene.

REFERENCES

- American Baptist Convention: Statement on Capital Punishment, Adopted Rochester, New York, June 7, 1960.
- American Society of Friends, The Five Years Meeting of Friends, held at Earlham College, Richmond, Indiana, Seventh Month, 14-21, 1960: "Capital Punishment."
- Augustana Evangelical Lutheran Church of North America: Statement on Capital Punishment, 1957.
- Lutheran Church in America, June 1966: "Capital Punishment."
- Christian Churches (Disciples of Christ), International Convention, Cleveland, Ohio, October 11-16, 1957: Statement on Capital Punishment.
- Church of the Brethren: (a) Statement on Capital Punishment, Adopted by 1957 Annual Conference; (b) Statement on Capital Punishment, Adopted by 1959 Annual Conference, June 20, 1959.
- General Conference Mennonite Church, Central District Conference, Goshen, Indiana, April 23-26, 1959: Statement on Capital Punishment.
- The Methodist Church, Doctrine and Discipline of The Methodist Church, 1964: "The Methodist Social Creed" par. 1820, p. 661.
- The Protestant Episcopal Church in the U.S.A., 59th General Convention, Florida, October 16, 1956: "Capital Punishment."
- Council for Christian Social Action, United Church of Christ: "Capital Punishment" Adopted January 30, 1962.
- The United Presbyterian Church in the U.S.A. 177th General Assembly, 1965: "Capital Punishment."
- Presbyterian Church in the United States, 106th General Assembly, 1966: "Capital Punishment."

DATA SHEET

Title : Abolition of Death Penalty.

Purposes :

1. Consideration of Member Churches.
2. Public desclaration.
3. Guidance to the Council in its action on relevant legislation.

Originating Unit : Department of Social Justice.

APPROVALS OF SUPERVISORY BODIES

Name	Date	Yes	No	Abstain
Department of Social Justice.....	Apr. 19, 1968	11	0	0
*Program board, Division of Christian Life and Mission....	May 8, 1968	25	0	0

Proposed Distribution:

General Board and General Assembly,
General Executive of Member Com-
munion, State and local councils
of churches and councils of church-
women.

Program Board of DCLM, Dept. of So-
cial Justice, Committee on Civil
and Religious Liberty, Committee
on Social Welfare.

National and religious press, Executive
and Legislative branches of the
Federal Government.

By which unit:

General Secretary's office

Dept. of Social Justice

Office of Information

Statement to Accompany Document:

a. Situation which makes such a statement timely and advisable.—A substan-
tial number of member communions have taken a position against the use of
the death penalty in state and federal courts. Legislation is currently pending
before the Congress of the United States to abolish the use of the death penalty
in the federal courts. Thirteen states have already abandoned the use of the
death penalty in state jurisdictions. Thirty-seven have not, but movements are
being undertaken in many of them to do likewise.

b. The theological basis of the Statement.—As Christians we acknowledge that
one of the most crucial events in the history of our Faith, the execution of Jesus
on the Cross, had its origins in capital punishment. As Christians we are in-
spired to proclaim the gospel of the subjugation of brutality. As Christ overcame
death, mankind is liberated from that law which exacts a life for a life. As
members of a democratic society which tolerates capital punishment, we are
collectively guilty of throwing the first stone by killing the offender in whose
death we all participate, and all are culpable. Aware of our own frailties, we
hesitate to throw any stones. It was on the occasion of the Women Taken in
Adultery, a capital offense under the law of His day, that Christ rendered His
judgment on the death sentence.

c. Proposed statement to be used in publication and distribution of this docu-
ment—regarding the nature, status, and sponsorship of the document, "State-
ment adopted by the General Board of the National Council of Churches of Christ
in the U.S.A. Date.....".

d. Titles and dates of previous actions dealing with this subject. Actions by
member communions—

American Baptist Convention.

Statement on Capital Punishment,

Adopted: Rochester, New York, June 7, 1960.

American Society of Friends,

The Five Years Meeting of Friends,

held at Earlham College, Richmond, Indiana,

Seventh Month 14-21, 1960 "Capital Punishment."

Augustana Evangelical Lutheran Church of North America,

Statement of Capital Punishment, 1957.

- Lutheran Church in America,
 June 1966 "Capital Punishment."
 Christian Churches (Disciples of Christ),
 International Convention, Cleveland, Ohio,
 October 11-16, 1957—Statement on Capital Punishment.
 Church of the Brethren,
 (a). Statement on Capital Punishment, Adopted by 1957 Annual Conference
 (b) Statement on Capital Punishment, Adopted by 1959 Annual Conference,
 June 20, 1959.
 General Conference Mennonite Church, Central District, Conference, Goshen,
 Indiana—April 23-26, 1959, Statement on Capital Punishment.
 The Methodist Church, Doctrine and Discipline of The Methodist Church, 1964,
 "The Methodist Social Creed" par. 1820, p. 661.
 The Protestant Episcopal Church in the U.S.A., 59th General Convention, Florida,
 October 16, 1956, "Capital Punishment."
 Council for Christain Social Action, United Church of Christ, "Capital Punish-
 ment"—Adopted January 30, 1962.
 The United Presbyterian Church in the U.S.A., 177th General Assembly, 1965—
 "Capital Punishment."
 Presbyterian Church in the United States, 106th General Assembly, 1966—
 "Capital Punishment."

HIGH COST OF DEATH

What about the cynical argument that it is cheaper to kill a capital offender than to maintain him in prison for the rest of his life? Persons who make this argument are really saying that capital offenders should be executed not on the basis of their crimes, but because poor penal administration makes it likely that they will not be self-supporting while in prison. A society's poor management of its prisons, however, is a bizarre rationalization for executing people. Even so, the argument that it is cheaper to legally execute a man than to maintain him in prison for life in complete idleness, and as a pure consumer, is simply not true and rests upon public ignorance of the pertinent facts.

The way to deal with the economic argument in favor of the death penalty is to make estimates and count dollars. The costs to be compared would be the price of maintaining prisoners of normal life expectancy, after their age of conviction, in prison for the balance of their lives as compared to the difference in price of capital and non-capital legal processes leading to an execution or a life sentence. In order to make such a comparison it would be necessary to detail the procedural steps, the personnel involved, the time intervals involved and the cost of facilities in capital and non-capital cases. It would also be necessary to have knowledge about the nature of the offense, the offender and the victim; the reaction of law enforcement, prosecution, judicial and jail personnel; and the attitude of the mass media and the public to the case; for all of these enter, in one way or another, into the ultimate money costs related to dealing with capital and non-capital cases. Over against all this would be the cost of maintaining an offender in prison at a cost of about \$1,500 per year for his normal life expectancy which, on the average, would be for about 30 years after conviction.

Apparently, the general public knows very little about the differences in cost between the handling of a capital case and a non-capital case. Almost every phase of the capital case is more complex, more time consuming and more costly. We need only advert to such things as the selection of a death penalty jury; the length of capital trials; the costs of both prosecution and defense, *both of which, more frequently than not, are borne by the state*; the printing costs incident to motions and multiple appeals; the special detention and handling costs of guarding and transporting capital offenders; and the costs of rehearsing and ultimately carrying out an execution. The printing costs alone, of briefs for both prosecution and defense, in the appeal process, frequently run into tens of thousands of dollars. I do not want to belabor the issue, but in an unpublished study I made of this question, I found that thirty years of imprisonment cost the state about \$45,000, assuming no cost-offsetting activity on the part of the prisoner. By way of comparison, the costs of a capital trial and appeals, special security handling in court and jail and the rehearsals and

carrying out of an execution, were in excess of \$60,000. Capital punishment is by no means cheaper than life imprisonment, and the jurisdiction that maintains it pays for it dearly in both money and human costs.

ANTIDOTE TO LYNCHING?

The argument in favor of capital punishment that a community deprived of legal killing will resort to illegal killing in the form of lynching, is probably the one that is most easily demolished. Historically, lynching has been more widely practiced in the southern than in the northern states. All of the southern states have capital punishment and they have all applied the death penalty more frequently than any northern state. To cite only the example, let us again revert to the state of Georgia. During the period in 1882 to 1961 there were 530 lynchings in this state. In the same period, the state of Georgia executed 342 persons. Similar comparisons could be made in the case of other southern states. Now, while it is true that lynchings have declined drastically, almost to the vanishing point, the historical evidence indicates that the presence of the death penalty in the southern states did not prevent southern communities from resorting to lynchings.

In conclusion it may be well to point out some general trends in homicides and executions that pose some difficulties for those who would maintain that capital punishment has any relationship to murder, i.e., the problem to which it is allegedly addressed as a specific remedy. The population of the United States in 1940 was roughly 132 million, and in 1960 it was roughly 180 million, an increase of about 36%. The number of homicides in 1940 was 7,540 and in 1960 it was 8,971, an increase of only about 19% in comparison to the 36% increase in population. Apparently the homicide rate is lagging behind the increase in population. Secondly, for the period 1930-39 the *average* number of executions per year was 151, in the period 1940-49 it was 106, in the period 1950-59 it was 60. In the year, 1961 only 42 executions were carried out in the United States. Thirdly, in the city of Chicago, during the period 1923-30 the *average number* of policemen killed and wounded per year was 25, in the period 1931-40 it was 14, and in the period 1940-54 it was 4. Yet, during these periods the situation as to the presence or absence of capital punishment in various jurisdictions underwent no decisive change. That is, those jurisdictions that had capital punishment, still have it, and those that had abolished it are still without it. Yet we see a decisive increase in the population, a relative decrease in the number of homicides, a sharp decline in the number of Chicago policemen killed and wounded and a similarly sharp decline in the number of executions carried out in the United States; while the presence or absence of the death penalty in various jurisdictions has undergone no significant change.

In short, capital punishment is the constant while all the other factors vary over time. In the light of these relationships it would be foolhardy for anyone to maintain that the death penalty, or any alleged deterrent quality attributed to it, is the crucial factor related to homicide. And yet, that is what those who favor the death penalty must prove unless they are simple sentimentalists. Far from being the crucial factor, however, the death penalty is simply irrelevant and has no relationship to homicide whatsoever. It is a cruel, expensive and demoralizing irrelevancy that can only serve the irrational impulses that survive in men.

The society or community that maintains capital punishment, and believes in its efficacy as a deterrent to homicide, may best be compared to a primitive and superstitious tribe of savages who credulously engage in a rain dance to produce the rain they need and desire. Their beliefs are erroneous, their activity is irrelevant and when the rains come they are the product of entirely different causes than those that the savages thought important. The savages and their irrational rituals have long since departed from the plains of Illinois but in the field of crime and punishment we are still maintaining the irrational tradition of applying irrelevant measures to serious social problems.

No matter how strongly we may feel about an irrelevant remedy like capital punishment, it will not help us to deal effectively with a serious social problem like murder. Capital punishment is indefensible on rational grounds. Ever since Socrates and Jesus Christ were made the victims of the death penalty, men have questioned the wisdom of its use. It is high time that this survival from the ages of superstition and cruelty be removed from our midst. Capital punishment should be abolished.

EXHIBITS

SPEECH BY THE PRIME MINISTER OF CANADA IN THE HOUSE OF COMMONS ON
THURSDAY, NOVEMBER 16, 1967, DURING DEBATE ON BILL NO. C-168 TO AMEND
THE CRIMINAL CODE (CAPITAL PUNISHMENT)

(P4367) : Right Hon. L. B. PEARSON (Prime Minister). Mr. Speaker, this is the first opportunity I have had within the House of Commons—perhaps not the first opportunity but the first time I have taken advantage of the opportunity—of speaking on this very important matter. There was an opportunity in 1961 and another one in 1965. I did not speak in 1965. At that time we were discussing a private member's bill and I felt that, while this was a bill and this was a subject which should be left to the individual member's conscience to decide, I did not feel at that time it was possible for the leader of the government to divorce his personal position from his official position. Although I held strong views on the subject, I did not give utterance to those views. I am venturing to do so tonight, Mr. Speaker, although I know that members are understandably anxious to have a decision taken on this matter.

(P4368) : This bill, Mr. Speaker, has been introduced by a minister of the government and in that sense the government has taken responsibility for the bill. However, this does not mean, as I understand some members are worried lest it might appear to mean, that this is in any sense not a free vote.

Some honorable MEMBERS. Oh, oh.

Mr. PEARSON. Mr. Speaker, every member in this house, on this side and indeed on the other side, has the right and the duty to vote with regard to this bill as his own conscience dictates.

Mr. HORNER (Acadia). That is hogwash.

Mr. PEARSON. The results of this bill—

Mr. HORNER (Acadia). Tell your whip.

Mr. PEARSON. Every member in this house has a right to express his opinion and try to influence the opinions of others, because that is the very essence of debate, the very essence of parliamentary activity. The proof that this vote is a free vote is the fact that it is not a matter of confidence or no confidence, whatever the result of this vote may be.

This bill is different in two important respects, as all hon. members know, from the bill that was voted upon a year and a half ago. This bill provides for a five year term, and that is a very important distinction I believe over the previous private member's bill. It does, as we all know, exempt from its provisions the murder of police officers and prison guards. The bill, from the point of view of those of us who believe in the abolition of capital punishment, is admittedly a compromise, but in the circumstances I believe it is a reasonable compromise. I would be the first to admit that as a compromise it does put those of us who believe in the total abolition of capital punishment in a position of some logical difficulty. There is no doubt about that. My own resolution of this particular difficulty on this bill in its present compromised form, is that it does provide a further, very important restriction on the exercise of capital punishment, if not the complete abolition of the death penalty. I am certainly prepared to accept it and be grateful for it. I do not wish to prejudice the possibility of not having three quarters of a loaf of bread by taking the stand which would prevent having any loaf at all.

The bill, Mr. Speaker, will dispose of this question for five years if it is carried. At the end of that time the decision can be reviewed in the light of the results that have occurred during that period. If the bill should fail to carry, then the matter is settled so far as the present government is concerned. Of course, every member of the house has the right to introduce any private bill on any subject at any time.

Mr. BELL (Carleton). Would the right hon. gentleman permit a question? In the event the bill fails to carry, would the government carry out the law of Canada?

Mr. PEARSON. Mr. Speaker, if this bill should be defeated, and I hope it will not be, the law of Canada will be carried out.

Mr. HORNER (Acadia). You said that the last time.

Mr. PEARSON. In this debate, Mr. Speaker, we have all been confronted with the deepest issues in human existence, life, death and society. I do not believe any of us need to apologize, and I do not believe any of us do apologize, for

taking the time of this house to debate these fundamental issues. The issues have been argued with sincerity and conviction, and indeed with emotion, in an entirely non-partisan way on both sides of the house.

We have heard statistics used to support the retention of the death penalty in Canada. We have heard statistics used to support the abolition of the death penalty. I have no intention tonight of taking up the time that would be required to examine the statistics for my own argument. Let me say, Mr. Speaker, as others have already said before me, that so far as I am concerned personally I am convinced from the study I have made over a long period of time that capital punishment is not effective enough as a deterrent to murder to justify its retention. In my opinion, its unique deterrent value, its adequate deterrent value, is the only valid reason I can find for retaining the death penalty for any crime. It seems to me that the death penalty stands or falls on that argument, although there are of course other related considerations which affect the issue, some of which I will mention. I think the retentionists as well as the abolitionists accept this position, that the basic question we have to settle is the deterrent value of the capital punishment that some of us wish to abolish.

Mr. FULTON. No, we never accepted that position.

(4369) Mr. PEARSON. If any other members used other arguments to justify their position, of course I respect those arguments. So far as I am concerned, and I think a good many on the other side of the argument are concerned, the deterrent value was the important part of the issue. We are told if the state can legally and morally kill, it is not to punish the guilty on the savage and primitive theory of an eye for an eye, a death for a death, but to frighten others from crime who might otherwise be tempted to imitate the guilty.

If this is a logical and moral position for those who advocate the retention of capital punishment, and if they believe in the deterrent value of capital punishment, then why do they not go further and insist that executions be held with a maximum of publicity to increase the fear and the deterrent value? That is in fact what used to be done. Surely it can be argued logically that if the death penalty is required because of the need to make an example of murders, maximum publicity should be part of the process, as was once the case not so very many years ago. (8:30 p.m.)

To me, Mr. Speaker, the balance of evidence shows that the existence or absence of the death penalty does not make any measurable statistical difference to the person who is unaware that he is going to kill until the moment of frenzy or obsession or passion hurls him into his terrible calamity. Those who commit tragic murders of that kind are not hanged now, because in 1961 we made a change to the law exempting from the penalty of execution those who commit non-capital murders of that type.

We are told, Mr. Speaker, by experts on the subject that a large number of murders are committed by persons with neither a previous criminal record nor with calculation or planning for their crime. So is there any real evidence that the threat of the death penalty frightens murderers, either of the kind who would not be hanged in any event or those from the ranks of the professional criminals who plan their crimes? I submit there is no evidence which would justify the use of capital punishment as a deterrent for that kind of murder.

Indeed, Mr. Speaker, as has so often been pointed out in this and in previous discussions, at a time when pickpockets were still executed in England other pickpockets worked the crowds that gathered to watch the execution.

An hon. MEMBER. That is an old one.

Mr. PEARSON. Yes, it is an old one, but there is a moral attached to it. Even, if it cannot be proven that the death penalty reduces the number of murders by its horrible example, then some retentionists argue—and it is an impressive argument—that while those who murder have obviously not been prevented by the fear of execution and death, there must be many other potential murderers who have been restrained by that fear but whom naturally we never know about.

This argument in favour of the death penalty, Mr. Speaker, means, as I understand it, that the greatest and most final of all punishments rests merely on a possibility that no one can prove. Surely, Mr. Speaker, a possibility which cannot be determined is too frail a foundation for Canadian justice in any form, but especially in such an absolute form as capital punishment. Death does not involve degrees or probabilities; it is definite, final and absolute. I think it was the first Earl of Strafford who said "Stone dead hath no fellow".

Mr. LAMBERT. So is the victim.

Mr. PEARSON. Yes, it is the same for the victim as for the murderer, but I will come to that later.

Mr. LAMBERT. Where is the greater crime?

Mr. PEARSON. Surely that kind of punishment should not be administered in the name of a possibility that cannot be determined by any society which calls itself civilized.

Death is also final in another sense, Mr. Speaker. There is no possibility of rectifying a mistake which may have been made in a death sentence; and we know that such mistakes can be made, have been made, and will be made. While the law is simple and blunt and irreversible—and in the case of the death penalty has an awful finality about it—the human spirit is infinitely complex, a collection of constantly competing needs and wants and emotions which no law can perfectly control.

(P. 4370) Fortunately, Mr. Speaker, most of mankind manages for most of the time to keep all these clashing forces that operate within a single personality in a kind of balance and under some control. But when an overpowering primal emotion breaks loose, no instinct, not even that of life or death, can oppose the tyranny of that irresistible force. Therefore a murder can occur. So for capital punishment to really be a deterrent, human nature would have to be as stable and cold as the law itself. And human nature, Mr. Speaker, is far from that. When this kind of human nature does exist in an individual, that individual is less likely to commit a murder.

I have tried to show that in dealing with this issue we should all be concerned—as I see it, primarily concerned—with the protection of society from the crime of murder. But we are also concerned—and this concern has been voiced by many speakers in this debate—with certain fundamental moral and social values in our civilization and in our society.

There can surely be no argument that the final justification of any law is in the good it does in the society in which it applies. As Sir Winston Churchill, who was not an abolitionist, said in the British House of Commons many years ago, when he was Home Secretary—and I am quoting from the speech he made at that time:

"The mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country. A calm dispassionate recognition of the rights of the accused, and even of the convicted criminal against the state; a constant heart-researching by all charged with the duty of punishment; a desire and an eagerness to rehabilitate . . . ; tireless efforts toward the discovery of creative and regenerate processes; unflinching faith that there is a treasure if you can find it, in the heart of every man. These are the symbols which . . . mark and measure the stored-up strength of a nation . . . proof of the living virtue in it."

Armand Camus put it more succinctly, if less eloquently, when he wrote: "Every society has the criminals it deserves."

In every capital conviction leading to execution, Mr. Speaker, it is not the condemned alone who stands under judgment. The whole of our society and our most fundamental human values are also being measured. Murder for which, it is argued, the death of the murderer is required is often, indeed is far too often, the end result of a lifetime of tragedy; the final liquidation of a human being who has never had or been able to find a place in society. (8:40 p.m.)

Mr. GRAFFTEY. Hear, hear.

Mr. PEARSON. The law itself has no way of taking into account those factors of life, personality, heredity and environment which in every individual are parcelled out unequally at birth and which may determine his fate, that fate of which we are all, wrongfully, supposed to be the master. The absolute responsibility of an offender who is to die cannot be precisely measured in any human system of justice, any more than the responsibility of society in the offender's crime can be completely measured or understood.

Some hon. MEMBERS: Hear, hear.

Mr. PEARSON. And so, Mr. Speaker, we recognize the impossibility of absolute justice. Yet death itself is the absolute condemnation. Its sentence postulates that the man is absolutely guilty and that the society which judges him is absolutely innocent; for the death penalty can admit of no qualification or imperfection. It is too final for that.

I repeat, Mr. Speaker, we know that neither our society, nor our judges and juries are without imperfections; and our imperfect society often makes it pos-

sible for the criminal with wealth to put his defence in a way which is not open to the poor or friendless man.

If, as no one can doubt is the case, the death penalty in any form is now considered too gruesome and degrading an example to be carried out in public; and if, as I believe is the case, the death penalty makes no demonstrable difference to the deterrence of murder in our society; if it does no service to society and if it involves the possibility of a mistake for which no rectification is possible, then I must ask myself what other reason there could possibly be for retaining it.

Mr. ALKENBRACK. For the murderers of policemen.

Mr. PEARSON. We know that the execution of a murderer will not restore the victim to life, comfort or solace his family, help them in any way, or bring comfort to his friends. So why ought we to retain it?

An hon. MEMBER. There is no alternative.

Mr. PEARSON. I believe the only logical explanation left for retaining capital punishment in our society is a desire for retaliation—

Some hon. MEMBERS. No, no.

Mr. PEARSON. —and for revenge.

Some hon. MEMBERS. No, no.

(P. 4370) Mr. PEARSON. It is to make the punishment fit the crime.

Some hon. MEMBERS. No, no.

Mr. PEARSON. The criminal kills, so he must be killed.

Some hon. MEMBERS. No, no.

(P. 4371) Mr. PEARSON. Well, Mr. Speaker, I cannot believe that this is an adequate reason in any society that aspires to become truly civilized.

An hon. MEMBER. You have it in the bill.

Mr. PEARSON. Retaliations do not protect society from anything. Indeed, such brutal revenge as the death penalty can feed the appetites for brutality and sadism that remain in our society. This is the one and major reason why the death penalty has been abolished from so many political societies.

From this I believe it can logically be argued that if society executes an offender only for retaliation, to make the punishment fit the crime, a closer look will reveal that it is not only the offender but society as well that feels the cruel corrosion of that retaliation. I feel this more strongly, because a criminal impulse is often the result of illness of mind or body, or both, and needs treatment rather than punishment.

An hon. MEMBER. And protection.

Mr. PEARSON. Guilty—

An hon. MEMBER. And protection.

Mr. PEARSON. Guilty and insane. What is insanity under the law, as it now stands? I do not say this because I am soft on criminals, but because all history proves the ineffectiveness of punishment alone as a cure for crime or as a protection for society. I base my argument not on sentiment but on the record. I believe that crime must be treated, not on the gallows or in the gas chamber, but in the slums, in the ghettos and in the clinics, at the source. And that source is the most intricate and mysterious and precious of all mechanisms, the individual personality and the influence of heredity and environment which affect it.

So, Mr. Speaker, we are deciding in this debate more than the question of capital punishment; we are deciding, as I see it, how civilized we want Canadian justice to be.

Mr. NIELSEN. That was decided one year ago.

Mr. PEARSON. I believe that no decision taken by this house can measure more accurately the nature and degree of our civilization than the decision we take on this issue. And we are not truly civilized when the desire for revenge and retaliation, as old as man, is stronger than the desire to reform and restore. Retaliation, even the final retaliation of death, will not correct murder in the nature of man and therefore is not, in my view, an acceptable principle for any law; nor is it a necessary or humane ingredient of our system of criminal justice.

Even if it were otherwise acceptable, capital punishment is not an equivalent retaliation for murder. Our present law considers premeditated murder more serious than murder from an unplanned and unanticipated emotional explosion, and makes a distinction between the two kinds of murder with the application of the punishment of death. But capital punishment is death through a premeditation more calculated than any crime of murder could possibly be.

Mr. FULTON. You are retaining it.

Mr. PEARSON. For there to be equivalence, the death penalty would have to punish a criminal who had warned his victim of the date at which he would inflict a horrible death on him and who, from that moment onward, had confined him at this mercy for months. Few murderers have ever been so horrible in their deliberation as an executioner.

I do not believe, Mr. Speaker, that such mental barbarity—and that is not too strong an expression—should have any place in the Canadian system of justice. If it cannot be removed entirely at this time, and I wish it could be, then surely it is a worth-while step forward to reduce it as much as possible, as we are doing in the bill before the house.

An hon. MEMBER. Discrimination.

Mr. PEARSON. I believe that all Canadians, to some degree, are morally diminished by the doctrine of legal retaliation as employed in the death penalty.

A few years ago, in an article in the *New Statesman*, Anthony Storr made the following statement:

"The criminal cannot be regarded as a different kind of animal with different instincts; for he is also human, and subject to the same laws and the same forces which determine the desires of every one of us.

"It is tempting to treat him as something utterly foreign from ourselves and so avoid looking into our own depths—

"To condemn him as inhuman is to fall into the trap of treating him as he treated his victims: as a thing, not a person, a thing on whom we can let loose our own sadistic impulses, not a fellow creature who might, even yet, be redeemed."

(P. 4372) If society restrains its emotions in such a case and spares the offender's life, he could be examined—if only in an effort to learn why he and his kind behave so terribly. In this way, the true purpose of the law, to protect society and correct the offender, would surely be served more effectively than by killing the offender. If, as is said, crime does not pay, the experience of history shows that punishment of crime pays even less, unless it is coupled with successful corrective measures for the offender and with alteration of the circumstances in which he offended. (8:50 p.m.)

As the South African writer Alan Paton once wrote: "An offender must be punished. I don't argue about that—"

None of us do. "But to punish and not to restore, that is the greatest of all offenses. . . . If a man takes unto himself God's right to punish, then he must also take upon himself God's promise to restore."

Some hon. MEMBERS. Hear, hear.

Mr. PEARSON. It is often argued, and it has been argued in this debate, that opponents of capital punishment are swayed only by emotion, that they are weakly sentimental. I suggest the opposite is the case. I respect the views of those who feel they must oppose this bill. But as I said earlier, in my personal opinion there can only be one reason left for wanting to retain capital punishment if it is not proven to be an adequate deterrent—and it has not been so proven. And that reason is retaliation. And retaliation is based not on reason but on emotion. Who, then, is really swayed by emotion and who is really being sentimental? To the degree that sentimentality may be considered a state of mind relying more upon emotion than upon reason, I suggest it is the defenders of the death penalty who are the sentimentalists.

If it could be proven that capital punishment was an effective and unique deterrent to murder, then even the most emotionally vulnerable diehard humanitarians would find themselves forced to espouse the other, the emotional argument, in its thinking, and I do not believe that emotion should dictate our actions in this matter. We should, instead, do all we can to discourage throughout our whole system of justice and correction, in our police force, in our courts and in our persons, this kind of retaliatory emotion. If we cannot yet eliminate capital punishment entirely from the Canadian system of justice, if we have not yet achieved that degree of civilization, then let us at least take the important step toward that time which is now open to every one of us in this house.

Some hon. MEMBERS. Hear, hear.

Mr. MORE. I should like to ask the Prime Minister a question. Mr. Prime Minister, the hon. member for York East (Mr. Otto) spoke just previous to you, and I notice that you—

Mr. SPEAKER. Order. The hon. member has to address the Chair.

Mr. MORE. I wish to ask the Prime Minister through you, Mr. Speaker, whether he agrees with the hon. member for York East that the reason for maintaining

capital punishment in the cases specified in the bill is that our law officers and administrators would otherwise take brutal retaliatory measures against these people. This was the statement the hon. member made in explanation of the reason for maintaining these exceptions in the bill. I believe it to be a reflection upon those concerned, which should be cleared up at once.

Mr. PEARSON. Those views as expressed by the hon. member are certainly not my views, and I do not agree with them.

Mr. THOMPSON. I would appreciate the privilege of directing a single question to the Prime Minister. In the event that Bill No. C-168 becomes law and that at some time in the future a person is found guilty, in due process of the courts, of murdering a policeman or a prison guard, would the government commute the death sentence or would it obey the Criminal Code as amended by the measure before us?

Mr. PEARSON. The hon. gentleman knows that the royal prerogative is exercised in a particular way as a result of the particular recommendation made regarding the circumstances of the case. If there were a recommendation to mercy from the jury in connection with the murder of a police officer or anyone else, that would be one situation; if there were no such recommendation, that would be another.

Mr. MUIR (Lisgar). I should like to ask the Prime Minister this question: If, as he says, capital punishment amounts to retaliation, why are those who murder policemen to be hanged?

(P. 4373) Mr. PEARSON. I thought I explained that, Mr. Speaker. I believe in total abolition, but I am willing to accept a bill which does not go as far as total abolition, although it goes toward that idea. I hope we shall have total abolition before long.

Some hon. MEMBERS. Hear, hear.

Mr. BALLARD. I should like to ask the Prime Minister a question with respect to a point on which I am not fully satisfied at the moment. Does the Prime Minister believe that life imprisonment should, in fact, mean life imprisonment?

Mr. PEARSON. It is impossible to give a categorical answer to that question, but the hon. member may know that the law was changed not long ago to the effect that in the case of commutation of a death sentence to one of life imprisonment the criminal cannot be released except upon the approval of the governor in council. So there is that protection.

Mr. FULTON. It is not in the law.

Mr. PEARSON. If it is not in the law, then I think it was done by administrative action. I think there should be that kind of protection, perhaps other kinds of protection, to avoid the premature release of those sentenced to imprisonment for life.

STATEMENT ON CAPITAL CRIMES UNDER THE NEW YORK LAW

(Prepared by New York Committee To Abolish Capital Punishment, Jerome Nathanson, chairman, Sol Rubin, of counsel, New York, N.Y., published September 1967, New York City)

I. THE REASONS FOR ABOLITION OF THE DEATH PENALTY

Culminating eight years of work by the New York Committee, efforts going back even longer by many individuals, including legislators, and finally the recommendations of the Temporary Commission on Revision of the Penal Law and Criminal Code, the New York legislature in 1965 abolished the death penalty except for two crimes. The New York Committee considers the bill that was enacted a great achievement, but it also believes that the 1965 act is unsatisfactory and it cannot cease in its efforts until abolition is complete. In this statement it examines the rationality—or irrationality—of the exceptions.

The 1965 act (chapter 321 of the session laws) abolished the death penalty for murder except of a guard by a prisoner under a life term, and (2) of a police officer while on duty. These "exceptions" to the abolition bill were opposed by the Temporary Commission on Revision of the Penal Law and Criminal Code. In its "Special Report on Capital Punishment," dated March 1965, the Commission recommended total abolition, immediately effective upon the passage of legislation. In general, it may be observed that the reasons given by the Commission for its abolition position are as applicable to murder by life term prisoners and murder of police officers as to any murders. It said:

First: The execution of the penalty of death calls inescapably upon the agents of the State to perpetrate an act of supreme violence under circumstances of the greatest cruelty to the individual involved. Only the clearest conviction that such action is essential to the public welfare possibly can justify a measure of this kind. We see no basis for holding that conviction. The social need for the grievous condemnation of the gravest crimes can be met, as it is met in abolition states, without resort to barbarism of this kind.

Second: The retention of the death penalty has a seriously baneful effect on the administration of criminal justice. The very fact that life is at stake introduces a morbid and sensational factor in the trial of the accused and increases the danger that public sympathy will be aroused for the defendant, regardless of his guilt of the crime charged. This morbid factor carries through the period preceding execution, and public sentiment, which should support the law and its administration, is often marshaled on the other side.

Third: Some erroneous convictions are inevitable in the course of the enforcement of the penal law and error sometimes cannot be established until time has passed. Such errors cannot be corrected after execution. An injustice of this kind destroys the moral force of the entire penal law. The danger that such an injustice may occur adds weight to claims of error in the trial, produces technical reversals on appeal and more than any other single factor has produced the endless protraction of post-conviction remedies developed by the courts in recent years. Cases that should and would have moved swiftly to life sentence on a plea of guilty have been carried on for years.

Fourth: Experience has shown that the death penalty cannot be administered in the United States with even rough equality. All States have found it necessary that the penalty be one that is discretionary with the court—or jury; even if the sentence is imposed, the Chief Executive must wrestle with demands for clemency and clemency is often granted. The number of executions is, in consequence, extremely small. No one can be confident that there is basis for a rational distinction between the few cases where the sentence is imposed and executed and the thousands of cases which result in sentence of imprisonment. Especially in a matter of life or death, equality is a prime constituent of justice.

Fifth: The considerations we have stated would lead us to favor abolition, whether or not the threat of death has a greater deterrent efficacy than the threat of long imprisonment. There may, indeed, be cases in which such unique deterrent power has in fact been exerted. Such data as we have carries assurance that this factor has no major quantitative significance. There will be cruel and repulsive murders in New York whether the penalty of death is abolished or retained. The important point is that their number never will be greatly influenced by abolition. We may be confident, therefore, that in proposing action that is right upon so many grounds we shall not jeopardize the safety of the people of New York.

II. MURDER OF A POLICE OFFICER—PROTECTION OF POLICE

Neither the majority report nor the minority of four members of the commission suggested that there were any logical exceptions to the general abolition position. The majority was for total abolition; the minority was for further study. The minority report also pointed out that in the course of the hearings before the commission 63 persons testified, but only two were law enforcement officials of New York state. They both spoke against abolition, but again without suggesting that any exception for prison guards or police officers be made.

It is evident from the Commission's staff study that the safety of police officers is involved in the opposition of police to abolition. On page 34 of the staff study, the statement is made that it is "the collective opinion of the vast majority of police officers that the death penalty is the only effective deterrent to homicide in general and to the killing of police in particular. It is the main reason, the police claim, why many robbers carry unloaded or toy guns and why many other felons travel unarmed in plying their trades."

On the other hand, at one of the public hearings, the staff study reports, "a dissenting note from the law enforcement group was struck by the Honorable George Edwards, the then Police Commissioner of Detroit, a former judge of

the Michigan Supreme Court, who, on the basis of his experience in an abolition state, discounted the death penalty as a police safeguard, and testified: "There is no proof that abolition of capital punishment makes the police officer's job any more difficult nor any more hazardous." (Report, p. 35)

The suggestion that "the vast majority of police officers (believe) that the death penalty is the only effective deterrent . . . to the killing of police" is not borne out by a study of police opinions. Donald R. Campion solicited the views of the directors of the twenty-seven state police forces. The replies were as follows: Respondents from eight states favored the view that the existence of the death penalty provides a certain protection for police officers. Respondents from five states either rejected the claim or felt that the death penalty probably did not provide greater protection. Respondents from five states said they had no opinion. ("Attitude of State Police Toward the Death Penalty," in Bedau, *The Death Penalty in America*, 253.)

But there are hard data available in the place of these impressionistic views. The staff study refers to it as "feel"; (p. 35). Thorsten Sellin, professor Sociology at the University of Pennsylvania, who has studied this subject more closely than probably any other person, is cited in the staff study as follows: "Thorsten Sellin, in preparing a 1959 report for the American Law Institute's Model Penal Code project, sent questionnaires to the police departments of 593 cities having populations of more than 10,000, such cities being distributed among six abolition states and eleven death penalty states. The only usable results consisted of figures from 266 cities showing the number of policemen annually killed in each such city during a period of from 1919 to 1954. The tabulations for that period show a percentage police death rate of 1.2 for the abolition state cities. In view of this insignificant statistical difference, Sellin ultimately wrote, it is obviously 'impossible to conclude' that by abolishing capital punishment, the six states in question 'thereby made the policeman's lot more hazardous.'"

Sellin has written:

"Now and then some organization passes a resolution demanding the retention of capital punishment. The most persistent of this organized opposition is the police. State associations of Chiefs of Police in the United States have on more than one occasion successfully put a stop to legislation favouring abolition. "Who would speak with greater authority than those in constant contact with criminals and exposed to danger at their hands?" seems to be the attitude of legislators. No one disagrees with the claim that police service, like fire-fighting, steeplejack work, testing planes and a number of other occupations involve a risk to life, but the claim of the police that the existence of the death penalty reduces such hazards is a myth and like other myths is accepted as fact in States that still have capital punishment. That the police have failed to test the validity of the myth is clear from the statement made in 1954 to the Joint Committee of the Senate and the House of Commons in Ottawa by the then president of the Chief Constables Associations. He began by saying: "Our main objection is that abolition would adversely affect the personal safety of police officers in the daily discharge of their duties." He then interjected this statement: "If time had permitted I would have tried to obtain this vital information as to the number of policemen murdered in the execution of their duty in those parts of the world where capital punishment has been abolished.

"He had no time to do so, but this did not prevent him from arriving at a conclusion. He continued: "I submit that it will be found the number is much higher than in those countries where the death penalty is still in effect." Having made up his mind and expressed the view of his Association without taking time to find the facts, he ended with these words: "This point is the main one in our submission that our government should retain capital punishment as a form of security."

"Mr. Routledge was quite correct in assuming that he would have had to conduct some research into the matter because none had previously been done to test the truth of his assertion. The Joint Committee had asked me to give them some assistance and I had previously spent two days with them discussing statements I had prepared for them on capital punishment. Now it occurred to me that the time had come to subject the beliefs of the police to a test. Nowhere could such a test be better made than in the United States where abolition States and capital punishment States bordered on each other. The test was made in 1955 and submitted to the Joint Committee which published the results in its

proceedings. Briefly, the study was based on a questionnaire sent to all police departments in cities with more than 10,000 inhabitants, according to the 1950 census, in the six States that had no death penalty and the eleven States that bordered on them. Information was requested on the number of policemen killed by lethal weapons in the hands of criminals or suspects each year beginning with 1919 and ending with 1954. Full reports were returned by 266 cities, representing 55 per cent of the cities in the abolition States and 41 per cent of those in the capital punishment States.

"Several interesting facts appeared from an analysis of responses. First, when comparing groups of cities in the two types of States, according to the size of the cities, it was found that there was no difference in the rates of policemen killed. Second, it was found that in the north-eastern States, police were killed more rarely than in the middle west. Third, the decade of 1920-1930 had been most hazardous to the police in both types of States and the number of police killed had since then declined regularly, whether the State had the death penalty or not. It is impossible, then, to conclude that capital punishment offers a unique protection to the police not offered by life imprisonment. Recent data on police killings supplied by the F.B.I. and covering through 1963 shows no significant differences between the two classes of States used in the previously reported study.

"It may be of interest to note that nine out of ten of the police officers who responded to the questionnaire from capital punishment States believed in the protective value of the death penalty, but that three out of four of the respondents from abolition States did not share that view." (Sellin, *Capital Punishment*, 8 *The Criminal Law Quarterly* 36 (1965), at 45-47.)

PREVENTION OF HOMICIDES

We urge another and broader argument. As just pointed out, police deaths—or police safety—are determined by the pattern of law enforcement vis-a-vis crime. We believe a pattern more preventive of killings than the existing pattern can be achieved. Prevention of homicide, indeed prevention of crime generally, depends on measures taken to enlarge a spirit of non-violence in our culture. Efforts toward the reduction of poverty and discrimination, from which violence born of desperation sometimes stems, are steps in this direction. But official violence, violence by the state and its officers, is contrary to the goals of reduced violence in our society.

In this context, how does one measure the retention of capital punishment particularly for the officer killed on duty? If anything, it is an ingredient in law enforcement that makes each contact between suspect and police officer a life and death issue, by very definition. Abolition of this exception to the death penalty, from this view, would therefore be a positive contribution to the safety of the police.

It would be well if a study of this argument could be made, based upon cases, in this and other jurisdictions. As a start, we present summaries of the most recent crimes that would subject the criminals to execution under the police-killing exception and offer a few comments. The cases speak for themselves. Do they suggest that the death penalty especially for police killers protects the police and others, or that it endangers them? Are they protected by their guns? Are the police—rather than the law and the courts—encouraged to be executioners?

Nathan Jackson

On June 14, 1960 Jackson and Nora Elliot committed a robbery on the 2nd floor of a hotel in Brooklyn. Miss Elliot waited for Jackson downstairs while he, armed with a gun, was upstairs. Patrolman William J. Ramos, attracted by the shouts of the victims, attempted to enter the hotel. He met Jackson coming out and the two scuffled for a few seconds. Jackson flipped Ramos on his back and ran past him. With Miss Elliot he ran toward a parked taxi, jumped in and ordered the driver to move. The driver did not. Ramos recovered, ran to the back door of the cab, inserted his hands through the open window, and pulled Jackson out. Jackson was pinned against the taxi. Miss Elliot picked up Ramos' nightstick and hit him once or twice, yelling, "Kill him! kill him!" Patrolman Ramos fell to the floor stunned and Jackson stood over him. Ptl. Ramos twisted around to reach for his gun and Jackson, holding his own gun, screamed "Don't be a hero" or words to that effect, once or twice. Nevertheless, Ptl. Ramos took

his pistol from the holster, shot Jackson at least once (probably in the stomach) whereupon Jackson shot Ptl. Ramos probably 3 times. Ptl. Ramos shot again, Jackson staggered away, commandeered a taxi and was taken to a hospital.

Here we note that a robbery was turned into a killing, although the robber did not intend to and made every effort to avoid killing. When encountered by the police officer he attempted only to escape. When the police officer caught the robber, he did not attempt to arrest him but fought with the robber. When the officer was apparently defenseless on the ground, the armed robber did not shoot him; and he made an effort to deter the police officer from killing. A reasonable interpretation of the fast-moving event is that he was demonstrating a willingness to surrender rather than kill. One thing is evident. The death penalty was irrelevant here except for the possibility that it may have encouraged the officer in his pursuit of a life and death solution on the spot.

Jesus Negron, Reuben Ortiz

On May 29, 1963 Officer George Crane and his partner, Officer Paul diGiano, went to a house on East 105th Street to check a report of a prowler. Officer Crane started up the fire escape of the 6-story tenement, his partner diGiano up the inside stairs. As he reached the fifth floor, diGiano heard shots above him, rushed to the rain-swept roof, and found Crane dying. He had been shot with his own gun, later found beneath a stairway in a nearby house. Twelve hours later police announced the capture of Negron and Ortiz, stating that they admitted the killing. It was said that Negron was fleeing across the rooftops when Crane reached the top of the fire escape. Crane called to Negron to stop and he halted. Crane did not notice Ortiz lurking behind a nearby stair exit. Ortiz suddenly spring on Crane, tackled him from the rear, grabbed his gun and pumped six bullets into the body of the fallen patrolman. Both fled before diGiano reached the roof.

Both Negron and Ortiz charged they were beaten by the police to confess, and offered alibi evidence at the first trial, which ended in the jury failing to reach a verdict. But assuming the accuracy of the account, the death of the officer was not intended by the defendants, who were apparently not armed. Even if one argued that the death penalty may have induced Negron and Ortiz to go unarmed, the arrest situation, the attempt to capture and the attempt to escape, had their own motion, and one can say again—the death penalty was irrelevant in these circumstances.

Jerome Rosenberg and Anthony Portelli

On May 18, 1962, at 3:30 p.m., two New York City police detectives, Luke Fallon and John Finnegan, entered a wholesale tobacco establishment to make a purchase. Shortly after they left, two bandits wearing hats, sunglasses, holding handkerchiefs over their faces and carrying guns, entered the store. They waved the proprietors and several employees into a storeroom and locked them in. One rifled the cash register. One of the owners was brought out of the storeroom to the office, in a search for more money. A few moments later there was a single shot, which hurt no one and which the bandit said was an accident, and told them not to worry.

Moments after the two police officers entered the store, evidently suspecting that something was amiss. One shot was fired, perhaps by Detective Fallon, who was killed with a gun in his hand. The single shot was followed by a volley of 8 or 10 shots. In this latter shooting, the officer was killed.

The circumstances around the grouping of the owners and employees negate any desire by the bandits to shoot. They shot when the shooting started. At that point, the possibility of a death sentence did not stay their hand.

FELONY-MURDER

The 1965 abolition act, despite its two exceptions, achieved another notable reform. It abolished felony-murder as a capital offense. In doing this, it joined a number of other states that had already done so, even though some of these states retained the death penalty for premeditated murder.

The distinction between premeditated murder and so-called "felony-murder" is well understood. The former is deemed the more reprehensible act, not only because it involves an intent to kill, but also because the felony-murder involves a killing that is accidental. The intent involved is to commit a felony other than a killing; that is a felony that is *not* a capital crime, not premeditated murder.

The felony-murder doctrine has been called an anachronism ("Felony Murder as a First Degree Offense: An Anachronism Retained," 66 Yale Law Journal 427 (1957)).

The amendment of 1965 abolishing the felony-murder concept was a valid part of the abolition spirit of the legislature of the state. In its foreword to the 1965 Revised Penal Code, the Commission on Revision of the Penal Law and Criminal Code stated that "In several fields, such as those dealing with principles of culpability, sentences and homicide, changes of a fundamental nature have been wrought upon the theory that the existing law is rooted in outmoded nineteenth century theories and requires a thoroughgoing alteration of basic conceptual foundations in order to bring it into step with modern sociological, psychological and penological thinking."

In restoring felony-murder as a capital offense when the person killed is a police officer, does the 1966 act protect the police officer any more than the exception in the 1965 act does? It might be argued that the exception in the 1965 act that made killing of a police officer a capital crime was for the protection of men exposed to some particular danger. The facts contradict such logic. But to make felony-murder of a police officer a capital crime does not even have the logic. The felon has no intent to kill—which is presumably what the death penalty attempts to deter. Surely no additional protection is added by making felony-murder a capital offense. But, making felony-murder a capital offense does have an effect—on the police officer. If he is under the belief that the death penalty protects him when he is making an arrest for a felony, he is, if anything, less likely to use the fullest guile and skill in making the arrest. Instead of police skill, there may be reliance on the death penalty as protection.

But the studies show that the death penalty is not such a protection, just as it is not a deterrent to other murders. Again, to make felony-murder a capital offense *contributes to making felony arrests more dangerous to life for both felon and police officer*. Quite to the contrary of the presumed additional protection to the officer, it probably works the other way, exposing the officer to greater risk.

III. ABOLITION OF THE DEATH PENALTY AND THE PREVENTION OF HOMICIDES

In our earlier brief to the Commission, we documented the hypothesis that the death penalty is often an incitement to murder, perhaps more so than it is a deterrent in other cases. When the death penalty was applicable to all murders, there was no particular focus on police work. At present there is. The message conveyed by the existing death penalty law is that any criminal is facing a life or death situation, since if an officer is murdered, he faces the death penalty. When the death penalty existed for all murders, neither the officer nor the criminal had a consciousness of something special in that crime. The 1965 law changes that.

With what effect: The criminal, who is hardly a student of the law, may not know about the present law; and if he does, it is no different than it was before. Murder involved the possibility of the death penalty; murder of the police officer still does. But the police are well aware of the special focus, which tells them that the violent support by the state will ensue if one of their number is killed.

There is, in fact, a serious problem of violence in connection with deadly weapons and law enforcement. Each police officer is armed with a gun. A gun is a potential death instrument, yet almost every day the press reports an incident in which a gun was used by a police officer.

The armed police officer has a dangerous sense of power. A police officer engaged in arresting a robber is, perhaps with the belief that the death penalty will protect him, more likely to use his gun. Intentional, tactical violence on his part is inherent in his being armed, and supported by making only the murder of a police officer a capital crime.

Abolition is thus a contribution to prevention of homicides by police, and of police. This rationale supports and is supported by the data gathered by Professor Sellin and others, showing a somewhat better safety record for police in states with total abolition.

IV. MURDER OF A GUARD BY A LIFE TERM PRISONER

The Commission's staff study divided voluntary murders into four groups, concluding that life imprisonment was as effective a deterrent as death for three of the groups. It then discussed "a fourth though very limited category to

which life imprisonment is not calculated to pose a serious deterrent threat. A prisoner serving a life sentence—at least a genuine 'life sentence'—is hardly likely to refrain from killing a guard or a fellow prisoner through fear of another life sentence. It is true that most 'life' sentences are such only from the standpoint of the maximum terms, and carry minimum terms involving parole eligibility after a given period of time. The average parole eligibility period is about fourteen years for the United States as a whole, but almost twenty-seven years for New York State.

"The shorter the parole eligibility period and the closer a prisoner approaches it, of course, the greater deterrent to murder is another 'life sentence' and the less is the need for the death penalty in this situation. Even with a relatively long period like that of New York, another 'life sentence' might be deemed an adequate deterrent to those with many years of prison service behind them, though perhaps not to those in the early years of their terms." (The staff report points out that North Dakota and Rhode Island though abolishing capital punishment for murder in general, have retained it for the "lifer" alone, but it provides no information of experience in those states.)

The staff study then tests this argument against experience. The various studies are consistent in reporting that paroled murderers rarely commit further crimes of violence, and a homicide is almost unheard of. The study of New York's experience has the most interest:

"The most pertinent figures resulting from the New York study show that, during a period of from 1930 through 1961, sixty-three first degree murder prisoners were released on parole; that three of these were returned as "effective delinquents; that two were found guilty of technical parole violations; and that one was convicted of burglary. . . . In line with other large states previously mentioned (California, Ohio and Pennsylvania), New York's murder parolees were found to have a much lower crime conviction rate, than non-murder parolees. During a period of from 1948 to 1957, 7.2 per cent of the first and second degree murder prisoners paroled were convicted of crimes after release. The figure for the non-murder group was 20.3 per cent.

"The foregoing figures would appear to justify the New York State Parole Division's conclusions "that those convicted of Murder First Degree (49) and Murder Second Degree are significantly better parole risks than those convicted of all other offenses." (Staff study, p. 48.)

In view of these facts, it is difficult to understand why this exception was made in the abolition bill at all. Unlike the police, who opposed abolition, wardens, who are responsible for the care of life term prisoners, generally oppose the death penalty. "Prison wardens overwhelmingly support abolition," states Donal E. J. MacNamara. (MacNamara, Statement Against Capital Punishment, op. cit. Bedau, p. 182, at 191, 192.)

If there were evidence that life-term prisoners are particularly prone to murder guards, the argument for the exception might have some merit. But such killings are extremely rare. The commission cites no data. Presumably it had none. When our Committee sought to obtain data from the Department of Correction, we were informed that the Department did not have the information, and did not have the resources to bring the data together.

Since then one study of killings by prisoners has appeared. Thorsten Sellin conducted a survey of homicides and assaults in American prisons during 1964, reporting the results in an article entitled "Homicides and Assaults in American Prisons," published in *Acta Criminologicae et medicinae legalis Japonica*, v. 31, p. 139 (1965). Out of 51 jurisdictions receiving a questionnaire, 42 replied, providing data on the federal and state penitentiaries prisoners where murderers are generally confined. No replies were received from nine states, including California, Maryland, New York, Florida and Louisiana.

What were the findings? In 30 states there were no prison homicides in 1964. There were 26 in 14 states and the federal system. All of the *victims were inmates*. Most of the killings were by prisoners *not* serving life term. The crimes for which the killers were serving terms were burglary (5), robbery (4), grand larceny (3), kidnapping, auto theft, importing narcotics, and forgery, one each. An armed robber under death sentence and one under life sentence together killed three inmates in Georgia. Two killings, one in Ohio and one in Mississippi were committed by inmates serving life terms for capital murder; one in West Virginia by an inmate under life sentence as an habitual criminal; one in North Carolina and one in Pennsylvania by prisoners serving long terms of years for non-capital

murder; and one in Michigan by an inmate serving time (apparently not life) for manslaughter. Of the 26 cases, 5 were thus homicides by persons under sentence for murder or manslaughter. Of these five, four were in capital punishment states. The fifth (the manslaughter prisoner) was in an abolition state, Michigan.

What conclusions can be drawn? (1) The data support the position that the death penalty played no preventive role in the killings. All but two occurred in death penalty states (the Michigan prisoner, and another by a prisoner serving a term for an unarmed robbery). As Sellin says, "These data surely cannot support any argument that life is held more cheaply in the prisons of abolition states than in prisons elsewhere." (2) Life term prisoners are not a particular threat to guards. No guard in these prisons was killed in 1964 by a prisoner.

V. CONCLUSION

The exceptions in the 1965 abolition act are without logic. They were not put in the act because of any sense of additional protection for the police or prison guards. Of all groups, these are *best* protected. Presumably if any group were to be "protected" by retention of the death penalty, it should be, perhaps, women, against rapists; or children. Norman Redlich pointed out ("The Death Penalty," *New York Law Journal*, June 1, 1965)—"These exceptions were inserted into the bill (at the urging of certain law enforcement groups) because of a belief that in two situations the death penalty was required as an additional punishment, not as a deterrent." The New York State Combined Council of Law Enforcement Officials called for additional exceptions—murders in sexual assaults and for murders of persons in a "lawful occupation." That is, they wanted no abolition bill at all, and the resulting bill of 1965 was a compromise in the face of this opposition. Governor Rockefeller, in signing the 1965 abolition bill, criticized the exceptions, saying—"If you kill a policeman, you get the electric chair . . . But if you kill a priest or minister, you get life!"

But to start on such a list is to expose not only the fallacy of the exceptions: now in the New York law, but also the fallacy of capital punishment altogether. It is that basic fallacy that led to the abolition bill of 1965; and it should be made complete and absolute, for the good conscience of the state and for the better safety of all.

CAPITAL PUNISHMENT: PRO AND CON ARGUMENTS

(Joyce Vialat, Education and Public Welfare Division, Washington, D.C., August 3, 1966)

(See: S. 1760) Reference Material

SECTION 1. AGAINST CAPITAL PUNISHMENT

1. THE STATE SHOULD NOT KILL

The central argument against capital punishment may be summarized as follows: In the absence of a clearly demonstrable benefit to society, it is morally wrong and pragmatically unsound for the State to be invested with the right to take the life of its citizens.

Abolitionists argue, first, that it is morally wrong to kill, and no less so for the State than for the private individual. Michael V. DiSalle, the former Governor of Ohio, writes:

First of all, I believe that taking a human life, even to pay for a life already taken is immoral. . . . Society, echoing the Ten Commandments, says: Thou shalt not kill. Then society illogically continues: Killing is wrong, and in order to prove it is wrong, we will kill you if you kill.⁶

While the moral argument, based as it is on the belief in the sanctity of human life, leads some abolitionists to argue that capital punishment is wrong regardless of whether or not it benefits society, this absolute stand is unusual. The following statement by Herbert L. Packer, Professor of Law at Stanford University, is representative of the more prevalent view:

The case is not that the sanctity of human life is an absolute but rather that it is a highly cherished value that should give way only upon a persuasive show-

¹ Michael V. DiSalle, *The Power of Life or Death* (1965), p. 6.

ing that some other, more important end will thereby be served. . . . Unless it can be shown that capital punishment serves prime social purposes that cannot otherwise be served, the claims of its proponents are unconvincing.²

Abolitionists argue, secondly, that this belief in the sanctity of the individual human life is the central value of our society and should be supported by the actions of the State. They contend that, if the institution of capital punishment does not actually undermine this value, and many believe that it does, it clearly does nothing to reinforce it. Governor Edmund G. Brown of California writes:

"I oppose capital punishment, too, because it brutalizes man; because a society that takes human life cannot invest its citizens with respect for human life."³ A *New York Herald Tribune* editorial entitled "The State Should Not Kill" puts it more strongly:

"Whenever the state takes life it cheapens life. Capital punishment panders to man's basic instincts, cloaking retribution in the mantle of the law, coloring vengeance with respectability, setting a public example for private violence."⁴

Third, abolitionists argue that the State should be granted legal power to take the lives of its citizens only if this is clearly necessary for self-defense which, in the case of capital punishment, means the protection of its law-abiding citizens. In the United States, this argument takes the traditional form of the need to protect the rights of the individual against the State, and is summarized as follows by Michael V. DiSalle:

"Those of us who are interested in the freedom of the individual realize that government exists only with those powers that have been delegated to it by the people, and the more restrictions we place upon government and the exercise of the powers that have been delegated to it, the more certain we are that we will have a democratic type of society where the freedom of the individual prevails. It should certainly not be the purpose of people within a society to delegate to government any more authority than that necessary to perform its functions; I feel that the delegation of the right to take away life can only be justified when a certain purpose is to be served; that purpose might be the preservation of society itself against a threat from the outside or a threat from within."⁵

In general, abolitionists in the United States are more willing to grant that the death penalty would be justified by its clear necessity for the protection of "society itself against a threat from the outside or a threat from within," than are, for instance European abolitionists. The latter tend to be more concerned than American abolitionists with the danger that capital punishment will be used illegitimately by the State. A representative European view on this issue is expressed as follows by the late Albert Camus:

"... for 30 years crimes of state have vastly exceeded crimes of individuals. I shall not even mention wars—general or local. . . . I am referring here to the number of individuals killed directly by the State, a number that has grown to astronomic proportions and infinitely exceeds that of "private" murders. There are fewer and fewer men condemned by common law, and more and more men executed for political reasons. . . . It is not so much against the individual killer that our society must protect itself than, as against the State. Perhaps this equation will be reversed in another thirty years. But for the present, a legitimate defense must be made against the State, before all else. Justice and the most realistic sense of our time require that the law protect the individual against a State given over to the follies of sectarianism and pride."⁶

In summary, then, most American abolitionists argue that the death penalty should stand or fall on proof that it is necessary to protect society. Furthermore, because of the moral and practical evils they see as inherent in the institution of the death penalty, abolitionists argue that the burden of proof rests with its supporters.

It is generally agreed by both sides in the capital punishment controversy that there are two ways in which the death penalty might afford society unique protection. First, it might be a more effective deterrent against major crime than life imprisonment. The deterrent issue is defined as follows by Hugo Adam Bedau:

² Herbert L. Packer *et al.*, "Mr. Barzun and Capital Punishment," *The American Scholar* (Summer 1962), p. 440.

³ Edmund G. Brown, *Statement on Capital Punishment* (1963), p. 2.

⁴ "The State Should Not Kill," *New York Herald Tribune* (March 27, 1960), in *Capital Punishment*, ed. Grant S. McClellan (1961), pp. 83-84.

⁵ American Bar Association, Section of Criminal Law, *1959 Proceedings* (1960), pp. 5-6.

⁶ Albert Camus, "Reflections on the Guillotine," *Evergreen Review* (No. 3, 1957), p. 48.

"The only question [regarding deterrence] which must be settled is this: is long term imprisonment (on the assumptions that it is less savage and more easily administered by the judicial system than capital punishment) as good a deterrent for the major crimes currently punished by death? This formulation leaves open, as it should, the question of how close either penalty is to a completely effective deterrent; and it does not raise the further question, as it shouldn't, whether death might be a better deterrent for certain crimes (e.g., against property) that no one would think of punishing in this way. To put it another way, the real dispute over deterrence is this: how many capital crimes, if any, have been (or might be) prevented by the threat of execution, which would not have been (or would not be) prevented by the threat of imprisonment?"⁷

Second, the death penalty might be the only way of protecting society against the incorrigibly dangerous. The debate with regard to this second function centers around the issue of whether or not the death penalty is in fact necessary, whether this protection is not provided equally well by measures short of execution.

Abolitionists argue that the death penalty has failed as a deterrent and is unnecessary as a protective measure. They argue that it should be abolished because there is no demonstrable proof that it affords society the unique protection which alone would justify its retention.

II. DETERRENCE

Hugo Adam Bedau defines the doctrine of deterrence and comments on its importance in the capital punishment controversy as follows:

"... by far the most common way to employ a punishment as a preventative of crime is to adopt a sufficiently severe penalty so as to compel general obedience out of fear of the consequences of disobedience—the classic doctrine of deterrence. Even though deterrence cannot override every other concern in formulating a rational penal philosophy, there is no doubt that the death penalty's efficacy as a deterrent is the major factual issue in dispute between abolitionists and retentionists."⁸

Abolitionists argue that the death penalty's efficacy as a deterrent is, at the very least, called into serious question both by the available statistics and by the evidence of modern psychology.

A. The Statistics

In a study of the death penalty which he prepared at the request of the American Law Institute, Thorsten Sellin notes:

"Any one who carefully examines the . . . data is bound to arrive at the conclusion that the death penalty, as we use it, exercises no influence on the extent or fluctuating rates of capital crimes. It has failed as a deterrent."⁹

Sellin analyzes the four ways in which the deterrent value of the death penalty would be evident if it, in fact existed:

"It seems reasonable to assume that if the death penalty exercises a deterrent or preventive effect on prospective murderers, the following propositions would be true:

"(a) Murders should be less frequent in states that have the death penalty than in those that have abolished it, other factors being equal. Comparisons of this nature must be made among states that are as alike as possible in all other respects—character of population, social and economic conditions, etc.—in order not to introduce factors known to influence murder rates in a serious manner but present in only one of these states.

"(b) Murders should increase when the death penalty is abolished and should decline when it is restored.

"(c) The deterrent effect should be greatest and should therefore affect murder rates most powerfully in those communities where the crime occurred and its consequences are most strongly brought home to the population.

"(d) Law enforcement officers would be safer from murderous attacks in states that have the death penalty than in those without it."¹⁰

⁷ *The Death Penalty in America*, ed. Hugo Adam Bedau (1964), p. 261.

⁸ Bedau (ed.), *op. cit.*, p. 260.

⁹ Thorsten Sellin, *The Death Penalty* (1959), p. 63.

¹⁰ Sellin, *op. cit.*, p. 21.

In general, the various statistical studies which have been made in an attempt to test the deterrent value of capital punishment concern themselves with one or more of these four propositions.

It will be noted that the majority of the studies in this field have been conducted by Sellin. Professor Emeritus of Sociology at the University of Pennsylvania and President of the International Society of Criminology, Thorsten Sellin has been described as the "foremost statistician in the field of criminal law in the world."¹¹ He was the principal consultant to Great Britain's Royal Commission on Capital Punishment as well as to the majority of other official government commissions studying this subject. Bedau notes:

"... [Sellin's] evidence has managed over the past decade to convince a wide variety of legislative committees throughout the English-speaking world, and not in every case were the members of these committees initially receptive to his conclusions."¹²

Contiguous Jurisdictions.—Sellin's studies of the homicide rates in contiguous jurisdictions with and without the death penalty are, in Bedau's words, "the cornerstone of the case against the deterrent superiority of the death penalty over imprisonment."¹³ Table 1 below shows the results of four of these studies described by Mr. Sellin as follows:

"The only fair comparison is one that takes into account regional differences and therefore compares the homicide rates of an abolitionist state with that of its neighbor states. The diagrams shown . . . [see below] are based on such comparisons. They show the annual size of the homicide death rate per 100,000 population for the period 1920-1958 and the general trend of the rate for each set of states compared."¹⁴

Sellin's conclusion of the basis of these studies follows:

"The striking thing about these diagrams is that within each set of states the rates are so nearly the same annually and the trends so closely alike that if the lines were not identified with each specific state, no one would dare to guess which lines represented the abolition states . . .

It is proper to conclude that states which are similar in the character of their population, their urban and industrial development, and their mores have similar homicide rates, whether or not they have the death penalty. In other words, the presence of the death penalty for murder in a state appears to have no more influence on its homicide rates than the absence of the penalty in a comparable state has on the rates of that state. And if our basic assumption is correct, what holds true for the homicide rates would hold true for the capital murder rates, were they obtainable.

"When it once becomes generally understood that the amount and the trends of murder depend on demographic, social, economic, and political conditions, one would realize that the explanation for rises or falls in the statistics of this crime must be sought through a study of these conditions, and that through such a study alone could any possible remedy be found. To hope that this remedy could be found in the application of the death penalty or in its introduction is to grasp at a straw."¹⁵

*Contiguous jurisdictions: Homicide death rates for Selected States*¹⁶

Abolition and the Criminality Curve in the Same Jurisdiction.—Several studies have been made on the second assumption state above by Sellin; namely that if capital punishment is a deterrent to murder, the homicide rate in a given jurisdiction should increase with the abolition of the death penalty and decrease with its restoration. Sellin has conducted such a study on the basis of the statistics available from states in this country which have abolished the death penalty. In his summary of this study, Bedau writes,

"The selection by Professor Sellin shows that in every abolition state, whether or not it later restored capital punishment, there is no correlation between the status of the death penalty and the homicide rate. This strongly suggests that in

¹¹ California Legislature, Senate Committee on Judiciary, *Hearings Report and Testimony*, . . . (1960), p. 65.

¹² Bedau (ed.), *op. cit.*, p. 285.

¹³ Bedau (ed.), *op. cit.*, p. 263.

¹⁴ Thorsten Sellin, "Capital Punishment," *Federal Probation* (Sept. 1961), p. 6. See also Sellin, *The Death Penalty*, pp. 23-34.

¹⁵ Sellin, "Capital Punishment," p. 6.

¹⁶ *Ibid.*, pp. 7-8.

the ten states that abolished the death penalty and later restored it the reasons had nothing to do with the measurable effects of death vs. imprisonment as a deterrent to murder."¹⁷

In general, the statistics available from other countries which have either partially or totally abolished capital punishment appear to follow the same pattern: abolition is not followed by an increase in crime. The United Nations report, *Capital Punishment*, contains the following observation on the effects of partial abolition:

"All the information available appears to confirm that such a removal has, in fact, never been followed by a notable rise in the incidence of the crime no longer punishable with death. This observation, moreover, confirms the nineteenth century experience with respect to such offenses as theft and even robbery, forgery and counterfeiting currency, which have progressively ceased to be punishable with death: indeed, these crimes, so far from increasing, actually decreased after partial abolition."¹⁸

With regard to total abolition, the U.N. report concludes that, "The same general observation can usually be made regarding the total abolition of the death penalty."¹⁹

The Effect of Executions on a Community.—Studies have been made on the effect of a series of executions on the capital crime rate in the community where the executions occurred. The reasoning behind these studies is described by Sellin as follows:

"If the death penalty is a deterrent, its greatest effect should be shown through executions which are well publicised. Furthermore, the effect should be most noticeable in the community where the offense occurred, where the trial aroused wide publicity and the offender lived and had relatives, friends and acquaintances."²⁰

Such a study was conducted in Philadelphia by Robert H. Dann.²¹ He compared the number of homicides occurring 60 days before and 60 days after five different executions. A total of 91 homicides occurred in the periods preceding the executions; 113 homicides occurred in the periods following them. Nineteen of the 204 homicides resulted in a sentence of first degree murder. Of these, nine occurred in the "before" period and ten occurred in the "after" period. A similar study conducted by Leonard D. Savitz in Philadelphia a number of years later yielded similar results. Savitz concluded:

"There emerges, therefore, no pattern that would indicate deterrence. . . . It can be said in summary, that the author is aware that the short period of time under analysis and the extremely small number of murders dealt with prevent conclusive findings, but we must conclude from the data at hand that there was no significant decrease or increase in the murder rate following the imposition of the death penalty on four separate occasions."²²

Police Safety.—The two extensive studies of the comparative safety of the police in jurisdictions with and without capital punishment do not indicate that the death penalty affords the police greater protection. Sellin conducted a major study of the comparative safety of metropolitan police, described by him as follows for the American Bar Association Section of Criminal Law:

"A few years ago, I sent a questionnaire to the chiefs of police in all cities with more than 10,000 population in the six states that at that time did not have the death penalty for murder, and in the states that bordered on them—seventeen in all. I asked them to give us year by year, beginning in 1920, the number of police killed by a criminal with a lethal weapon. We got a pretty good response—47 per cent—at least from all but the big metropolitan cities; a few of these responded but not enough to really make any comparison easy. We broke the information down in groups of cities by size; there were five or six population groups, so that the large city would not distort the information gained from

¹⁷ Bedau (ed.), *op. cit.*, pp. 333-334.

¹⁸ United Nations, Department of Economic and Social Affairs, *Capital Punishment* (1952), p. 54.

¹⁹ *Ibid.*, p. 55. See also Sellin, *The Death Penalty*, pp. 34-50.

²⁰ Sellin, *The Death Penalty*, p. 50.

²¹ Robert Dann, *The Deterrent Effect of Capital Punishment* (1935); see James A. McCafferty, "Major Trends in the Use of Capital Punishment," *Federal Probation* (Sept. 1961), p. 20.

²² Leonard D. Savitz, "The Deterrent Effect of Capital Punishment in Philadelphia" (1958), in Bedau (ed.), *op. cit.*, pp. 321-322. See also William F. Graves, "The Deterrent Effect of Capital Punishment in California" (1956), in Bedau (ed.), *op. cit.*, pp. 322-332.

smaller cities. We computed rates and found to our surprise that there was no difference in the information gathered between the states that had the death penalty and those that did not have it. There were as many police killed in the states with the death penalty, considering the size of the cities involved, as in the states without the death penalty. The argument of the police on the basis of that study falls by the wayside."²³

This study indicated that the rate of police killings was in fact higher in death penalty states than in abolition states: 1.3 per 100,000 in the former, compared to 1.2 per 100,000 in the latter.²⁴

A companion study of the comparative safety of state police was conducted by Donald R. Campion, S. J. Father Campion summarized his findings as follows:

"... We conclude that the data available to us after a survey of half the state police forces of the United States do not lend empirical support to the claim that the existence of the death penalty in the statutes of a state provides a greater protection to the police than exists in states where that penalty has been abolished."²⁵

B. *The Psychology of Deterrence*

In the opinion of many abolitionists, the deterrent value of capital punishment has been seriously called into question by the evidence of modern psychology and penology. As the U.N. report on capital punishment notes, the majority of specialists in these fields are themselves abolitionists:

"... It will be noted that, among the leading authorities in penal science, the supporters of abolition appreciably outnumber those who favour the retention of capital punishment. The specialists of the social sciences, criminologists, sociologists, penologists, psychologists, doctors and writers on social science and criminology are, in their great majority, abolitionists."²⁶

This is substantiated by Bedau in his discussion of what Americans think about the death penalty:

"... Psychiatrists, penologists and possibly social scientists and social workers generally, as well as higher government officials, tend to oppose the death penalty in this country at this time."²⁷

In his anthology, *The Death Penalty in America*, Bedau summarizes what in his opinion are the two major abolitionist arguments; one of these arguments is a comprehensive statement of the abolitionist objections to the psychological validity of the death penalty as a special deterrent to murder.²⁸ According to this argument, murders are either premeditated, or they are not. In the case of unpremeditated murders, no punishment will be effective as a deterrent. Mr. Bedau's comment here reflects the conviction held by many that this category comprises a considerable percentage of those who commit violent crimes:

"When one considers that most of the undeterrables are likely to be suffering from one or another form of mental illness, and that considerable evidence exists to show that murderers and condemned men generally include a large proportion who are sick, it seems pointless to threaten such offenders with death."²⁹

The argument continues that premeditated murders are committed by people who either do or do not expect to be caught. About the latter category, those who expect to be apprehended, Bedau comments:

"In the latter case, there is nothing whatever gained (so far as controlling his behavior is concerned) by threatening to kill him as his punishment; for he is likely to try to kill himself (just as he is likely to surrender to the police right after his crime). Such cases are by no means rare."³⁰

Abolitionists argue that, for this type of murderer the death penalty is, in fact, more apt to be an inducement than a deterrent. Sellin has noted the existence of

"... good evidence that the availability of instruments used to inflict the punishment of death has induced people of unbalanced mind to seek that punishment as a devious means of suicide."³¹

²³ American Bar Association, Section of Criminal Law, *op. cit.*, p. 23.

²⁴ Sellin, *The Death Penalty*, p. 55.

²⁵ Donald R. Campion, "Does the Death Penalty Protect State Police?" (1955), in Bedau (ed.), *op. cit.*, pp. 314-315.

²⁶ United Nations, *op. cit.*, p. 62.

²⁷ Bedau (ed.), *op. cit.*, p. 236.

²⁸ *Ibid.*, pp. 270-272. See p. 16 below for a discussion of the second argument.

²⁹ Bedau (ed.), *op. cit.*, p. 271.

³⁰ *Ibid.*

³¹ Sellin, "Capital Punishment," p. 4.

In a section entitled "Capital Punishment as Cause for Murder" in the study he made for the American Law Institute, Sellin itemizes cases of people attempting to commit suicide by execution.³³

It is equally difficult to see, the argument continues, what value as a deterrent the death penalty has for those who plan their murder on the assumption that they will get away with it. Bedau comments:

"Gangland killings, kidnappings for ransom, and a large proportion of all serious crimes are committed by those who think they will never be caught. The obvious, and probably the only, way to deter such persons is by increasing the effectiveness of law enforcement and criminal prosecution in the courts."³⁴

This category of murderers, including as it does the gangland killer, is of considerable importance. It would seem that the deterrent theory should be applicable here, if anywhere: the gangster, murdering as a means to an end, would seem to be capable of rationally considering other possible ends of his action—for instance, his own death. However, the facts seem to justify the conviction of those engaged in organized crime that they have virtually no reason to fear the death penalty. Sellin testified as follows before the New Jersey Commission to Study Capital Punishment:

"Defenders of the death penalty would probably feel that if anybody deserved this punishment, it will be the hired killer in organized crime. It's a well-established fact that such murderers enjoy almost complete immunity, that the instances in which even a conviction has been secured are extremely rare, and that deterrence plays no role in this connection."³⁵

This leaves one final category: "those who are sane and cautious enough to weigh the risk of punishment against the anticipated gain from crime, and who would decide that the risk is too great if the threatened punishment is death, but not great enough to deter them if it is only imprisonment."³⁶ Bedau quotes the following passage from the *Ceylon Report on Capital Punishment* as the answer to the question, "How many such persons are there in the total population?"

"It would be most exceptional for a man to be insufficiently sane and normal to be deterred by the risk of a sentence of protracted imprisonment but yet sufficiently sane and normal to be deterred by the risk of his own execution, when both risks are at a level of contingency which he is doing his utmost to avoid."³⁷

C. The Administration of the Death Penalty

Those opposed to the death penalty argue that the very way in which it is necessarily administered undercuts whatever deterrent effect it might have for those capable of exercising some degree of rationality. Bedau considers this to be one of the two major abolitionist arguments, and discusses it in some detail:

"Since the time of Beccaria, Bentham, Rush and Livingston, most penologists have agreed that for any punishment to have optimum efficacy as a deterrent, the penalty must be imposed consistently, immediately and inexorably; that is, on all offenders, promptly after their crime, and in such a way that the general public expects exactly this. But in practice, not one of these conditions is satisfied by the way capital punishment is administered. Only a small proportion of first degree murderers are sentenced to death and even fewer are executed. The delay in convicting and executing those who do get a death sentence is increasing and notorious. So, almost anyone who contemplates some horrible crime can see some chance in getting away with it, or at least in not having to pay the supreme penalty. If, in practice, the death penalty is no more effective a deterrent for murder, rape and kidnapping than imprisonment is, this may be the reason. One must either admit it, and keep capital punishment on other grounds, in the knowledge that it cannot be made a better deterrent than it is; or else abandon the jury system, the right of appeal, and deprive the accused of most of his basic constitutional rights in all capital cases, in the hopes of improving the deterrent efficacy of the death penalty; or else get rid of the death penalty itself in the confidence that imprisonment is on the evidence as good a deterrent and considerably simpler to administer."³⁸

³³ Sellin, *The Death Penalty*, pp. 65-69.

³⁴ Bedau (ed.), *op. cit.*, p. 271.

³⁵ New Jersey Commission to Study Capital Punishment, *Report* (1964), p. 13. See also Sellin, "Capital Punishment," p. 5.

³⁶ Bedau (ed.), *op. cit.*, p. 272.

³⁷ Quoted by Bedau (ed.), *op. cit.*, p. 272.

³⁸ Bedau (ed.), *op. cit.*, p. 270.

III. THE DEATH PENALTY AS A PROTECTIVE MEASURE

Most abolitionists agree that the institution of the death penalty would be justified by its necessity as a protective measure against the incorrigibly dangerous. The debate here differs from the debate about deterrence in that there is clearly no question about the effectiveness of capital punishment as a protective measure. The argument turns on the issue of whether or not the death penalty is, in fact, necessary. In so far as there actually is a danger to society from those found guilty of capital crimes, is it possible to provide protection by some means short of their death? Abolitionists argue that this danger is considerably exaggerated by retentionists and, more importantly, that life imprisonment is a completely adequate protective measure. Sellin comments:

"In the last analysis, the argument that the life sentence does not offer an adequate safeguard against further homicidal criminality by a murderer who is not executed appears untenable. Basically, those who advance it probably feel that the life sentence, in practice, is not an adequate *punishment* for murder."³⁸

The abolitionist arguments on the issue of incapacitation are summed up as follows by the late Lewis E. Lawes, the warden for many years of Sing Sing Prison:

"Murderers make the best prisoners. They are least troublesome to any warden, and often they accomplish a great deal behind bars. I know of none released during my wardenship at Sing Sing who reverted to crime. Furthermore, it is not true—at least in New York State—that a murderer whose death sentence is commuted to life imprisonment can easily obtain his freedom. The average period of incarceration among those who receive the second commutation is about twenty years. Granted that other states are too lenient, that would be an argument for a better administration of justice, not for putting people to death."³⁹

A. "Murderers Make the Best Prisoners"

It is generally agreed that murderers do, in fact, make the best prisoners and that the percentage of violent crime committed by them in prison is negligible. A survey conducted in 1950 by the International Penal and Penitentiary Commission comparing the behavior of prisoners serving sentences for murder with the behavior of those serving sentences for other offenses clearly indicated this to be the case in countries abroad. Sellin discusses the results of this survey and continues:

"The same views are those . . . expressed by prison administrations in many European countries are held by American wardens and superintendents of correctional institutions. Lifers are generally considered to be among the best behaved prisoners. It would be unnatural were they not at times involved in disciplinary violations, and examples are known when some lifer has committed an assault in prison and even a homicide, but these appear to be very rare exceptions. Generally speaking, such murderous offenses are committed by prisoners serving sentences for other crimes than murder."⁴⁰

B. The Danger from Released Murderers

Statistics indicate that the behavior of first degree murderers released on parole is, in the words of Sellin, "very good, much better than that of other prisoners who have been paroled, especially property offenders."⁴¹ This is equally true of those who have been pardoned. Bedau comments:

"The general position of American penologists on the matter of pardoning (or paroling) murderers was stated succinctly a decade ago by the retired Director of the Federal Bureau of Prisons, Sanford Bates, when he informed the Royal Commission on Capital Punishment: "Cases of murder committed by persons pardoned from the death penalty are rare if not almost unknown." This is almost as true of all murderers, whether sentenced to death and commuted by the governor or sentenced to life imprisonment by the jury, and whether kept in prison or released."⁴²

³⁸ Sellin, *The Death Penalty*, pp. 78-79.

³⁹ Lewis E. Lawes, "Capital Punishment," *Encyclopedia of Criminology*, ed. Vernon C. Branham and Samuel B. Kutash (1949), p. 44.

⁴⁰ Sellin, *The Death Penalty*, p. 72. See also Bedau (ed.), *op. cit.*, pp. 400-401.

⁴¹ American Bar Association, Section of Criminal Law, *op. cit.*, p. 24.

⁴² Bedau (ed.), *op. cit.*, p. 397; see pp. 397-399 for state statistics.

Abolitionists are generally agreed that the misguided release of those who remain a danger to society indicates a need for the reform of a state's parole practices, rather than for retention or reinstatement of capital punishment. In the words of Robert G. Caldwell, a lawyer and noted criminologist:

"For example, it is clear that the possibility of releasing dangerous prisoners into the community could be reduced by improving the rehabilitative facilities of our correctional institutions and by strengthening our pardon and parole procedures. An execution, it is true, absolutely eliminates this possibility; but since it is to be prescribed as punishment for a crime, one can hardly maintain that in a given case it should be used not so much because a certain offense has been committed but because we are to lenient and inefficient in the operation of our correctional systems."⁴³

Moreover, abolitionists argue that the low rate of recidivism among paroled murderers indicates that in general dangerous prisoners are not being released, and that the danger of such releases is greatly exaggerated.

Finally, the abolitionist position on the alleged lack of a satisfactory alternative penalty is summed up as follows by Donal E. J. MacNamara, Dean of the New York Institute of Criminology:

"The record in abolition jurisdictions, some without the death penalty for more than one hundred years, both in the United States and abroad, in which imprisonment for indeterminate or stated terms has been substituted for the penalty of death, is a clear demonstration that alternative penalties are of equal or greater protective value to society than is capital punishment."⁴⁴

IV. RETRIBUTION VS. VENGEANCE

Abolitionists do not accept the argument that capital punishment is defensible on the grounds of retribution, apart from any benefit it may afford society either as a superior deterrent or as a necessary protective measure. According to many proponents of capital punishment, some criminals are simply unfit to live; they have committed acts so heinous that the only appropriate punishment is death. This function of the death penalty is commonly referred to on the retentionist side as retribution and on the abolitionist side as vengeance.

Abolitionists argue that the motivation behind this use of the death penalty is of the same order as the irrationality which provoked the criminal to the act for which he is being executed. Arthur Koestler comments:

"Yet though easy to dismiss in reasoned argument on both moral and logical grounds, the desire for vengeance has deep, unconscious roots and is roused when we feel strong indignation or revulsion—whether the reasoning mind approves or not. This psychological fact is largely ignored in abolitionist propaganda—yet it has to be accepted as a fact. The admission that even confirmed abolitionists are not proof against occasional vindictive impulses does not mean that much impulses should be legally sanctioned by society, any more than we sanction some other unpalatable instincts of our biological inheritance. Deep inside every civilized being there lurks a tiny Stone Age man, dangling a club to rob and rape, and screaming an eye for an eye. But we would rather not have that little fur-clad figure dictate the law of the land."⁴⁵

The purpose of the criminal law is to provide protection against man's irrationality and violence, not to furnish a means of expressing it. Abolitionists contend that the death penalty is a violation of this purpose. In the words of Theodore McKeldin, former Governor of Maryland:

"The function of the criminal law is to protect the law-abiding, not to sate society's lust for revenge. Only as a protector of the lives and property of honest men does it deserve the respect and support of honest men. Hence anything that tends to associate it with the idea of vengeance impairs its dignity and subtracts from the respect that intelligent people accord it. The argument that the death penalty is needed to allay public excitement is an argument against capital punishment, not in its favor."⁴⁶

⁴³ Robert G. Caldwell, "Why is the Death Penalty Retained?", *The Annals* (Nov. 1952), pp. 48-49. For statistics and a discussion of the actual length of life sentences in various states, see Sellin, *The Death Penalty*, pp. 72-76.

⁴⁴ Donal E. J. MacNamara, "The Case Against Capital Punishment," *Social Action* (April 1961), p. 12.

⁴⁵ Arthur Koestler, *Reflections on Hanging* (1975), p. 100.

⁴⁶ Maryland Committee on Capital Punishment, *Report* (1962), p. 25.

In summary, then, of the central argument against capital punishment, those who oppose the penalty believe that it does not deter would-be murderers more effectively than life imprisonment, and that life imprisonment is a fully adequate safeguard against those who have committed murder. In the words of Thorsten Sellin:

"The belief that the death penalty is a unique instrument for the protection of society against murder and superior to life imprisonment in this respect is not supported by any credible evidence now available to us."⁴⁷

In the absence of "credible evidence" that the death penalty is necessary to protect society, abolitionists argue that its only purpose is to satisfy man's desire for vengeance. The acceptance of vengeance as a legitimate goal of the criminal law of a civilized state is, accordingly to abolitionists, morally wrong and pragmatically dangerous.

V. THE DEATH PENALTY AND CRIMINAL JUSTICE

A number of the arguments against capital punishment relate to its alleged incompatibility with equitable and efficient criminal justice. The following statement by Herbert L. Packer of Stanford Law School is representative of the opinion of many, particularly in the legal profession, who oppose capital punishment:

"The case for abolition rests most securely, I think, on pragmatic considerations. Very simply, capital punishment is more trouble than it is worth. Criteria for its even-handed application are totally lacking; its effect on the administration of justice is malign and pervasive; it brings the law into disrepute."⁴⁸

A. The Possibility of Error

A major argument in this area is the danger that an innocent man will be executed. The Marquis de Lafayette once said, "I shall ask for the abolition of the penalty of death until I have the infallibility of human judgment demonstrated to me."⁴⁹ The argument remains the same today. Sellin writes:

"Human justice can never be infallible. No matter how conscientiously courts operate, there still exists a possibility that an innocent person may, due to a combination of circumstances that defeat justice, be sentenced to death and even executed. That possibility is made abundantly clear when one considers the many instances in which innocent persons have been saved from the extreme penalty either by the last minute discovery of new evidence or by a commutation followed, perhaps after many years in prison, by the discovery of the real criminal."⁵⁰

In *The Death Penalty in America*, Bedau abstracts "seventy-four cases occurring in the United States since 1893, in which a wrongful conviction of criminal homicide has been alleged and, in most cases, proved beyond doubt."⁵¹ These cases resulted in the following penalties:⁵²

Death sentence executed.....	8
Death sentence not executed.....	23
Life sentence.....	30
Less than life sentence.....	10
Conviction averted.....	3
Total	74

Bedau comments that while there is some doubt whether the right men executed were innocent, "no doubt, however, attaches to the fact that nearly two dozen met have been sentenced to death for crimes they demonstrably did not commit."⁵³ He also points out that 11 of the 30 life sentences occurred in abolition states.

"Had the death penalty not been abolished in these states, it is likely that at least some of these eleven men would have received a death sentence and been executed."⁵⁴

⁴⁷ Sellin, "Capital Punishment," p. 9.

⁴⁸ Packer, *op. cit.*, p. 441.

⁴⁹ Quoted by Otto Pollak, "The Errors of Justice," *The Annals* (Nov. 1952), p. 115.

⁵⁰ Sellin, *The Death Penalty*, p. 63.

⁵¹ Bedau (ed.), *op. cit.*, p. 436; see pp. 434-452.

⁵² *Ibid.*, p. 438.

⁵³ *Ibid.*, p. 440.

⁵⁴ *Ibid.*, p. 438.

Several governors who have had to make the final decisions on executions have been particularly emphatic about the reality and seriousness of the danger of executing the innocent. Both Governor Edmund Brown of California⁵⁵ and Michael V. DiSalle, former Governor of Ohio,⁵⁶ recount incidents which illustrate this danger. Bedau points out that, reputedly, the States of Maine, Rhode Island, and Wisconsin abolished the death penalty during this century because of the hanging of innocent men.⁵⁷

B. Inequality of Application

Opponents of the death penalty are universal in their denunciation of the injustice with which this penalty is enforced. Mr. Bedau speaks for abolitionists in general in his comment that, "The whole pattern of treatment of capital convictions by the higher courts seems devoid of rhyme or reason."⁵⁸

Abolitionists charge that racial prejudice, particularly against Negroes, is a major factor in the unequal application of the death penalty. They cite particularly statistics on executions for rape. The Federal Bureau of Prisons, in its 1965 national prisoner statistics bulletin on executions, indicates that during the period 1930-1964, nine-tenths of all executions for rape have been of non-white males.⁵⁹ On this subject, Bedau notes:

"... as *National Prisoner Statistics* shows, of the nineteen jurisdictions that have executed men for rape since 1930, a third of them have executed only Negroes. In these six states, the very existence of rape as a crime with an optional death penalty is, in the light of the way it has been used, strong evidence of an original intent to discriminate against non-whites. This was probably the purpose behind the decision in Tennessee in 1915 to abolish capital punishment for murder and treason, but to retain it for rape."⁶⁰

According to abolitionists, a second factor in the inequitable use of the death penalty is reflected in the fact that with few exceptions, it is the "poor and friendless" who are executed. Because of the very nature of our law courts, the difference between life and death is frequently determined by the ability of the accused to provide himself with skilled legal counsel. Former Governor DiSalle writes:

"I have never seen a person of means go to the chair. It is the well-heeled gangster, the professional killer who can afford the best legal talent to defend him, who gets off with a lesser sentence. It is the poor, the illiterate, the underprivileged, the member of the minority group—the man who because he is without means is defended by a court-appointed attorney—who becomes society's blood sacrifice.

"The court-appointed defender, diligent though he may be, is always handicapped. Sometimes he is inept—there is no criterion of experience in criminal law to guide a court appointment—and always he lacks the staff and funds available to the prosecution. Without funds and personnel to investigate the background of jurors and witnesses, to check alibis and examine the evidence before trial, the court-appointed attorney and his client have two strikes against them before they even enter a plea."⁶¹

Abolitionists argue that the inequalities involved in the actual use of the death penalty undermine the justification of it on the basis of the protection it may offer society. They maintain the facts indicate that, far from serving a rational, legitimate purpose, the death penalty is an instrument of class and racial prejudice and a test of expensive legal ingenuity.

Abolitionists argue further that the way in which the death penalty is actually used completely invalidates any possible defense of it on the grounds of society's right to retribution. They state for instance, that it is difficult to defend the position that Negro rapists merit death while white rapists, for the most part, do not. Sellin comments:

"... If I were an adherent of the view of retributive justice, I might—if my emotions did not deprive me of my reason—wish to find out if retributive justice is efficiently and properly administered. . . . If only about 4 percent of those who actually commit murders in the first degree [are executed], a figure

⁵⁵ Brown, *op. cit.*, p. 6.

⁵⁶ DiSalle, *op. cit.*, p. 6.

⁵⁷ Bedau (ed.), *op. cit.*, p. 407.

⁵⁸ Bedau (ed.), *op. cit.*, p. 410.

⁵⁹ U.S. Bureau of Prisons, *Executions 1930-1964* (April 1965), p. 10.

⁶⁰ Bedau (ed.), *op. cit.*, p. 413.

⁶¹ DiSalle, *op. cit.*, pp. 10-11.

based on what we conservatively estimate to be the number of capital murders committed annually in the United States and the accurate knowledge we have of the number of executions, it is obvious that, whatever the elements may be that produce the attrition, retribution is but rarely achieved and in no equitable manner. Therefore, just as the death penalty has proved to fail as a special means of social protection, so it has failed as an instrument of retributive justice."⁶²

C. The Administration of Criminal Justice

Abolitionists contend that the existence of the death penalty has a bad effect on the administration of criminal justice. This point of view is summed up as follows in the report of the Florida Special Commission for the Study of the Abolition of Death Penalty in Capital Cases:

"When the life of an accused person is at stake, it is more difficult and takes longer to impanel juries because prospective jurors dislike such cases and are frequently disqualified because they do not believe in the death penalty. Trials become longer and more expensive and emotions are especially likely to confuse the guilty person is more likely to escape punishment altogether because of the reluctance of the jury to convict and thereby make the death penalty a possibility. Appeals are more likely to result in reversals, and this brings on new and equally expensive trials. More are of the opinion that there would be many convictions for what are now capital crimes if life imprisonment replaced execution."⁶³

The issue of the disproportionate amount of time involved in capital cases was the subject of a study conducted in 1961 by the American Bar Foundation, the research branch of the American Bar Association. The Foundation concluded that that the long delays in capital trials and in the carrying out of death sentences weakened public confidence in the law.⁶⁴ The study was prompted by the Caryl Chessman case, which began in June 1948 and ended with his execution on May 2, 1960. Abolitionists argue that, while this case is an extreme, it is not an anomaly. In 1957, two prisoners were executed in California after seven years of appeals and trials.

As the report of the Florida Special Commission indicates, another major objection in this area is that the emotion aroused by the spectacle of a man fighting for his life is not compatible with the just and rational administration of the law. Governor Edmund G. Brown of California has referred to the capital trial as "our modern equivalent of the Roman Circus."⁶⁵ The effect of this emotion on the trial itself is seen by many eminent lawyers to be deplorable. Mr. Justice Frankfurter, in his appearance as a witness before the British Royal Commission, said:

"When life is at hazard in a trial, it sensationalizes the whole thing almost unwittingly; the effect on juries, the bar, the public, the judiciary, I regard as very bad. I think scientifically the claim of deterrence is not worth much. Whatever proof there may be in my judgment does not outweigh the social loss due to the inherent sensationalism of a trial for life."⁶⁶

The retentionist response to this category of arguments is that they indicate the need for legal reform, not the abolition of capital punishment.⁶⁷ Those opposed to the death penalty reply that recommending legal reform is no answer unless retentionists are, to quote Herbert L. Packer, "prepared to propose the solution that has so far eluded all students of the subject."⁶⁸ In fact, many abolitionists argue that the death penalty is a major factor operating against the reform of our criminal law. The late Professor Sam Bass Warner of Harvard Law School said that "the existence of the death penalty for first degree murder is one of the principal reasons, if not the main reason, why it is extremely difficult to get judges and legislators to remove procedural barnacles from our laws."⁶⁹ Dr. Sheldon Glueck, a professor at Harvard Law School and an eminent sociologist, comments that the death penalty "bedevils the administration of criminal

⁶² Sellin, "Capital Punishment," *op. cit.*, p. 10.

⁶³ Florida Special Commission for the Study of the Abolition of Death Penalty in Capital Cases, *Report* (1965), p. 26.

⁶⁴ *New York Times*, Jan. 29, 1961, p. 60.

⁶⁵ Brown, *op. cit.*, p. 5.

⁶⁶ Quoted by Richard C. Donnelly, "Capital Punishment," in *Congressional Record*, Aug. 24, 1960, p. A6285.

⁶⁷ See below, pages 61-65.

⁶⁸ Packer, *op. cit.*, p. 441.

⁶⁹ Quoted by Herbert B. Ehrmann, "The Death Penalty and the Administration of Justice" (1952), in Bedau (ed.), *op. cit.*, p. 433.

justice all the way down the line and is the stumbling block in the path of general reform."⁷⁰

D. *Technicalities of the law*

In the majority of jurisdictions which retain capital punishment, a person convicted of murder can only be sentenced to death if he is found to be legally sane and guilty of murder in the first degree. A number of eminent lawyers have argued that many of the abuses surrounding the death penalty stem directly from the inadequacy of the legal definition of sanity and the vagueness of what Herbert Ehrmann refers to as the "metaphysical" distinction between first and second degree murder.⁷¹

Mr. Justice Cardozo commented as follows on the distinction between first and second degree murder:

"I think the distinction is much too vague to be continued in our law. . . . The statute is framed along the lines of a defective and unreal psychology. . . . The present distinction is so obscure that no jury hearing it for the first time can fairly be expected to assimilate and understand it. I am not at all sure that I understand it myself after trying to apply it for many years and after diligent study of what has been written in the books. Upon the basis of this fine distinction with its mystifying psychology, scores of men have gone to their deaths."⁷²

Professor Packer of Stanford Law School points out that the arbitrariness with which the death penalty is used is directly related to the lack of guidance afforded by the law in this area:

"All students of the subject agree that the grading of murder into degrees, characteristic of most American penal codes, is hopelessly inept. Tacit recognition that this is so underlies the fact that in most jurisdictions the grading of murder has been reinforced by conferring discretion on the jury to decide whether persons convicted of first degree murder shall be executed or imprisoned. The result is that in practice the selection of those to be executed is the result of arbitrary, whimsical and uninformed choice. At this most crucial point in the administration of even-handed justice, law abdicates completely. The choice of life or death reflects mainly the strains and tensions of our society, most notably in the Southern states, but throughout the country as well."⁷³

The stand taken by abolitionists on the issue of legal sanity in capital trials centers around their objection to the M'Naghten Rule, the test of sanity in most jurisdictions. This rule is based on a decision handed down in 1843 and states, in essence, that a person is legally sane if, at the time of the commission of his crime, he was capable of distinguishing between right and wrong. The abolitionist view of the effect of this ruling on criminal justice is summed up as follows in the report of the Florida Special Commission:

"Many feel that the death penalty makes the issue of insanity as a defense to a charge of capital crime a thorn in the side of the administration of criminal justice. Insanity of the accused is often in issue, but the law's test of ability to distinguish between right and wrong is hard to apply because modern medicine does not even recognize this type of "insanity" as a clinical entity. As a result, the expert medical witnesses often testify that the accused is suffering from mental disease, but then the judge tells the jury, in effect, that this is not the "insanity" recognized by the criminal law."⁷⁴

A prominent San Francisco psychiatrist, Dr. Bernard L. Diamond, testified before the California Legislative Subcommittee on Capital Punishment that "Only a driving idiot has no conception of right and wrong." He went on to describe the consequences of the M'Naghten rule as follows:

"The result is that a given psychiatrist will answer, as to the knowledge of right and wrong, on the part of an accused person, in accordance with his own prejudices, or (worse yet) with the wishes of the side that hired him. The conclusion, therefore, inescapable that the right and wrong test satisfies the requirements of neither psychology nor medicine, nor, indeed, of the law itself."⁷⁵

In summary, then, many, particularly in the legal profession, argue that our present laws on who shall and shall not be sentenced to death are inadequate.

⁷⁰ Quoted by James A. McCafferty, "Major Trends in the Use of Capital Punishment," *Federal Probation* (September 1961), p. 21.

⁷¹ Ehrmann, *op. cit.*, p. 429. For a discussion of the distinction between first and second degree murder and its historical development, see Bedau (ed.), *op. cit.*, pp. 23-27.

⁷² Quoted by Ehrmann, *op. cit.*, p. 429.

⁷³ Packer, *op. cit.*, p. 441.

⁷⁴ Florida Special Commission, *op. cit.*, p. 26.

⁷⁵ Quoted by Eugene B. Block, *And May God Have Mercy* (1962), p. 80.

Furthermore, it is argued that these laws, particularly with regards to the issue of legal sanity, are essentially inaccessible to reform within the framework of the law as it now stands. In the opinion of many, it is no accident that the law relating to capital punishment has not been reformed along the lines of a more realistic view of psychology. This would mean opening the doors to a deterministic view of individual responsibility which is essentially incompatible with the assumptions underlying our system of law. Arthur Koestler writes in his book, *Reflections on Hanging*:

"The reason why the law relating to capital punishment cannot be reformed is basically simple. It could only be reformed at the price of undermining the concept of criminal responsibility by such deterministic notions as "irresistible impulse" or "diminished responsibility"—that is, by making *determinism statutory*, as it were. This necessity does not arise in the case of other offenses, because the sentence is elastic. . . . To sum up. The deficiencies of the capital law are irremediable because the death-penalty is based on a philosophical concept of criminal responsibility which does not admit the compromises with the determinist view practiced in other courts. Regarding all other offences, the administration of the law is elastic; the death-penalty, by its nature, excludes gradings of culpability. This rigidity and finality, which is the very essence of the capital law, is at the same time the reason of its attractiveness and symbolic value for the anti-progressive forces in society."⁷⁶

Furthermore, abolitionists argue, that it is essentially impossible to determine the degree to which an individual is responsible for his behavior with sufficient certainty to base a life and death decision on it. Koestler comments on this point:

Yet even by revolutionizing the basic concepts of Common Law for the sole purpose of making capital law a little less barbaric, its self-contradictions would remain. Since the frontiers between "responsible" and "irresponsible" are fluid, problematical and bedevilled by metaphysical problems, any drawing of the line by legal definition would be arbitrary. And since it is impossible to define when a man acted freely and ought to die, or when he acted under compulsion and ought to live, the only solution is to bring capital law into line with the remaining body of the Common Law by eliminating the unique, fixed, all-or-nothing penalty which admits of no gradations."⁷⁷

Abolitionists tend to see the difficulty of determining individual responsibility as relevant only to the death penalty, not to lesser sentences, or to penology in general. Many retentionists regard abolition of capital punishment as a triumph for the view that criminal behavior is an illness which should be cured, not punished—a step in the transition, prophesied by Jacques Barzun, from law to social work.⁷⁸ Abolitionists argue that precisely the opposite is true, that it is the existence of the death penalty which has forced criminal justice to become embroiled in the issue of psychological determinism. Packer writes:

"But what . . . has been primarily responsible for the extremism position that criminals should all be regarded as sick rather than bad? Demonstrably, it has been capital punishment. This is the spur and this is the rallying point for the attack upon law. The polemic battle that has enlisted so much psychiatric talent has been waged almost entirely with reference to capital punishment. It is in the murder trial that the issue of the extent to which the mental condition of the defendant should excuse or mitigate has been most often and most acrimoniously litigated. As Chief Justice Weintraub of N.J. said: "For all practical purposes the furor . . . is confined to the disposition of offenders convicted of murder. It is the death penalty that sparks the quarrel."⁷⁹

V. THE RELIGIOUS ARGUMENT

Many Protestant churches have taken an official stand against capital punishment. While the Roman Catholic Church has not taken a stand on either side, according to the recent U.N. study it has in recent years been moving more towards the view that the death penalty should be abolished.⁸⁰ Most Jewish organizations are officially opposed to the death penalty.

⁷⁶ Arthur Koestler, *Reflections on Hanging* (1957), pp. 102-104.

⁷⁷ *Ibid.*, p. 102.

⁷⁸ Jacques Barzun, "In Favor of Capital Punishment" (1962), in Bedau (ed), *op. cit.*, p. 157. See page 57 below.

⁷⁹ Packer, *op. cit.*, p. 442.

⁸⁰ United Nations, *op. cit.*, p. 64.

The religious argument against the death penalty generally centers around the belief that even sinful men are the objects of God's redemptive love, and that vengeance belongs to God, not man. In the words of Bishop John Wesley Lord of the Washington, D.C., Conference of the Methodist Church:

"A Christian view of punishment must look beyond correction to redemption. It is our Christian faith that redemption by the grace of God is open to every repentant sinner, and that it is the duty of every Christian to bring to others by every available means the challenge and opportunity of a new and better life. We believe that under these circumstances only God has the right to terminate life."⁸¹

Similarly, the following resolution was adopted in 1958 at the General Convention of the Episcopal Church:

"Inasmuch as the individual life is of infinite worth in the sight of Almighty God; and

"Whereas the taking of human life falls within the providence of Almighty God and not within the right of man; Therefore be it Resolved, That the General Convention goes on record as opposed to capital punishment."⁸²

The Bible is used by both sides in the capital punishment controversy. *Abolitionists* cite Romans, XII, 17, in which Paul says:

"Recompense to no man evil for evil . . . avenge not yourselves, but rather give place unto wrath: for it is written, Vengeance is mine; I will repay, saith the Lord."

In the Old Testament, they point, first, to the fact that Cain was not put to death (Genesis IV, 15), and to the adjuration in Leviticus, XIX, 18:

"Thou shalt not avenge, nor bear any grudge against the children of thy people, but thou shalt love thy neighbor as thyself: I am the Lord."

More generally, those opposed to capital punishment for religious reasons urge that the whole Christian concept of love and redemption as presented in the New Testament runs counter to use of the death penalty in a system of justice. In support of this, they refer specifically to the Sermon on the Mount (e.g., Matthew V, 44) and to Luke VI, 35.

In addition to the Old and New Testaments, abolitionists quote St. Augustine in opposition to capital punishment. The following passage is from a plea that some Donatists, a heretic African sect, who had confessed to the heinous murder of Christians, be spared the death penalty:

"We do not wish to have the sufferings of the servants of God avenged by the infliction of precisely similar injuries in the way of retaliation. Not, of course, that we object to the removal from these wicked men of the liberty to perpetrate further crimes, but our desire is rather that justice be satisfied without the taking of their lives or the maiming of their bodies in any particular; and that, by such coercive measures as may be in accordance with the laws, they be drawn away from their insane frenzy to the quietness of men in their sound judgment, or compelled to give up mischievous violence and betake themselves to some useful labour."⁸³

VII. PUBLIC OPINION

The four most recent Gallup Poll surveys indicate a steady decrease of public support for the death penalty. In each case, the question asked was, "Are you in favor of the death penalty for persons convicted of murder?" The results of the four polls are shown below:⁸⁴

	Percent			
	1966	1965	1960	1953
Yes.....	42	45	51	68
No.....	47	43	36	25
No opinion.....	11	12	13	7

⁸¹ Maryland Committee, *op. cit.*, p. 24.

⁸² Quoted by Florida Special Commission, *op. cit.*, p. 24.

⁸³ Quoted by Koestler, *op. cit.*, p. 100.

⁸⁴ *Washington Post*, July 2, 1966, p. A3.

The waning public support for the death penalty is reflected on the state level by the fact that in 1965 alone four states abolished it.⁶⁵ On the federal level, 1965 saw the Justice Department's break with its previous official position of neutrality on the issue. Deputy Attorney General Ramsey S. Clark wrote in a letter to the House District Committee:

"We favor the abolition of the death penalty. . . . This nation is too great in its resources and too good in its purposes to engage in the light of the present understanding in the deliberate taking of human life as either punishment or a deterrent to domestic crime."⁶⁶

A number of sociologists have commented on the extent to which the retention or abolition of capital punishment depends on the public attitude toward it,⁶⁷ and have predicted that the current trend of increasing opposition will culminate in the abolition of the death penalty in this country, at least in practice if not in law. After itemizing various factors that have contributed to the decline of public support, Sellin concludes that:

"... it is not difficult to explain the rapid downward trend in the number of executions annually from a high of 199 in 1935 to 57 in 1960. And this trend is likely to continue, barring unforeseen social crises, until executions will become a much greater rarity than today and will ultimately be abandoned."¹

There were seven executions in 1965, an all-time low in the history of this country.

SECTION 2 IN FAVOR OF CAPITAL PUNISHMENT

I. THE STATE SHOULD PROTECT THE LAW-ABIDING CITIZEN

The central argument in defense of capital punishment is that the first responsibility of the State, and thus of the criminal law, is the protection of the law-abiding. As long as there is substantial reason to believe that capital punishment serves this function, it should be retained. This argument is expressed as follows in the majority report of the New Jersey Commission to Study Capital Punishment:

"This Commission has an obligation to the people of the State of New Jersey. Our citizens deserve the maximum degree of protection from injury both to their persons and to their property. In case of doubt as to which method will create the most likely optimum of protection, this Commission is bound to retain the type of punishment which throughout history has proved to be the most severe. . . . It seems clear that those who seek the abolition of capital punishment are concerned with the saving of the lives of those convicted of the crime in question. . . . Yet most, if not all of those seeking abolition would, the Commission is certain, retain the death penalty if they were satisfied that it would save innocent lives. One abolitionist witness thought that the saving of a single life would not be enough. The Commission, however, in its obligation to the people of this State, is not justified in gambling the life of a single citizen."²

Retentionists argue that if this goal of providing the law-abiding citizen optimum protection conflicts with the welfare of the criminal, then it is the criminal who must be sacrificed.

Retentionists assert that the death penalty affords the law-abiding unique protection in two ways. It is, they argue, superior to life imprisonment as a deterrent to would-be murderers, and it is necessary as a protective measure against the incorrigibly dangerous. Furthermore, those in favor of capital punishment contend that because of the responsibility of the State to protect its citizens, the burden of proof rests with the abolitionists. Those opposed to capital punishment must, according to retentionists, prove conclusively that the death penalty is ineffective as a deterrent and unnecessary as a protective measure before abolition can be seriously considered.

II. DETERRENCE

A. The Evidence of Experience

The case for retaining the death penalty has the support of a majority of the law enforcement profession. Ralph G. Murdy, Managing Director of the Baltimore Criminal Justice Commission, writes,

⁶⁵ Iowa and West Virginia abolished it completely; New York and Vermont abolished it except for special crimes (e.g., killing a policeman acting in the line of duty).

⁶⁶ *New York Times*, July 24, 1965, p. 1.

⁶⁷ Bedau (ed.), *op. cit.*, pp. 231-232.

¹ New Jersey Commission to Study Capital Punishment, *Report* (1964), pp. 7-8.

"There is no question that a large majority of law-enforcement officers throughout the country favor capital punishment. The June 1960 issue of the official publication of the International Association of Chiefs of Police was entirely devoted to capital punishment without any expression from a police administrator encountered who favored its abolition. Occasionally an endorsement will be seen from a police administrator in a noncapital punishment state. However, only a few are active in presenting a case against capital punishment."²

Sheriff Peter Pitchess of Los Angeles County testified as follows before the California Senate Committee on the Judiciary,

But I can tell you that the overwhelming majority of people in law enforcement—the ones who are dealing with these criminals, the ones who are seeing them not as statistics but real live human beings, and who are studying their human behavior—are overwhelmingly convinced that capital punishment is a deterrent.³

J. Edgar Hoover, Director of the Federal Bureau of Investigation since 1925, is unqualifiedly opposed to the abolition of capital punishment. The 1959 issue of *The Uniform Crime Reports for the United States* contains the following statement by Mr. Hoover:

"The professional law enforcement officer is convinced from experience that the hardened criminal has been and is deterred from killing based on the prospect of the death penalty. . . . For the law enforcement officer the time-proven deterrents to crime are sure detection, swift apprehension, and proper punishment. Each is a necessary ingredient."⁴

The importance of the support of the death penalty by members of the law enforcement profession is evidenced by the weight placed on it in the following passage from the New Jersey Commission majority report:

"The Commission is convinced that capital punishment does deter some potential murderers from committing capital crimes. More particularly, it is believed that the deterrence is most significant in the area of felony murder and in the area of a truly premeditated crime. While the statistical information presently available does not indicate a significant difference in the homicide rates between abolition states and capital punishment states, even when adjoining, this statistical information was admittedly not restricted to capital crimes, did not include the incidence of felony murders, the relationship of aggravated assaults to homicides, or the relationship of Police woundings. Those presenting only raw homicide figures admitted that these were as yet the best available, and for the purpose of further analysis they would like to have available the additional information set forth above. On the other hand, those most intimately concerned with law enforcement gave evidence and their conclusions that capital punishment is a deterrent in some cases."⁵

The conclusion that capital punishment has a deterrent value "in the area of felony murder and in the area of a truly premeditated crime" is emphasized and backed with evidence in the majority of the defenses of capital punishment. The following is the introductory paragraph of a report from the Los Angeles Police Department presented as evidence at hearings before the California Senate Committee on Judiciary.

"The following defendants in conversations with reporting officers stated that they either: (1) used toy guns; or (2) empty guns or (3) simulated guns in robberies rather than take a chance on killing someone and getting the gas chamber."⁶

The report then discusses 13 defendants who had been involved in a total of 28 felonies, with 28 potential victims.

In his statement before the American Bar Association Section of Criminal Law in 1959, Richard E. Gerstein, as State's Attorney of the Eleventh Judicial Circuit of Florida, cited the following instances from testimony given by law enforcement officers concerning the deterrent value of the death penalty:

(1) Criminals who have committed an offense punishable by life imprisonment, when faced with capture refrained from killing their captor though by killing, escape seemed probable. When asked why they refrained from the

² Ralph G. Murdy, "A Moderate View of Capital Punishment," *Federal Probation* (Sept. 1961), p. 13.

³ California Legislature, Senate Committee on Judiciary, *Hearing Report and Testimony* (1960), p. 150.

⁴ Federal Bureau of Investigation, *The Uniform Crime Reports of the United States* (1959), p. 14.

⁵ New Jersey Commission, *op. cit.*, pp. 8-9.

⁶ Quoted by California Senate Committee, *op. cit.*, p. 17.

homicide quick responses indicated a willingness to serve a life sentence but not to risk the death penalty.

(2) Criminals about to commit certain offenses refrained from carrying deadly weapons. Upon apprehension, answers to questions concerning absence of such weapons indicated a desire to avoid more serious punishment by carrying a deadly weapon, and also to avoid use of the weapon which could result in imposition of the death penalty.

(3) Victims have been removed from a capital punishment state to a non-capital punishment state to allow the murderer opportunity for homicide without threat to his own life. This in itself demonstrates that the death penalty is considered by some would-be killers. Statistics cannot tell us how many lives have thus been saved.

In several cases, the indication of the clear awareness and consideration on the part of the criminal of the capital laws of different states have led abolition states to reinstitute the death penalty. Thorsten Sellin testified before the British Royal Commission as follows:

"South Dakota reintroduced the death penalty because a couple of Illinois convicts, who had finished serving their terms, tramped across the state and killed a couple of filling-station attendants, if I remember correctly—they were robbery murders."⁸

The Attorney General of Kansas testified before the British Royal Commission that:

"One of the contributing factors leading to the re-enactment [in the State of Kansas] of the death penalty for first degree murder was the fact that shortly prior thereto numerous deliberate murders were committed in Kansas by persons who had previously committed murders in states surrounding Kansas, where their punishment, if captured, could have been the death penalty. Such murders in Kansas were admittedly made solely for the purpose of securing a sentence to life imprisonment in Kansas if captured."⁹

More recently, a letter was intercepted by the Delaware State Police in which a murderer wrote he had known before he killed that the most he could get was 15 years. The murder occurred after Delaware had repealed capital punishment in 1958 and was a major factor in the reinstitution of the death penalty in that state in 1961.¹⁰

B. The Psychology of Deterrence

The majority report of the New Jersey Commission noted:

No punishment would be a deterrent for a crime of passion or a crime committed by one who is insane. These are not the persons who generally receive the death penalty.¹¹

The fact that many murders appear to be either crimes of passion or acts of insanity is interpreted by retentionists not as an indication of the death penalty's uselessness as a deterrent, but of its success in deterring people from *premeditated* murder. The following is from the Canadian Parliamentary Committee's *Report on Capital Punishment*:

"One measure of its [the death penalty's] deterrent effect was afforded by an analysis of murders which indicated that a considerable proportion, probably in excess of half, are committed under the compulsion of overwhelming passion or anger where no deterrent could have been effective. This would seem to demonstrate that the death penalty, coupled with the excellent standards of law enforcement prevailing in Canada, has been successful in deterring the commission of deliberate, premeditated murders and reducing their incidence to minimum proportions. The deterrent effect may also be indicated by the widespread association of the crime of murder with the death penalty which is undoubtedly one reason why murder is regarded as such a grave and abhorrent crime."¹²

The minority report of the Massachusetts Special Commission contains a related observation:

"... we believe that the death penalty threat is effective in preventing large numbers of wrongdoers from ever allowing themselves to reach that stage of criminality where they become victims of uncontrollable impulses and subjects

⁸ Quoted by Hugo Adam Bedau (ed.), *The Death Penalty in America* (1964), p. 336.

⁹ *Ibid.*

¹⁰ Maryland Committee on Capital Punishment, *Report* (1962), pp. 30-31.

¹¹ New Jersey Commission, *op. cit.*, p. 9.

¹² Quoted by Bedau (ed.), *op. cit.*, p. 268.

of murder commissions. It is in this early grey zone of murder premeditation that the death penalty threat is most apt to be operative and effective."¹³

As indicated in the passage from the Canada report quoted above, retentionists also believe that the death penalty is effective as a deterrent in the broadest sense, by reinforcing the public abhorrence of murder. It is argued that the death penalty reinforces the public's belief in the sanctity of human life by associating this abstract moral concept with the strong instinctive fear of one's own death. Richard Gerstein comments on this point as follows:

"Furthermore, as the Royal Commission [of Great Britain] opined, the death penalty helps to educate the conscience of the whole community, and it arouses among many people a quasi-religious sense of awe. In the mind of the public there remains a strong association between murder and the penalty of death. Certainly one of the factors which restrains some people from murder is fear of punishment and surely, since people fear death more than anything else, the death penalty is the most effective deterrent."¹⁴

C. The Statistics¹⁵

Those in favor of capital punishment assert that the question of the superior deterrent value of the death penalty to life imprisonment most probably cannot be—and certainly has not been—definitively answered by statistical studies. This argument is supported by the following passage from the Florida Special Commission's report on capital punishment:

"Superficial consideration might lead one to conclude that this question [whether the death penalty is superior to imprisonment in deterring those persons who would otherwise commit serious crimes] might be answered by scientific and statistical studies, but such is not the case. There is no reliable method for determining who has contemplated committing a capital crime but refrained due to the fear of the death penalty as distinguished from other forms of criminal punishment. . . . It is probably impossible to subject deterrence to scientific study in any direct way. The facts cannot be ascertained so that they can be subjected to scientific analysis and interpretation."¹⁶

First, as the Florida report indicates, there is the obvious point that those who are deterred do not show up as statistics. Secondly, both abolitionists and retentionists agree that the available statistics are inadequate. Hugo Adam Bedau, an abolitionist, writes in *The Death Penalty in America*:

"In a word, there is no exact information anywhere as to the volume of capital crimes in the United States. Difficult as it is to specify the capital laws for the nation as a whole, it is impossible with the present sort of criminal statistics to specify the exact amount of capital crimes for even one jurisdiction is even one year for even one crime! Ten years ago, George B. Vold complained, "There are no general statistics available as to the number of offenses committed per year for which death is the required penalty." Nothing has changed in the interim."¹⁷

The major difficulty is that the only murder figure available for use in attempting to gauge the effect of capital punishment on the murder rate is the "murder and non-negligent manslaughter" figure reported by the Federal Bureau of Investigation in its annual publication, *Uniform Crime Reports for the United States*. As Mr. Bedau points out:

"Since some states have no death penalty for murder, the national totals of "murder and non-negligent manslaughter" will exceed the number of homicides punishable by death. What is even more important, the F.B.I. does not distinguish between total murders (or first degree murders), which alone carry the death penalty, and all lesser forms of non-negligent criminal homicide, in particular second degree murder and voluntary manslaughter, crimes usually punished

¹³ Massachusetts Special Commission Established for the Purpose of Investigating and Studying the Abolition of the Death Penalty in Capital Cases, *Report and Recommendations* (1958); the minority report is reprinted in *Capital Punishment*, ed. Grant S. McClellan (1961), p. 82.

¹⁴ American Bar Association, Section of Criminal Law, *op. cit.*, p. 17.

¹⁵ The statistical studies of the deterrent effect of the death penalty are discussed in detail in Section 1, pp. 5-12 above. The following comment from the State of Florida's Report of the Special Commission for the Study of Abolition of Death Penalty in Capital Cases is relevant here: One caution is appropriate at this point: it is those opposed to the death penalty who have been active in research and who are responsible for the statistical studies discussed herein (p. 19).

¹⁶ Florida Special Commission for the Study of the Abolition of Death Penalty in Capital Cases, *Report* (1965), pp. 13-14.

¹⁷ Bedau (ed.), *op. cit.*, pp. 56-57.

by imprisonment. Instead, all voluntary or non-negligent criminal homicides are lumped together in *Uniform Crime Reports* under the title, "murder and non-negligent manslaughter." . . . What one wants to know, of course, is what fraction of the totals entered in this fashion are murders; and what fraction of this fraction are capitally punishable homicides, i.e., murders where a normal adult (not a child, juvenile, or lunatic) is the criminal and where a capital indictment might issue (excluding, therefore, those cases where the murderer commits suicide). It is impossible to supply this information at present."¹⁸

Mr. Bedau comments as follows on the validity of this "murder and non-negligent manslaughter" figure for the purpose of capital punishment statistics:

"One of the first criminologists to discuss the statistical relationship between general homicides and capitally punishable homicides was the late Professor Edwin H. Sutherland. In 1925, he pointed out that although (a) the *number* of homicides far exceeded the number of first degree murders (and, by inference, the number of capitally punishable homicides), (b) the *ratio* of the two was sufficiently constant to use the former as a guide to the latter . . . there is no doubt that [(a)] . . . is true. But what about (b)? It is extremely difficult to determine what evidence it is based on. Sutherland himself offered none, but advanced it as a plausible assumption. In the intervening generation, no criminologist has done any better."¹⁹

Mr. Bedau subsequently analyzes in some detail one specific difficulty involved in relying on inferences from homicide rates to capitally punishable murder rates:

"We have already seen . . . how sketchy the known connection is between the two rates. To whatever degree the former is an unreliable guide to the latter—which we have no way of directly measuring at all—to that degree all the studies . . . [relying on it] are unreliable at the crucial point: is the death penalty an effective deterrent for those kinds of homicides punishable by death? Here is one kind of difficulty that arises when one expects homicides statistics to provide a conclusive answer to this question. Data reported [in an article by Thorsten Sellin] . . . show that the ten-year average of annual homicide rates in Ohio fell during the 1920's from 7.9 per 100,000 of population to 3.8 in the 1950's. Yet if the death penalty had been abolished in Ohio at the beginning of this period and if (let us suppose) abolition had been followed by a dozen or so more murders each year thereafter, the general homicide rate would have decreased almost exactly as in fact it has, and at no time would the rate for any given year be more than a tenth of one per cent greater than it has been. Thus, while we could truthfully say that the abolition of the death penalty in Ohio had been followed by a decrease in the general homicide rate, it would also have been true that abolition resulted in an *increase* in the total number of murders, and this despite the constancy of the ratio of total homicides to murders (except in the first year after abolition). For all we know, this is exactly what has happened in all the abolition states, which without exception show a steadily declining general homicide rate over the past several decades. The number of crimes at stake here is so small that they would never be noticed by anyone who relies on the ordinary vital and criminal statistics of homicide."²⁰

The report of the Florida Special Commission contains the following comment on the inadequacy of statistical comparisons based on the F.B.I. murder and non-negligent manslaughter figure:

"Perhaps it is fortunate that the judgment of most persons who have studied them is that they do not prove much; that while they do not prove that the death penalty is a superior deterrent, they do not *prove* that it is not. . . . J. Edgar Hoover, Director of the Federal Bureau of Investigation, favors retention of the death penalty, but he has charged that statistical comparisons [based on inferences from homicide rates to first degree murder rates] are "completely inconclusive."²¹

D. The Need to Protect the Police

The defense of the death penalty on the grounds that it is necessary for police protection is a special case of the argument that its deterrent value is superior to that of the penalty of life imprisonment. It might be noted that two of the

¹⁸ Bedau (ed.), *op. cit.*, p. 61.

¹⁹ *Ibid.*, pp. 68-69.

²⁰ Bedau (ed.), *op. cit.*, pp. 265-266.

²¹ Florida Special Commission, *op. cit.*, p. 17.

thirteen states which have generally abolished capital punishment have retained it for the offense of killing a policeman acting in the line of duty.

Members of the law enforcement profession are generally convinced that the death penalty protects the police. The minority report of the Massachusetts Special Commission comments:

"We have been impressed by the urgent demands of large numbers of law-enforcement officers that the death penalty be retained. These men have not made the speculative study of the problem with which they are confronted that would enable them to present their conclusions in compelling statistical form. Their point of view is not, however, for this reason to be taken lightly, especially in view of their insistence that their own lives are endangered by their efforts to protect the lives and property of their fellow men. . . ."²²

III. THE DEATH PENALTY AS A NECESSARY PROTECTIVE MEASURE

Those in favor of the death penalty argue that the second way in which it affords society unique protection is by guaranteeing that certain criminals who have committed particularly heinous crimes will not have the opportunity to do so again. Jacques Barzun, Provost of Columbia University, defends the death penalty on these grounds as follows:

"The uncontrollable brute whom I want put out of the way is not to be punished for his misdeeds, nor used as an example or a warning; he is to be killed for the protection of others, like the wolf that escaped not long ago in a Connecticut suburb. No anger, vindictiveness or moral conceit need preside over the removal of such dangers. But a man's inability to control his violent impulses or to imagine the fatal consequences of his acts should be a presumptive reason for his elimination from society."²³

Retentionists do not accept the abolitionist position that life imprisonment is in all cases a sufficient safeguard. They argue that some criminals are incorrigibly anti-social and will remain potentially dangerous to society for the remainder of their lives. These men constitute a danger to prison officials and to the other inmates, and there is always the chance that they may escape.

Furthermore, retentionists argue that, because the life sentence rarely means that an offender is in reality imprisoned for life, there is a serious possibility that dangerous men will be released on parole. Mr. Barzun points out that it is impossible to ascertain that a murder has, in fact, been "cured":

"The 'scientific' means of cure are more than uncertain. The apparatus of detention only increases the killer's anti-social animus. . . . Some of these are indeed "cured"—so long as they stay under a rule. The stress of the social free-for-all throws them back on their violent modes of self-expression. At that point I agree that society has failed—twice: it has twice failed the victims, whatever may be its guilt toward the killer."²⁴

The defense of the death penalty on the grounds that it is a necessary protective measure is directly related to the argument that there is no satisfactory alternative sentence for those criminals who clearly constitute a continuing danger to society. The obvious possible alternative is the life sentence without the possibility of parole. However, a number of penologists believe that this is a highly unsatisfactory solution. They argue that such a sentence removes all inducement to improve and thus greatly increases the difficulty and danger involved in handling the men so sentenced. The Maryland report noted the reaction of Ralph G. Murdy, the Managing Director of the Baltimore Criminal Justice Commission, to such a suggestion as follows:

". . . Mr. Murdy observed that many penal experts believe the no-parole sentence for life-terms creates a hard core of incorrigibles in prisons who fear no authority because they can never be set free. They are robbed of the incentive to behave, he said."²⁵

Thorsten Sellin comments on the absolute life sentence as follows:

"Recent legislation in some states and proposed in others, depriving a person sentenced to life for murder of that hope [of future release], may prove to be most inadvisable."²⁶

²² Massachusetts Special Commission, in McClellan (ed.), *op. cit.*, p. 79.

²³ Jacques Barzun, "In Favor of Capital Punishment" (1962), in Bedau (ed.), *op. cit.*, pp. 155-156.

²⁴ Barzun, in Bedau (ed.), *op. cit.*, p. 159.

²⁵ Maryland Committee, *op. cit.*, p. 20.

²⁶ Thorsten Sellin, *The Death Penalty* (1959), p. 72.

The former Director of the Maryland Department of Parole and Probation, Mr. Wallace Reidt, indicated to the Maryland Commission that the possibility of the no-parole life sentence replacing the death penalty was a major reason for his opposition to the repeal of capital punishment in that state:

"If capital punishment is abolished, there will be considerable pressure to prevent parole in life terms and there will be removed what I believe is a great deterrent in the handling of prisoners in institutions.

"Most persons connected with institutions feel that unless there is some fear of punishment or hope of reward that a good many life-termers would cause a great deal of trouble in the institutions and make the work of prison officials much more dangerous than it now is."²⁷

A. The second-time murderer

Several states which have generally abolished capital punishment have retained it for a person found guilty of murder who then murders again. The argument that the death penalty should be retained for those who murder a second time is a limited version of both the argument that the death penalty is necessary as a protective measure, and the argument that it is more effective than life imprisonment as a deterrent. Sidney Hook, Professor of Philosophy at New York University, comments:

"... in a sub-class of murderers, i.e., those who murder several times, there may be a special group of sane murderers who, knowing that they will not be executed, will not hesitate to kill again and again. For *them* the argument from deterrence is obviously valid. Those who say that there must be no exceptions to the abolition of capital punishment cannot rule out the existence of such cases on *a priori* grounds. If they admit that there is a reasonable probability that such murderers will murder again or attempt to murder again, a probability which usually grows with the number of repeated murders, and still insist they would *never* approve of capital punishment, I would conclude that they are indifferent to the lives of the human beings doomed, on their position, to be victims."²⁸

Of the thirteen states which have generally abolished capital punishment, four of them retain it for some type of second-time murder, as follows:

New York: Killing a peace officer acting in the line of duty; and murder committed by a prisoner acting under sentence of life imprisonment.

North Dakota: Murder in the first degree committed by a prisoner already serving a sentence for murder in the first degree.

Rhode Island: Murder committed by a prisoner under sentence of life imprisonment.

Vermont: Second conviction of murder, at discretion of jury, provided the two cases are not related; and first-degree murder of a police officer or prison guard who is on duty.

IV. RETRIBUTION AND THE SANCTITY OF HUMAN LIFE

Capital punishment is defended by some on the grounds that it satisfies a legitimate communal need for retribution aroused by particularly heinous crimes. Society's desire that a man pay with his life for a violent crime represents both society's moral condemnation of such acts, and the closing of the ranks against those who violate society's laws. Thus, Lord Justice Denning testified before the British Royal Commission on Capital Punishment that:

"The punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them. It is a mistake to consider the objects of punishment as being deterrent of reformatory or preventive and nothing else. . . . The ultimate justification on any punishment is not that it is a deterrent, but that it is the emphatic denunciation by the community of a crime; and from this point of view, there are some murders which, in the present state of public opinion, demand the most emphatic denunciation of all, namely the death penalty."²⁹

Closely related to the defense of the death penalty on the grounds that it satisfies the legitimate public demand for retribution is the argument that capital punishment is, in fact, a public and official testimony to the belief in the sanctity

²⁷ Maryland Committee, *op. cit.*, p. 23.

²⁸ Sidney Hook, "The Death Sentence" (1961), in Bedau (ed.), *op. cit.*, p. 153.

²⁹ Quoted by Richard C. Donnelly, "Capital Punishment," in *Congressional Record*, Aug. 24, 1960, p. A6284.

of human life. This argument was stated as follows by Roy A. Gustafson, District Attorney of Ventura County, before the California Senate Committee on the Judiciary:

"Capital punishment . . . is based upon our concept of the high value placed upon life. We consider life to be the most precious possession and, therefore, when the crime is the most heinous and most grave of all crimes, then we make the man forfeit the thing that is most precious to him, namely, life."³⁰

In answer to the abolitionist assertion that capital punishment is, in fact, a violation of the sanctity of human life, retentionists argue as follows:

"There is too much loose talk about the sacredness of human life. A life is sacred only when it makes itself sacred; when it respects the lives and rights of others. . . . A cold-blooded murderer, having cunning intelligence without moral restraint, is infinitely more dangerous than any other animal on earth."³¹

J. Edgar Hoover characterizes as "maudlin" the view that "the most wanton slayer [is] 'a child of God' who should not be executed," and continues, commenting on a crime committed recently in California:

"Was not this small, blonde six-year-old girl a child of God? She was choked, beaten, and raped by a sex fiend whose pregnant wife reportedly helped him lure the innocent child into his car and who sat and watched the assault on the screaming youngster. And when he completed his inhuman deed, the wife, herself bringing a life into the world, allegedly killed the child with several savage blows with a tire iron. The husband has been sentenced to death. Words and words and words may be written, but no pleas in favor of the death penalty can be more horribly eloquent than the sight of the battered, sexually assaulted body of this child, truly a 'child of God.'"³²

V. THE ABOLITION MOVEMENT AND MODERN LIBERALISM

There is a strong feeling among those in favor of capital punishment that the abolition movement of today is in many respects a corollary of the permissive, deterministic view of individual behavior which characterizes much modern psychology and is reflected in the thinking of many liberal intellectuals. With regard to penology, this view is characterized—so the retentionist argument goes—by a belief that society is responsible, and thus to blame, for the ills of its misfits, and by a preference for the black sheep over the white. Retentionists point to such passages as the following to illustrate their case:

"By the establishment of a motive, an understanding of the crime, at least in the legal sense, is achieved, and no more official effort is extended from or charged to the authorities to go beyond and find a deeper insight into the true motivation of the mind of the man who kills.

"Acceptance in legal procedures of the motive at large is based on the presumption that, unless it is proved otherwise through the intricacies and formalities of the court trial, the individual [murderer] is like any other person, who could exercise at pleasure any function he chose. There is no recognition of the fact that if he had been in possession of such perfect powers of reasoning and such ideal forces of will, he could have prevented the occurrence of the fatal act. In reality, he is in his predicament for the very reason that he was incapable of behaving like a complete man, the master of himself. However, people in general refuse to look upon him as an invalid, and find considerable gratification in obtaining for society a maximum security and protection by imposing a maximum retribution."³³

The distance between this approach and that of many retentionists may be seen by contrasting the above passage with the following statement by Jacques Barzun, Provost of Columbia University:

"I happen to think that if a person of adult body has not been endowed with adequate controls against irrationally taking the life of another, that person must be judicially, painlessly, regretfully killed before that mindless body's horrible automation repeats."³⁴

³⁰ California Legislature, Senate Committee on Judiciary, *op. cit.*, p. 103.

³¹ Euell J. Younger, "A Sharp Medicine Reconsidered" (1956), in McClellan (ed.), *op. cit.*, p. 16.

³² J. Edgar Hoover, "Statements in Favor of the Death Penalty" ((1961), in Bedau (ed),

³³ Ralph S. Banay, "Study in Murder." *The Annals* (Nov. 1952), p. 33.

³⁴ Barzun, in Bedau (ed.), *op. cit.*, p. 159.

Brazun sums up the general viewpoint discussed above as follows:

"Social science tends steadily to mark a preference for the troubled, the abnormal, the problem case. Whether it is poverty, mental disorder, delinquency or crime, the "patient material" monopolizes the interest of increasing groups of people among the most generous and learned. Psychiatry and moral liberalism go together; the application of law as we have known it is thus coming to be regarded as an historic prelude to social work, which may replace it entirely. Modern literature makes the most of this same outlook, caring only for the disturbed spirit, scorning as bourgeois those who pay their way and do not stab their friends. All the while the determinism of natural science reinforces the assumption that society causes its own evils. A French jurist, for example, says that in order to understand crime, we must first brush aside all ideas of Responsibility. He means the criminal's and takes for granted that of society. The murderer kills because reared in a broken home or, conversely, because at an early age he witnessed his parents making love. Out of such cases, which make pathetic reading in the literature of modern criminology, is born the abolitionist's state of mind: we dare not kill those we are beginning to understand so well."⁸⁶

Generally speaking, retentionists argue that, regardless of the developments of the day in the field of psychology, law and order cannot exist unless people are held individually responsible for their actions and thus subject to the control of punishment if they fail to obey the law. Those in favor of capital punishment argue that it reflects, both pragmatically and symbolically, this fundamental tenet of our society, and that its abolition could well be seen as an endorsement of the kind of liberalism described by Mr. Barzun—a view which, if incorporated into our laws, would lead to social anarchy. Richard Gerstein commented on this point as follows before the American Bar Association:

"Society must also consider what effect the abolition of capital punishment could have upon the philosophy of the youth of our country. Many of them might very well look upon the criminal code, including that part of it forbidding murder, as a mere convention of society which advanced thinking and progressive social theories permit them to set aside as a matter of no consequence. This theory leads to the belief that each is a law unto himself; that each may choose the laws which he will obey, and that he may violate the rest. This type of thinking would eventually lead us into virtual anarchy."⁸⁷

More specifically, retentionists argue that the concern of abolitionists for the criminal has led them to place far too much emphasis on rehabilitation, as opposed to deterrence and protection, as the purpose of punishment. Richard Gerstein comments that, "we must not forget that reformation is an enjoyable by-product, not the sole goal of punishment."⁸⁷ The minority report of the Massachusetts Special Commission notes,

... it might be well here to point out that it is the opinion of the minority that the majority report lays too great stress on the welfare of the individual criminal subject to a sentence of execution. It is not our intent to deprive the criminal of every consideration which may be afforded to him by the executive powers of the state subsequent to his sentencing to execution. However, the urge that this one could be rehabilitated or that one could be given psychiatric treatment and therefore they all are salvable does not solve the problem of suppressing potential murderers. If one becomes convinced that the drastic measure of execution is the effective deterrent, then it must logically follow that the innocent lives saved thereby are of far greater import than the criminal life sacrificed. This method of thinking must of necessity divorce itself from any thought of the rehabilitation of the properly condemned criminal."⁸⁸

The New Jersey Commission majority report comments in a similar vein, "The great increase of crime in this State has coincided with a greater tendency to emphasize the rehabilitation factor in criminology as against the punishment or retributive and deterrent aspects of criminology. The Commission cannot conclude that easing the lot of the murderer will cause less crime or fewer criminal homicides."⁸⁹

The supporters of capital punishment contend that this misplaced emphasis on rehabilitation as well as the general willingness to "brush aside all ideas

⁸⁶ *Ibid.*, pp. 157-158.

⁸⁷ American Bar Association, Section on Criminal Law, *op. cit.*, p. 18.

⁸⁸ *Ibid.*

⁸⁹ Massachusetts Special Commission, in McClellan (ed.), *op. cit.*, p. 78.

⁹⁰ New Jersey Commission, *op. cit.*, p. 7.

of Responsibility" is a corollary of the fact that many abolitionists argue from theory rather than from a direct experience with the realities of crime and law enforcement. J. Edgar Hoover comments,

"As a representative of law enforcement, it is my belief that a great many of the most vociferous cries for abolition of capital punishment emanate from those areas of our society which have been insulated against the horrors man can and does perpetrate against his fellow beings."⁴⁰

Direct experience with law enforcement has led most members of this profession to support the death penalty. Sheriff Pitchess of Los Angeles County testified as follows before the California Senate Committee investigating capital punishment:

"... when I was in law school, I remember that I prepared a paper supporting the abolition of capital punishment. I changed my mind. I went directly from law school into the F.B.I. I can't tell you whether it was within a year or two years, but it wasn't long after I had been in the active field of investigating that I changed my mind, and I have become progressively more convinced. I wish I could be as positive and as certain as the proponents of abolition—I wish I could be. I am as certain as I can be, after searching my own conscience, that it is a deterrent, but my change—and I am not ashamed to admit that I did change my mind—was based on my direct contact with the criminals, who convinced me that it was a deterrent to them."⁴¹

VI. THE DEATH PENALTY AND CRIMINAL JUSTICE

With regard to the complex of arguments relating to capital punishment and criminal justice (see pp. 23-33), retentionists contend, first, that the institution of capital punishment should stand or fall on the issue of whether or not it provides maximum security for the law-abiding, and not on the fact that certain abuses exist in its use, or that it is time-consuming and expensive to administer. Secondly, they argue that many of abuses alleged by abolitionists either do not actually exist or are remediable through a reform of the courts. Supporters of the death penalty point out that its efficacy as a deterrent is itself undermined by the inequalities and inefficiencies in the administration of criminal justice; what is indicated here is not the need to abolish the death penalty, but the need to reform criminal procedure.

A. The Possibility of Error

A major issue in this area is the alleged danger of executing the innocent. First, there are those who argue that this is not, in fact, a real possibility, given the precautions taken by the courts in capital cases. Judge Learned Hand commented,

Our procedure has always been haunted by the ghost of the innocent man convicted. It is an unreal dream.⁴²

There have been no *known* cases of the execution of an innocent man in this country.⁴³

The position of those retentionists who admit that the possibility of error does exist is summed up by the Florida report as follows:

"Proponents of capital punishment who admit that the possibility of convicting an innocent man is present maintain that such a possibility is extremely remote today due to the painstaking care that the courts take and the many avenues for correcting trial error. The task of conducting capital punishment trials is carried out with every possible precaution in favor of an accused thereby making the chance of a miscarriage of justice infinitely small."⁴⁴

Those who support the death penalty argue that, insofar as there is a risk that an innocent man will be executed, it is justified by the protection afforded to society by the death penalty. This argument is stated as follows by the minority report of the Massachusetts Special Commission:

"We do not feel, however, that the mere possibility of error, which can never be completely ruled out, can be urged as a reason why the right of the state to inflict the death penalty can be questioned in principle . . . All that can be expected of [human authorities] is that they take every reasonable precaution

⁴⁰ Hoover, in Bedau (ed.), *op. cit.*, p. 130.

⁴¹ California Legislature, Senate Committee on Judiciary, *op. cit.*, pp. 150-151.

⁴² Quoted by Florida Special Commission, *op. cit.*, p. 29.

⁴³ Bedau (ed.), *op. cit.*, p. 440; see pp. 23-24 above.

⁴⁴ Florida Special Commission, *op. cit.*, p. 29.

against the danger of error. When this is done by those who are charged with the application of the law, the likelihood that errors will be made descends to an irreducible minimum. If errors are then made, this is the necessary price that must be paid within a society which is made up of human beings and whose authority is exercised not by angels but by men themselves. It is not brutal or unfeeling to suggest that the danger of miscarriage of justice must be weighed against the far greater evils for which the death penalty aims to provide effective remedies."⁴⁵

B. *The Alleged Inequality of Application*

Abolitionists allege that there is a discrimination in the use of the death penalty, based primarily on race, wealth, and legal counsel. The retentionist answer to this allegation is well stated as follows by Hugo Adam Bedau, himself an abolitionist:

"One of the contentions of abolitionists in this country, popularized by the late Warden Lawes, is that 'only the poor, the friendless and the foreign-born' are sentenced to death and executed. As a description of the class of persons executed, this is probably fairly accurate (though, with the virtual curtailment of immigration, the place of the foreign-born has been taken by native non-whites). But if it is meant to imply deliberate discrimination by trial courts, appellate courts and boards of pardons, it remains unproved. The vast majority of all prisoners throughout our country's history have been the poor, the friendless and the foreign-born (or non-white). It has yet to be shown that murderers or prisoners under death sentence differ significantly in these respects from other criminals."⁴⁶

On the specific issue of the high percentage of Negroes sentenced to death, it has been noted:

"Much previous research in criminal homicide, which includes murder in the first degree, has demonstrated the fact that a disproportionate contribution to the homicide rate is made by Negroes. It is no surprise, therefore, that as many as thirty-six per cent of persons placed on death row are Negro. Consistent with independent research and the *Uniform Crime Reports*, Negroes comprise between three and four times more of the criminal homicide cases (either as offenders or as victims) than they do of the general population."⁴⁷

C. *The Need for Reform*

As indicated above, retentionists view the existence of abuses in the administration of the death penalty not as an argument for abolishing the death penalty, but for reforming the courts and the criminal procedure. Mr. Barzun's comment on the danger of executing the innocent is generally relevant here:

"... what is at fault in our present system is not the sentence [of death] but the fallible procedure . . . What the miscarriages point to is the need for reforming the jury system, the rules of evidence, the customs of prosecution, the machinery of appeal."⁴⁸

Retentionists contend that if the death penalty is a less effective deterrent than it might be, a major reason is the rarity of its use. A number of abolitionists concur. Thorsten Sellin comments:

"We arrive then at the conclusion that if the death penalty is to have any restraining effect there must be an adequate threat of execution, but no one has ventured to calculate how great the risk of possible execution must be in order to constitute an adequate threat."⁴⁹

Bedau develops this argument at some length:

"Since the time of Beccaria, Bentham, Rush and Livingston, most penologists have agreed that for any punishment to have optimum efficacy as a deterrent, the penalty must be imposed consistently, immediately and inexorably; that is, on all offenders, promptly after their crime, and in such a way that the general public expects exactly this. But in practice, not one of these conditions is satisfied by the way capital punishment is administered. Only a small proportion of first degree murderers are sentenced to death and even fewer are executed. The delay in convicting and executing those who do get a death sentence is increas-

⁴⁵ Massachusetts Special Commission, in McClellan (ed.), *op. cit.*, p. 81.

⁴⁶ Bedau (ed.), *op. cit.*, pp. 411-412. For statistics which substantiate Bedau's argument, see California Legislature, Senate Committee on Judiciary, *op. cit.*, pp. 106-108.

⁴⁷ Marvin E. Wolfgang, Arlene Kelly, and Hans C. Nolde, "Executions and Communications in Pennsylvania" (1962), in Bedau (ed.), *op. cit.*, p. 473.

⁴⁸ Barzun, in Bedau (ed.), *op. cit.*, p. 163.

⁴⁹ Sellin, *The Death Penalty*, pp. 20-21.

ing and notorious. So, almost anyone who contemplates some horrible crime can see some chance of getting away with it, or at least in not having to pay the supreme penalty. If, in practice, the death penalty is no more effective a deterrent for murder, rape and kidnapping than imprisonment is, this may be the reason."⁵⁰

Those in favor of retaining the death penalty do not accept the abolitionist argument that it is impossible to effect the reforms necessary to make capital punishment a more credible threat to the man contemplating a horrible crime. The Massachusetts Special Commission minority report comments:

"It does not seem logical to say that the death penalty should be abolished because statistics prove that it is not a deterrent. It seems more consistent to urge that every effort be made to minimize the influence on the effectiveness of the death penalty of factors extrinsic to itself, and thus to realize to the maximum its intrinsic value. . . . If we admit that the state has, in principle, the right to inflict it, we should admit likewise a corresponding obligation on the part of the state to make it effective and we should not urge failure to do this as proof that the death penalty itself is not necessary."⁵¹

VII. THE RELIGIOUS ARGUMENT

The defense of capital punishment on religious grounds rests primarily on two points. First, it is argued that the death penalty is a testimony to the sacredness of life, and—in the case of the Hebrew-Christian tradition—that the Bible clearly differentiates between murder and the death penalty as a just punishment for the taking of God-given life. This argument is supported by the following passages, as well as others, from the Old Testament:

"Whoso sheddeth man's blood, by man shall his blood be shed: for in the image of God made he man (Genesis, 9: 6).

"He that smiteth a man, so that he die, shall be surely put to death. . . . But if a man come presumptuously upon his neighbor to slay him with guile; thou shalt take him from mine altar, that he may die (Exodus, 21: 12, 14).

"Whoso killeth any person, the murderer shall be put to death by the mouth of witnesses. . . . Moreover ye shall take no satisfaction for the life of a murderer, which is guilty of death; but he shall be surely put to death . . . and the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it (Numbers, 35: 30, 31, 33)."

Turning to the New Testament, it is argued that the law of love preached by Jesus implies the need for the existence of a strong civil law, and that it is a misreading of the New Testament to see it as advocating leniency for criminal behavior. This argument is summed up as follows by Rev. Jacob J. Vellenga who, since 1958, has served as Associate Executive of the United Presbyterian Church in the United States:

"The law of love, also called the law of liberty, was not presented to do away with the natural laws of society, but to inaugurate a new concept of law written on the heart where the mainsprings of action are born. The Church is ever to strive for superior law and order, not to advocate a lower order that makes wrongdoing less culpable . . . wherever and whenever God's love and mercy are rejected, as in crime, natural law and order must prevail, not as extraneous to redemption but as part of the whole scope of God's dealing with man."⁵²

He continues:

"The law of capital punishment must stand as a silent but powerful witness to the sacredness of God-given life. Words are not enough to show that life is sacred. Active justice must be administered when the sacredness of life is violated."⁵³

In addition to the Old and New Testaments, St. Thomas Aquinas is also quoted in support of capital punishment: "It is lawful to kill an evil-doer insofar as it is directed to the welfare of the whole community."⁵⁴

VIII. PUBLIC OPINION

Thirty-seven states, the District of Columbia, and the Federal Government have the death penalty. Of the thirteen states which have abolished it, only eight

⁵⁰ Bedau (ed.), *op. cit.*, p. 270.

⁵¹ Massachusetts Special Commission, in McClellan (ed.), *op. cit.*, p. 77.

⁵² Jacob J. Vellenga, "Christianity and the Death Penalty" (1959), in Bedau (ed.), *op. cit.*, pp. 127-128.

⁵³ *Ibid.*, p. 129.

⁵⁴ St. Thomas Aquinas, *Summa Theologica*. New York, Benziger Bros., 1947, II, 1467.

have done so completely. Five retain it on a limited basis, for such crimes as killing a policeman acting in the line of duty and the killing of a prison guard by an inmate who is serving a life term for murder. Jacques Barzun's assertion that his views in favor of the death penalty "are now close to unpopular" has been answered by Jerome Nathanson, a leading abolitionist, as follows:

"When I read this I wondered if he and I live in the same United States. How close is close? . . . A few years ago a special Massachusetts commission recommended abolition of the death penalty, whereupon the legislature promptly voted against its own commission. A few years ago Delaware abolished capital punishment. Subsequently, as has happened elsewhere, an especially outrageous crime led to a demand for its restoration. The legislature responded favorably to the demand, the Governor vetoed the measure, and it was passed again over his veto. The Governor of California is a supporter of abolition, but there is hardly the ghost of a chance, after the furor over the Chessman case, that it will be realized during his administration, even if he is elected to another term in office. . . . One could go on and on . . . After working a number of years in behalf of abolition, I have the contrary impression that the preponderance of popular sentiment is on [Mr. Barzun's] side."⁵⁵

The reason for such public support—and its importance as an argument in favor of the retention of the death penalty—is commented on by Mr. Ralph G. Murdy, Managing Director of the Baltimore Criminal Justice Commission, as follows:

"Traditionally, our people have believed capital punishment necessary to control attacks on body and life. A majority today still holds that belief despite evidence of growing hesitation and question. To fly in the face of such conviction by completely doing away with the death penalty would only serve to further weaken the faith of our citizens in the administration of justice."⁵⁶

The abolitionist argument that such popular feelings are based on emotion and prejudice rather than on a knowledge of the facts is answered by the retentionists as follows:

"Abolitionists say the public is not enlightened. That argument is always used to rationalize a minority point of view; but it is no more valid in this case than in any other case where two points of view exist and the question is resolved in accordance with the democratic process."⁵⁷

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⁵⁵ Jerome Nathanson et al., "Mr. Barzun and Capital Punishment," *American Scholar* (Summer 1962), p. 436.

⁵⁶ Murdy, *op. cit.*, p. 13.

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BOARD OF SOCIAL MINISTRY,
LUTHERAN CHURCH IN AMERICA,
New York, N.Y., March 13, 1968.

Hon. PHILIP A. HART,
Senator from Michigan, Senate Office Building, Washington, D.C.

DEAR SENATOR HART: We have sent to the other members of the Subcommittee on Criminal Laws and Procedures copies of the position statement of the Lutheran Church in America on Capital Punishment and our longer background study on the same subject. Although I think we sent these to you some time ago, I am enclosing copies with this letter.

I hope that these will be helpful to you and the Subcommittee.

Sincerely yours,

CEDRIC W. TILBERG,
Secretary for Program and Leadership.

A STUDY REPORT ISSUED BY THE STAFF OF THE BOARD OF SOCIAL MINISTRY,
LUTHERAN CHURCH IN AMERICA

In response to heightened interest throughout the United States and Canada in the question of capital punishment, the staff of the Board of Social Ministry has prepared the following Staff Study Report No. 5. It is offered to the constituency of the Lutheran Church in America as an aid to study and discussion. In no sense is it to be construed as an official statement of either the Lutheran Church in America or the Board of Social Ministry.

This document has been prepared with the assistance of numerous consultants. Special thanks go to Mr. Victor H. Evjen, Assistant Chief of Probation, Federal Probation System (U.S.A.), and the Rev. Clifton L. Monk, Executive Secretary, Division of Welfare, Canadian Lutheran Council. While these and others rendered invaluable assistance in the preparation of this report, they are not to be held accountable for any inaccuracies which may appear.

Comments on this paper are kindly solicited. They should be addressed to: Board of Social Ministry, 231 Madison Avenue, New York, New York 10016.

CAPITAL PUNISHMENT

The question of capital punishment, an issue of intense concern a number of decades ago, has re-emerged within the past few years as a subject of widespread public debate throughout the United States and Canada. This situation has been accompanied by the actual abolition (complete or partial) of the death penalty in thirteen states and two dependencies of the United States¹ and in six other states a cessation in executions since 1955.² The present government of Canada has announced its intention to have a free vote in Parliament on the question of abolition. During the past few years, death sentences in Canada have been consistently commuted.³

Statistics point to a marked long-term decline in executions. For instance, more than 35 countries are known to have abolished capital punishment. All Western European countries, with the exception of France, Greece, and Spain, have abolished the death penalty by law or have not used it in this century. Most Latin-American countries do not have the death penalty.

Of the thirteen states in the United States that have abolished capital punishment, five of them did so in 1965. A number of states are currently considering abolition of the death penalty. There were seven executions in the United States in 1965 as compared to fifteen in 1964 and twenty-one in 1963.

These developments have been paralleled by an intensified attention to the social and psychological causes of crime, a search for improved methods of crime prevention and law enforcement, efforts at revising the penal code and judicial process, and pressure for more effective methods of correction and rehabilitation.

The over-all trend seems to be toward universal abolition of capital punishment. Nevertheless, there is in states which have formally abolished it continuing pressure from various quarters for reinstatement of the death penalty. The question thus remains a live one even after it may seem to have been settled by legislation.

I

One reason that many Lutherans have difficulty with the issue of capital punishment is their uncertainty as to whether, from a confessional standpoint, the question has any basic validity at all. Lutheranism has traditionally upheld the state as a divinely-ordained structure which is to be obeyed "for the Lord's sake" (Romans 13:1-6; 1 Peter 2:13, 14). The Lutheran confessions take seriously the God-given "power of the sword" entrusted to the state for the sake of the peace and order of the civil community. In explaining the Fifth Commandment, Luther wrote in the Large Catechism: "Therefore God and government are not included in this commandment, nor is the power to kill, which they have, taken away. For God has delegated his authority to punish evildoers to the government . . ." The Apology of The Augsburg Confession, elaborating on Article XVI, lists capital punishment as one of the means of public redress that God has authorized to be carried out through the office of the magistrate.

Part of the problem encountered by Lutherans results from the tendency on the part of many opponents of capital punishment to sentimentalize the state through a denial of its God-given "power of the sword." It was against such a tendency that the Reformers sought to guard when they affirmed the validity of punishment by death at the hands of the civil authority. The difficulty is that, once they have guarded against such sentimentalizing, Lutherans are often slow to see in their own heritage a framework for evaluating the death penalty on its own merits. Having affirmed the state's legitimate power of life and death, they tend to accept the *status quo* without realizing that capital punishment can be questioned on other than sentimental grounds.

There is no denying the legitimate power of the state to take human life when the failure to do so constitutes a clear danger to the safety and order of the civil community. The exercise of this power is, however, clearly one of last resort and must be seen in relation to the total mandate of the state which

¹ Hon. Guy Favreau, *Capital Punishment—Material Relating to Its Purpose and Value*, pp. 15-16; Arthur O'Halloran, "Capital Punishment," *Federal Probation*, June, 1965. The following states in the U.S. have abolished the death penalty: Michigan (1846), Wisconsin (1853), Maine (1887), Minnesota (1911), Alaska (1957), Hawaii (1957), Oregon (1964), Iowa (1965), West Virginia (1965), and Vermont (1965). The following have abolished the death penalty with certain exceptions: Rhode Island (1852), North Dakota (1915), and New York (1965).

² Hon. Guy Favreau, *Op. cit.*, pp. 120-23.

³ *Ibid.*, pp. 4, 5, 11.

includes both the maintenance of order and the promotion of justice. The relevant question to be asked in regard to capital punishment is, therefore, a double one: *Does the death penalty have any utility in the maintenance of civil order, and is such a penalty in keeping with the mandate of the state to promote justice?*

In summary, an authentic consideration capital punishment must, for Lutherans, begin with two assertions and a question. The assertion are:

1. That the possession by the state of power over human life is not in itself to be interpreted as a command from God that death *shall necessarily* be employed in the punishment of certain crimes; and
 2. That a decision on the part of civil government to abolish the death penalty is not to be construed as a repudiation of the inherent right of the state to take life when civil order and justice demand that it do so.
- The question then is whether capital punishment assist the state in performing its God-given role, or whether it militates against such performance.

II

An impressive and growing body of testimony by a variety of professionals points toward the conclusion that capital punishment is totally incompatible with the twofold mandate of the state to maintain public order and to secure justice for its citizens. The following paragraphs attempt to summarize the main themes of this testimony.

1. *Application of the death penalty is notoriously uneven.* Those who are executed are usually the poor, the neglected, the uneducated, the mentally ill, the mentally retarded, and persons of minority status. There is a double standard of justice—black and white, rich and poor, educated and uneducated. More than half of those executed in the United States since 1930 were from minority groups. The death penalty is inflicted disproportionately on those who by reason of circumstances, often beyond their control, are the disadvantaged members of society. The poor lack the resources to retain the most skilled counsel or to press their cases to the ultimate decision on appeal where convictions are frequently reversed or new trials ordered.

Moreover, there has never been a universal definition of a capital crime. In Hammurabi's Babylon 37 offenses were punishable by death. Eighteenth Century England designated approximately 350 crimes as capital offenses.

States differ as to what crimes are punishable by death. Today there are 31 capital crimes in the various states, in many states only one or two. Since 1930, only seven types of offense have resulted in executions. During that time 86% of the total number of executions have been for murder. World War II saw 142 American soldiers executed, but the last execution in the Navy was in 1842. Thus, the application of the death penalty may even be determined by an accident of geography or the branch of military service to which an offender may belong.

There are no identifiable standards for choosing which persons convicted of capital crimes will be put to death. There are in death row in some states persons awaiting execution for crimes identical in degree and extenuating circumstances to those for which prisoners in other states are serving life terms with a possibility of parole. The death penalty imposes a fatal discrimination against those in society who are the most common victims of bigotry and prejudice. It does not mete out evenhanded justice; its application is uneven, unpredictable, and frequently unjust.

2. *Society needs protection—not revenge.* The death penalty is more retributive than it is punitive; it is more of an act of hate and vengeance than of justice. Retribution cannot be considered a legitimate goal of criminal law. The purpose of punishment is to reform or control—not to destroy. Yet, for many, simple retribution is one of the most appealing arguments for the retention of the death penalty.

Minimal morality requires society to demonstrate that there is no alternative before it takes the life of a person by a planned, official act. A refined sense of justice calls for restraint on the part of the state in the exacting of penalties. Excessive punishment appears to be ultimately self-defeating, and it injects into the social mentality an element of callousness which militates against the humane content which Western society has striven so long to give to its juridical system.

3. *There is no evidence to support the deterrent effect of the death penalty.* Systematic research has failed to produce evidence that the abolition of capital punishment leads to an increase in the homicide rate. Nor has there been any

valid research to prove that capital punishment actually deters crime. Contemporary studies show no pronounced difference in the rate of murders and other crimes of violence between states in the United States which impose capital punishment and those bordering on them which do not. In fact, many states and countries without capital punishment have an incidence of homicide (murder and nonnegligent manslaughter) below that of contiguous and comparable jurisdictions where the death penalty is in effect for such offenses.⁴

During the 5-year period from 1960 to 1965, the Federal Bureau of Investigation estimated that there were 43,890 murders and nonnegligent manslaughters. Only 145 persons were executed for murder during the same period. It is estimated that one-fourth of the total homicides were defined as capital crimes. Accordingly, approximately 8 persons per 1,000 capital crimes paid the extreme penalty. When such a small proportion—8 persons out of every 1,000 murders—surrender their lives, it is difficult to understand how the death penalty can be regarded as a deterrent to homicide. As one of the world's foremost criminologists (Professor Thorsten Sellin of the University of Pennsylvania) has said: "The death penalty has failed as a deterrent."

The deterrent theory is also irrelevant because most murders are committed by persons who are in an irrational state of mind, often with only a moment's forethought. Such persons are frequently so perplexed and bewildered at the time of a quarrel that they are not capable of being objective in their judgments and actions.

A high proportion of homicides are committed by family members, friends, or lovers of the victims. Only a relatively small number commit their crimes deliberately. These do not plan on being apprehended. Thus, most persons who commit a homicide seldom deliberate beforehand or contemplate the consequences, and many do not intend the death of the victim.

Crimes of violence frequently are committed by persons suffering from serious mental illness. To a large extent their crimes also are impulsive; often they are irresistibly driven to their crimes. Their mental disorder is not always detected until violent acts occur. To expect the death penalty to act as an effective deterrent to these mentally ill persons is to expect abnormal people to act in terms of an objective and rational calculation of possible consequences.

Finally, no one has yet been able to demonstrate that abolition of capital punishment leads to an increase in capital crimes. Here again the necessary evidence is hard to get at, e.g., to what degree does the existence of the death sentence act as a deterrent? However, the before and after rate of homicides in jurisdictions where abolition has just occurred reflect no increase. In support of this statement we quote from page 7 of the 1964 *Uniform Crime Reports*, published by the Federal Bureau of Investigation.

"There were over 1,350 felony murders committed in 1965 during the course of crimes such as robberies, gangland slayings, sex crimes, murders of police officers, etc. It is the law enforcement position that this is generally the type of killing for which the death penalty should be retained as deterrent rather than the impulsive type of murders described earlier. Statistical measurement of the deterrent effect of the death penalty or the lack of it is not conclusive from data currently available but the following is set forth for information. The felony murder rate in the eight non-capital punishment states for the three-year period 1962-1964 was 4 per million inhabitants. In the remaining states where the death penalty was legally possible, the felony murder rate was 6 per million population. On the other hand, the proportion of felony murder to the total willful killings in the noncapital punishment states during the same period was 17 per cent, while in capital punishment states the percentage of felony murder was 13 per cent. As indicated earlier, the basic conditions which cause murder, including felony murder, vary widely from state to state. The extent to which these conditions exist will essentially determine the amount of murder; other factors are contributory."⁵

Much of the pressure on behalf of retaining capital punishment comes from the law enforcement community. It is held that the death penalty is significant as a deterrent to the killing of policemen. Such an allegation cannot, however, be demonstrated empirically. On the contrary, a study conducted in 1955 indicates that, during the period between 1919 and 1954; six states having no death penalty

⁴ *Ibid.*, pp. 15, 117-18; see also United Nations Publication ST/SOA/SD/9, 62. IV, 2, "Capital Punishment," 1962.

⁵ See also statistics of the Canadian Correction Association as reproduced in *Social Statements of the Lutheran Church in America-Canada Section*, 1965, pp. 7-8.

and the eleven states bordering on them showed the same rate of policemen killed. More recent statistics supplied by the Federal Bureau of Investigation for 1961-63 show no significant difference between the two groups of states included in the earlier study.⁶

4. *Most of those convicted of homicide eventually return to society as law-abiding citizens.* The retentionists have expressed concern about the recurrence of another homicide, either in prison or following release to the free community. This is not borne out by the facts. Career prison administrators assert that lifeterms convicted of murder rarely commit another homicide and declare that society is amply protected by a sentence to life imprisonment.⁷ Relapse into crime is rare among persons convicted of first-degree murder who later are paroled.

In most jurisdictions persons serving life terms are eligible for release—but not necessarily released—to society after serving 15 years of their sentence. A relatively high proportion return to their communities as law-abiding, responsible citizens. Professor Thorsten Sellin states, "Prisoners serving life sentences for murder do not constitute a special threat to safety of other prisoners, or to the prison staff. They are, as a rule, among the best behaved prisoners and if paroled, they are the least likely to violate parole by commission of a new crime. In the few cases where such a violation occurs, the crime is usually not a very serious one. A repeated homicide is almost unheard of."

A recent 10-year-study in California showed that of 342 persons committed for first-degree murder who were paroled after serving a prison term averaging 12 years, 90 per cent completed their parole without violation. Of those who violated the conditions of parole, only 2.9 per cent committed violations of such seriousness that they had to be returned to prison.

5. *The death penalty results in delayed justice and costly trials.* Capital punishment is an obstruction to the swift and certain administration of criminal justice. Legal trials in capital crimes are involved and costly. Trial and appellate courts invariably are confronted with numerous post-trial applications, petitions, and appeals which, in the aggregate, are time consuming.

There are also inordinate delays from the time of conviction until execution. In California during the last dozen years, for example, no one has been executed less than 8 months after being received in death row. One man spent more than 11 years in death row and was finally put to death. In California the median period for those awaiting execution is 15 months. Two men in the Louisiana death house have been awaiting execution for nearly 13 years. Society is thus carrying out a deliberate infliction of the death penalty months or years after the occurrence of the offence.

6. *An execution makes final and irrevocable any miscarriage of justice.* The death penalty poses the frightening possibility of putting to death an innocent person. There are a number of instances where innocent men have been executed and also cases where the stay of execution came too late—the execution was under way. Convictions may sometimes be obtained by forced confessions or other violations of due process of law. Execution is the only penalty in which a legal error revealed later cannot be corrected. From a humane standpoint this by itself is sufficient reason to abolish the death penalty.

III

For the reasons summarized above it is concluded that capital punishment, far from assisting civil government to perform its divinely-ordained role, actually conflicts with the state's task of maintaining order and justice for the sake of its citizens.

Efforts to secure the abolition of capital punishment should be made within the context of a larger concern about those social ills which breed criminal behavior. Such a concern is stated most clearly in the concluding paragraph of the background paper which accompanied the recent statement by the Canada Section of the Lutheran Church in America. It reads:

"The first objective of the State and its citizens must be to strive for adequate treatment facilities in correctional institutions, for increased parole and probation services, for intensified study of the causes of anti-social behavior and crime, and for programs and social services which work towards the elimination of such causes. Coupled with this must be the strengthened of family life and the building up of strong spiritual and moral values in

⁶ As reported in an address by Thorsten Sellin, Professor of Sociology, University of Pennsylvania to the Canadian Society for the abolition of the Death Penalty, February 7, 1965.

⁷ LCA-Canada Section, *Op. cit.*, p. 9.

the individuals who make up our society. The Church must constantly re-appraise its ministry to people in conflict with society and its role in strengthening family life and upholding community values. Only after intensive efforts by both State and Church towards the improvement of social conditions and of the correctional system will society be in a position to assess an appropriate response to those who commit capital crimes."⁸

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SOCIAL STATEMENTS, OF THE LUTHERAN CHURCH IN AMERICA

CAPITAL PUNISHMENT

(Adopted by the Third Biennial Convention, Kansas City, Mo., June 21-29, 1966)

Within recent years, there has been throughout North America a marked increase in the intensity of debate on the question of abolishing the death penalty. This situation has been accompanied by the actual abolition of capital punishment in ten states and two dependencies of the United States, qualified abolition in three states, and in six states a cessation in the use of the death penalty since 1955. Although the issue of abolition has been widely debated in Canada in recent years, a free vote in Parliament on April 5, 1966, failed to end the legality of the death sentence. However, during the last two years or more, death sentences in Canada have been consistently commuted.

These developments have been accompanied by increased attention to the social and psychological causes of crime, the search for improved methods of crime prevention and law enforcement, efforts at revising the penal code and judicial process, and pressure for more adequate methods in the rehabilitation of convicted criminals. There has been a concurrent concern for persons who, because of ethnic or economic status, are seriously hampered in defending themselves in criminal proceedings. It has been increasingly recognized that the socially disadvantaged are forced to bear a double burden: intolerable conditions of life which render them especially vulnerable to forces that incite to crime, and the denial of equal justice through adequate defense.

In seeking to make a responsible judgment on the question of capital punishment, the following considerations must be taken into account:

1. The Right of the State to Take Life

The biblical and confessional witness asserts that the state is responsible under God for the protection of its citizens and the maintenance of justice and public order. For the exercise of its mandate, the state has been entrusted by God with the power to take human life when the failure to do so constitutes a clear danger of the civil community. The possession of this power is not, however, to be interpreted as a command from God that death shall necessarily be employed in punishment for crime. On the other hand, a decision on the part of civil government to abolish the death penalty is not to be construed as a repudiation of the inherent power of the state to take life in the exercise of its divine mandate.

2. Human Rights and Equality Before the Law

The state is commanded by God to wield its power for the sake of freedom, order and justice. The employment of the death penalty at present is a clear

⁸ LCA-Canada Section, *Op. city.*, p. 11.

misuse of this mandate because (a) it falls disproportionately upon those least able to defend themselves, (b) it makes irrevocable any miscarriage of justice, and (c) it ends the possibility of restoring the convicted person to effective and productive citizenship.

3. *The Invalidity of the Deterrence Theory*

Insights from both criminal psychology and the social causes of crime indicate the impossibility of demonstrating a deterrent value in capital punishment. Contemporary studies show no pronounced difference in the rate of murders and other crime of violence between States in the United States which impose capital punishment and those bordering on them which do not.

In the light of the above considerations, the Lutheran Church in America :

urges the abolition of capital punishment ;

urges the members of its congregations in those places where capital punishment is still a legal penalty to encourage their legislatures to abolish it ;

urges citizens everywhere to work with persistence for the improvement of the total system of criminal justice, concerning themselves with adequate appropriations, the improved administration of courts and sentencing practices, adequate probation and parole resources, better penal and correctional institutions, and intensified study of delinquency and crime ;

urges the continued development of a massive assault on those social conditions which breed hostility toward society and disrespect for the law.

EXECUTIONS UNDER STATE AUTHORITY—JANUARY 20, 1864 TO AUGUST 10, 1966

(Compiled by Negley K. Teeters, Visiting Professor of Sociology, Hartwick College, Oneonta, N.Y. and Charles J. Zibulka, B.A., University of Washington)

This is a compilation of the names, counties, and dates of execution of every individual executed at a State penal institution from the first executions in the Vermont State Prison in 1864. Executions in the District of Columbia have been included, together with the electrocutions at the Cook County Jail, Chicago, Illinois, and the country jail hangings in Kentucky for rape. In the latter two instances, county authorities exercised concurrent jurisdiction with State authorities.

This compilation is presented and distributed in the hopes that it will lead to further studies of capital punishment on the State level. With executions from every State having capital punishment listed in this compilation, it will be possible to use newspapers and the published opinions of courts of appellate jurisdiction as sources of information upon these individuals, especially regarding their crimes.

In the column headed CRIME, the crime is presumed to be murder, unless another crime is specifically named. (14 States have no degree of murder). In the column header APPEAL, the symbol * denotes an appeal to the highest State appellate Court ; the symbol ** denotes an appeal to the United States Supreme Court (this included petitions for writs of Certiorari, most of which are denied) ; the symbol *** denotes an application for the writ of Habeas Corpus to the United States District Court and/or appeal to the United States Circuit Court of Appeals. The symbol n.t. means a new trial has been awarded by order of one of the above courts.

Information on appeals has been derived from the Indices to the *Decennial Digests* published by West Publishing Company. This data is not completely accurate, as the Indices alone were hurriedly consulted for legal citations. Many defendants with common surnames have had their appeals confused with other defendants of the same name not executed. OR some appeals have been docketed under the name of a crime partner who was not executed. A listing of appeals for executions since 1956 is very incomplete, as a 10-year table of cases has not been compiled for that period. Many appeals so reported are either summarily affirmed or argued upon legal points only, and no information as to the crime is included in the opinion.

Some institutions have furnished information as to race and age, which are included. Sometimes age is that upon reception, which can be some time earlier than execution.

Our heartfelt thanks to the Wardens and Departments of Correction of the various States who have taken the trouble to furnish us with the information which is, in part, distributed in this compilation.

ALABAMA ELECTROCUTIONS

[Explanation of symbols to the tables below precede.]

Name	County	Race	Age	Executed	Appeal	Crime
1. DeVaughan, Horace	Jefferson	N		Apr. 8, 1927		Murder.
2. Murphy, W. Virgil	Houston			Apr. 15, 1927		Do.
3. Bachelor, Clyde Reese	Elmore			July 23, 1927	*	Do.
4. Hall, Sam	Autauga	N		Sept. 9, 1927	*	Do.
5. Coleman, Jeff	Jefferson	N		Dec. 16, 1927	*	Do.
6. Eatman, Bob	Hale	N		Dec. 30, 1927		Do.
7. Washington, Charlie	Jefferson	N		Mar. 9, 1928	*	Do.
8. Burchfield, John	Chambers			do.	*	Do.
9. Brooks, Isiah	Crenshaw	N		Apr. 6, 1928	*	Do.
10. Shelton, Robert	Mobile	N		June 15, 1928	*	Do.
11. Peoples, Rodel	Jefferson	N		July 10, 1928	*	Do.
12. Jiles, Dock	Lee	N		Mar. 15, 1929	*	Do.
13. Carter, Will	Jefferson	N		July 26, 1929	*	Do.
14. Harris, Charlie	Barbour	N		Aug. 23, 1929	*	Do.
15. Jarvis, Jack	Mobile			Mar. 14, 1930	*	Do.
16. Miles, Roy Lee	Bullock	N		June 20, 1930	*	Do.
17. Harris, Edgar	Marengo	N		do.	*	Do.
18. Brown, Jack	do.	N		do.		Do.
19. Gilmore, Silena	Jefferson	N		June 24, 1930		Female.
20. Malone, Cleveland	Talladega	N		Feb. 27, 1931		Rape.
21. Daniels, Mose	Montgomery	N		do.	*	Do.
22. Bates, Spencer	Sumter	N		Mar. 29, 1931	*	Murder.
23. Ashe, Richard	Hale	N		Jan. 15, 1932	*	Do.
24. Williams, Charley	Mobile	N		do.	*	Rape.
25. Irvin, Percy	Lowndes	N		Mar. 11, 1932	*	Robbery.
26. Mims, Isaac	do.	N		do.	*	Murder.
27. Jones, Charlie	Jefferson	N		Feb. 3, 1933	*	Do.
28. Johnson, Willie James	do.	N		do.	*	Do.
29. Meadows, George	Montgomery	N		Oct. 27, 1933		Robbery.
30. Waller, Ernest	Dallas	N		Feb. 9, 1934		Murder.
31. Thompson, John	Mobile	N		do.	*	Do.
32. White, Horie	do.	N		do.	*	Do.
33. Foster, Bennie	Dallas	N		do.	*	Do.
34. Roper, Solomon	do.	N		do.	*	Do.
35. Thomas, Ed	Hale	N		Mar. 1, 1935		Do.
36. Ruff, Blake	Clay	N		Mar. 22, 1935	*	Do.
37. Preston, Johnny	Lee	N	36	Jan. 31, 1936 ¹	*	Do.
38. Dudley, Robert	Jefferson	N	27	Mar. 20, 1936	*	Do.
39. Roper, Eddie	do.	N	30	do.	*	Do.
40. Peterson, Henry	Montgomery	N	29	Mar. 27, 1936	*	Do.
41. Bynum, Willie E.	do.	N	26	Apr. 17, 1936	*	Do.
42. Cosey, Waddie	Morgan	N	30	May 15, 1936	*	Do.
43. Stewart, Jimmie	Montgomery	N	33	do.	*	Do.
44. Gast, Joseph Wheeler	Tuscaloosa		37	June 5, 1936	*	Do.
45. Vincent, Wesley	Jefferson		19	June 12, 1936	**	Do.
46. Waters, Gabel	Sumter	N	19	do.		Do.
47. Harrell, Tyrie	Elmore	N	44	do.	*	Do.
48. Aravant, Elmer N.	Lowndes	N	33	June 19, 1936	*	Do.
49. Miller, Walter	Madison	N	39	do.		Do.
50. Perkins, Tom	Monroe	N	23	July 3, 1936		Do.
51. Smiley, A.B.	Elmore	N	30	July 10, 1936		Do.
52. Patterson, Oscar	Coosa	N	24	July 31, 1936	*	Rape.
53. Summerville, Ed Lee	Pickens	N	35	Aug. 7, 1936		Murder.
54. Skelton, Edgar Prude	Tuscaloosa		36	Jan. 29, 1937	*	Do.
55. Franklin, James Victor	do.		31	Feb. 26, 1937	*	Do.
56. Collins, Roosevelt	Calhoun	N	31	June 11, 1937	*	Rape.
57. Oliver, Arthur	Elmore		46	Sept. 10, 1937	*	Murder.
58. Millhouse, Frank	Mobile	N	18	Jan. 28, 1938	*	Do.
59. Vaughn, R. P.	do.	N	20	do.	*	Do.
60. Davidson, Mack	Baldwin	N	28	July 22, 1938		Robbery.
61. Young, Gary	Mobile	N	41	do.		Murder.
62. Whitfield, Willie James	Montgomery	N	17	Aug. 19, 1938		Do.
63. Cobb, Curtis	Jefferson	N	25	do.	*	Rape.
64. Brown, Jimmie	do.	N	25	Nov. 25, 1938	*	Do.
65. Vaughan, Connie	do.	N	27	do.	*	Do.
66. Smith, Adolph	Geneva	N	28	Dec. 30, 1938		Robbery.
67. Ware, Fred	Randolph	N	24	Feb. 17, 1939		Murder.
68. Kennedy, Joe Lee	Jefferson	N	33	Mar. 17, 1939	*	Do.
69. Wimbush, Edward	do.	N	22	do.	*	Do.
70. Williams, Tom	Elmore	N	28	Apr. 14, 1939	*	Do.
71. Tubbs, Grady	Hale	N	21	June 9, 1939	*	Do.
72. Frazier, Joseph	Marengo	N	22	do.	*	Do.
73. White, Charles	Pike	N	46	do.	*	Rape.
74. Anderson, Ray	Jefferson	N	32	do.	*	Do.
75. Sanders, Robert	Montgomery	N	37	July 7, 1939		Murder.
76. Jackson, Mack	Jefferson	N	23	Aug. 18, 1939	*	Do.
77. Tucker, Calvin	Mobile	N	24	Feb. 26, 1940		Do.
78. Avery, Lonnie	Bibb	N	32	Mar. 15, 1940	**	Do.

ALABAMA ELECTROCUTIONS—Continued

Name	County	Race	Age	Executed	Appeal	Crime
79. Bell, Herman	Mobile	N	23	Mar. 29, 1940	*	Rape.
80. Williams, David	Jefferson	N	22	do.	*	Murder.
81. Jackson, Mack	do.	N	28	do.	*	Do.
82. Ragland, Judge	Lee	N	33	May 3, 1940	*	Do.
83. McGuire, David	Jefferson	N	25	May 24, 1940	*	Do.
84. Williams, Willie C.	do.	N	31	June 14, 1940	*	Do.
85. Brandon, Willie James	Coffee	N	22	Aug. 9, 1940	*	Rape.
86. Jackson, Julius	Talladega	N	29	July 11, 1941	*	Murder.
87. Clark, William	Limestone	N	18	July 17, 1941	**	Rape.
88. Hass, Frank	Morgan	N	22	Aug. 8, 1941	*	Burglary.
89. Jones, Robert	Greene	N	24	do.	*	Murder.
90. Dyer, Albert	Jefferson	N	34	Jan. 9, 1942	*	Do.
91. Powell, Dock	Clay	N	27	Jan. 23, 1942	*	Do.
92. Gipson, Esker W.	Mobile	N	33	Jan. 29, 1942	*	Do.
93. Horring, Bud Phelps	Coffee	N	69	Mar. 13, 1942	*	Do.
94. Hayes, Ed Jr.	Marengo	N	34	May 1, 1942	*	Do.
95. Hardy, Clarence	Jefferson	N	42	do.	*	Do.
96. Patterson, William M.	do.	N	25	June 26, 1942	*	Do.
97. Snead, William N.	do.	N	32	do.	*	Rape.
98. Mealer, Paul	Tuscaloosa	N	40	July 10, 1942	*	Murder.
99. Bassie, Haywood	Marengo	N	24	Feb. 19, 1943	*	Do.
100. Johnson, Frank	Jefferson	N	24	June 4, 1943	**	Rape.
101. Goldsmith, Leroy	Montgomery	N	38	Aug. 6, 1943	*	Murder.
102. Daniels, Henry, Jr.	Mobile	N	19	Aug. 13, 1943	*	Rape.
103. Robinson, Curtis	do.	N	20	do.	*	Do.
104. Mitchell, Lewis	Montgomery	N	22	Mar. 24, 1944	*	Murder.
105. Vernon, Joe	Jefferson	N	---	Nov. 3, 1944	**	Do.
106. Reddy, Daniel T.	do.	N	19	Mar. 16, 1945	*	Rape.
107. Hackenberry, Joseph H.	do.	N	21	do.	*	Do.
108. Patton, Ed Lucky	Hale	N	45	July 20, 1945	*	Murder.
109. Hall, Peter Paul	Barbour	N	---	Jan. 18, 1946	*	Murder-rape.
110. Johnson, Ernest	Hale	N	17½	Jan. 25, 1946	*	Murder.
111. Brown, Richard	do.	N	---	Feb. 1, 1946	*	Do.
112. Pilley, Robert S.	Jefferson	N	26	Apr. 19, 1946	*	Do.
113. Wingard, Lester	Montgomery	N	---	May 24, 1946	*	Do.
114. Hicks, Fred	Hale	N	---	do.	*	Do.
115. Mincey, Joe	Pike	N	---	June 14, 1946	*	Do.
116. Alston, William Edgar	Walker	N	---	Aug. 16, 1946	*	Do.
117. Smith, John B.	Tuscaloosa	N	---	Dec. 13, 1946	*	Rape.
118. Brooks, Booker T.	Chambers	N	---	Mar. 14, 1947	*	Murder.
119. Garrett, Israel	Hale	N	---	May 23, 1947	*	Do.
120. Grant, Noel J.	Baldwin	N	40	Mar. 19, 1948	*	Do.
121. Munson, John Henry, Jr.	Jefferson	N	28	do.	*	Do.
122. Cobb, Philip	Montgomery	N	23	Mar. 11, 1949	*	Do.
123. Waygood, Percy Lee	Jefferson	N	26	Mar. 18, 1949	*	Do.
124. Snead, Buster	Bibb	N	41	Mar. 25, 1949	*	Do.
125. Green, Nehemiah	Jefferson	N	26	Aug. 12, 1949	*	Do.
126. Winters, J.C.	Elmore	N	18	do.	*	Do.
127. Smith, Charlie	Mobile	N	---	May 16, 1950	*	Do.
128. Odom, Homer Garland	Jefferson	N	---	July 21, 1950	*	Do.
129. Sims, Claude B.	do.	N	---	do.	*	Do.
130. Keith, Joe	Limestone	N	---	do.	*	Do.
131. Drake, Cooper	Shelby	N	29	May 2, 1952	*	Murder-attempted.
132. Smith, Andrew Lee	Jefferson	N	31	do.	*	rape.
133. Forrest, Leveret	Mobile	N	19	May 9, 1952	*	Murder.
134. Miles, Desmond	Covington	N	34	Oct. 10, 1952	*	Do.
135. Myhand, Reuben	Geneva	N	---	Aug. 28, 1953	*	Do.
136. Dennison, Earle	Elmore	N	---	Sept. 4, 1953	*	Rape.
137. Hardy, Will	Tuscaloosa	N	---	Jan. 22, 1954	*	Female.
138. Jones, Albert Lee	Russell	N	---	Apr. 23, 1954	*	Murder.
139. Grimes, Arthur Lee	do.	N	---	do.	*	Do.
140. Jackson, Jessie Frank	Montgomery	N	---	June 4, 1954	*	Do.
141. Jackson, Melvin	Russell	N	18	Sept. 28, 1956	*	Rape.
142. Johnson, Clarence	Wilcox	N	56	Mar. 22, 1957	*	Do.
143. Martin, Rhonda Belle	Montgomery	N	---	Oct. 11, 1957	**	Murder.
144. Reeves, Jeremiah	do.	N	19	Mar. 28, 1958	*	Female.
145. Walker, Ernest Cornell	Jefferson	N	24	Dec. 4, 1959	*	Rape.
146. Dockery, Edwin Ray	Morgan	N	24	Dec. 11, 1959	*	Do.
147. Boggs, Columbus	Dallas	N	26	Apr. 29, 1960	*	Murder.
148. Johnson, Joe Henry	Limestone	N	17	Nov. 24, 1961	*	Do.
149. Gosa, Wilmon	Tuscaloosa	N	43	Aug. 31, 1962	*	Do.
150. Coburn, James	Dallas	N	39	Sept. 4, 1964	*	Robbery.
151. Bowen, William Frank Jr.	Madison	N	33	Jan. 15, 1965	*	Murder.

* List has February.

* Automatic appeal started in 1943.

* New trial.

ARIZONA STATE PRISON

Name	County	Executed	Appeal	Race
HANGINGS (TERRITORIAL PRISON)				
1. Lopez, Jose	Pinal	Jan. 5, 1910 .....	.....
2. Sanchez, Cesario	Coconino	Dec. 2, 1910 .....	.....
3. Barela, Rafael	do	do .....	.....
4. Franco, Domingo	Santa Cruz	July 7, 1911 .....	.....
5. Galles, Alejandra	Yavapai	July 28, 1911 .....	.....
HANGINGS (STATEHOOD)				
6. Villalobo, Ramon	Pinal	Dec. 10, 1915	*	
7. Rodriguez, Francisco	Maricopa	May 19, 1916	*	
8. Chavez, N. B.	Yavapai	June 9, 1916	*	
9. Peralta, Miguel	do	July 7, 1916	*	
10. Torrez, Simplicio ¹	Coconino	Apr. 16, 1920	*	
11. Dominguez, Pedro	Greenlee	Jan. 14, 1921	*	
12. Martin, Nichan	Yavapai	Sept. 9, 1921	*	
13. Lauterio, Ricardo	Maricopa	Jan. 13, 1922	*	
14. Roman, Tomas	do	do	*	
15. West, Theodore	Mohave	Sept. 29, 1922	*	
16. Hadley, Paul V.	Pima	Apr. 13, 1923	*	
17. Martinez, Manuel	Santa Cruz	Aug. 10, 1923	*	
18. Ward, William B.	Pinal	June 20, 1924	*	Negro.
19. Flowers, Sam	Maricopa	Jan. 9, 1925	*	Do.
20. Lawrence, William	do	Jan. 8, 1926	* **	
21. Blackburn, Charles J.	Graham	May 20, 1927	*	
22. Sam, B. W. L.	Mohave	June 22, 1928	* 5:16 a.m.	Chinese.
23. Chin, Shew	do	do	* 5:42 a.m.	Do.
24. Har, Jew	do	do	* 6:06 a.m.	Do.
25. Long, Gee King	do	do	* 6:33 a.m.	Do.
26. Dugan, Eva	Pima	Feb. 21, 1930	* female	
27. Macias, Refugio	Greenlee	Mar. 7, 1930	*	
28. Young, Herman	Pima	Aug. 21, 1931	*	
LETHAL GAS (ADOPTED OCT. 28, 1933)				
29. Hernandez, Manuel	Pinal	July 6, 1934	*	
30. Hernandez, Fred	do	do	*	
31. Shaughnessy, George	Santa Cruz	July 13, 1934	*	
32. Douglas, Louis Sprague	Yuma	Aug. 31, 1934	*	
33. Sullivan, Jack	Cochise	May 15, 1936	*	
34. Rascon, Frank	Maricopa	July 10, 1936	*	
35. Cochrane, Roland H.	do	Oct. 2, 1936	*	
36. Duarte, Frank	Pinal	Jan. 8, 1937	*	
37. Patten, Ernest	Apache	Aug. 13, 1937	*	
38. Anderson, Burt	Yavapai	do	*	Negro.
39. Knight, David Benjamin	Maricopa	Sept. 3, 1937	*	
40. Odon, Elvin Jack	do	Jan. 14, 1938	*	
41. Bailey, James	Pinal	Apr. 28, 1939	*	
42. Conner, Frank	Santa Cruz	Sept. 22, 1939	*	Do.
43. Burgunder, Robert	Maricopa	Aug. 9, 1940	*	
44. Levice, J. C.	Cochise	Jan. 8, 1943	*	Do.
45. Sanders, Charles	do	do	*	Do.
46. Cole, Grady B.	do	do	*	Do.
47. Rawling, James C.	Greenlee	Feb. 19, 1943	*	
48. Macias, Elisandro	Pima	Apr. 27, 1943	*	
49. Ransom, John Earnest	Maricopa	Jan. 5, 1945	*	Do.
50. Smith, Lee Albert	Cochise	Apr. 6, 1945	*	
51. Holley, U. L.	Gila	Apr. 13, 1945	*	Do.
52. Serna, Angel B.	Pinal	July 29, 1950	* **	
53. Lantz, Harold Thomas	Cochise	July 18, 1951	*	
54. Folk, Carl J.	Navajo	Mar. 4, 1955	*	
55. Bartholomew, Lester Edward	Maricopa	Aug. 31, 1955	*	
56. Coey, Leonard	do	May 22, 1957	*	
57. Thomas, Arthur	Cochise	Nov. 17, 1958	* **	Do.
58. Jordan, Richard Lewis	Pima	Nov. 22, 1958	* **	
59. Craft, Lonnie	Maricopa	Mar. 7, 1959	*	
60. Fenton, Robert D.	Pima	Mar. 11, 1960	* **	
61. Robinson, Honor	Maricopa	Oct. 31, 1961	*	Do.
62. McGee, Patrick M.	Coconino	Mar. 8, 1963	* **	
63. Silvas, Manuel E.	Pinal	Mar. 14, 1963	* **	

¹ Capital punishment abolished Dec. 8, 1916; restored Dec. 5, 1918.

ARKANSAS STATE PENITENTIARY ELECTROCUTIONS

Name	County	Race	Executed	Appeal	Crime
1. Simms, Lee	Prarie	N	Sept. 5, 1913	*	Rape.
2. King, Ed	Ashley	N	Dec. 12, 1913	*	Murder.
3. Felton, Fred	Lincoln	N	Mar. 28, 1914	*	Rape.
4. Neely, Will	Union	N	Dec. 8, 1914	*	Murder.
5. Hodges, Arthur	Clark	N	Dec. 18, 1914	*	Do.
6. Hall, John	Craighead	N	Apr. 2, 1915	*	Do.
7. Owens, Walter	do	N	do	*	Do.
8. Simms, Clay	Desha	N	Mar. 19, 1915	*	Do.
9. Derrick, Sam	Monroe	N	July 28, 1915	*	Do.
10. Hawkins, John	Little River	N	Mar. 13, 1917	*	Do.
11. Smith, Henry	Crittenden	N	Mar. 31, 1917	*	Do.
12. Biggs, Tom	Conway	N	June 22, 1917	*	Do.
13. Johnson, Aaron	Desha	N	do	*	Do.
14. Daffron, Solomon	Polk	N	July 26, 1918	*	Do.
15. Caughron, Ben	do	N	Aug. 23, 1918	*	Do.
16. Tobay, Vick	Washington	Ind	Aug. 14, 1920	*	Do.
17. Cooper, Charlie	Ouachita	N	Nov. 19, 1920	*	Do.
18. Reynolds, Revertia	Lincoln	N	Apr. 29, 1921	*	Do.
19. Clarke, Virgil	Chicot	N	July 17, 1921	*	Do.
20. Ratcliff, Amos	Carroll	N	Oct. 14, 1921	*	Do.
21. Price, John	Phillips	N	Dec. 30, 1921	*	Do.
22. Wills, James	Drew	N	Mar. 10, 1922	*	Do.
23. Sease, Herbert	Baxter	N	July 27, 1922	*	Do.
24. Richardson, Duncan	Ashley	N	Feb. 22, 1923	*	Do.
25. Richardson, Ben	do	N	do	*	Do.
26. Bullen, E. G	do	N	do	*	Do.
27. Debord, Will	Stone	N	do	*	Do.
28. Owens, John	Little River	N	Aug. 24, 1923	*	Do.
29. Connell, Emory	Pulaski	N	Apr. 18, 1924	*	Do.
30. Buck, Spurgeon	Crawford	N	June 27, 1924	*	Do.
31. Bettis, Will	do	N	do	*	Do.
32. Buster, Jack	Jefferson	N	June 26, 1925	*	Do.
33. Flowers, Perk	Columbia	N	do	*	Do.
34. Harris, Aaron	Ashley	N	Jan. 8, 1926	*	Do.
35. Clark, Tyrus	Benton	N	do	*	Do.
36. Edmons, Roy	Union	N	Feb. 5, 1926	*	Do.
37. Walker, Lee	do	N	do	*	Do.
38. Johnson, Cephus	Ouachita	N	Feb. 12, 1926	*	Do.
39. Canady, John	do	N	do	*	Do.
40. Mason, Clint	do	N	do	*	Do.
41. Jones, Ishman	do	N	do	*	Do.
42. Martin, Willie	Pulaski	N	June 9, 1926	*	Do.
43. Jones, Albert	Mississippi	N	do	*	Do.
44. Dixon, Lonnie	Pulaski	N	June 24, 1927	*	Do.
45. Martin, Booker	Monroe	N	Sept. 2, 1927	*	Do.
46. Cathey, Horace	do	N	do	*	Do.
47. Eutsey, Willie	Ouachita	N	Mar. 30, 1928	*	Do.
48. McKenzie, Will	do	N	do	*	Do.
49. Brown, Sinner	Hempstead	N	do 1928	*	Do.
50. Robinson, Pete	Union	N	Sept. 10, 1928	*	Do.
51. Evers, Ben	Arkansas	N	Jan. 24, 1930	*	Do.
52. Brown, Mack	Little River	N	Mar. 21, 1930	*	Do.
53. Green, John	do	N	do	*	Do.
54. Ambrosia, Alford	Ouachita	N	Jun. 20, 1930	*	Do.
55. Nolan, Bud	Little River	N	Jul. 25, 1930	*	Do.
56. Howell, W. H.	Crawford	N	Aug. 15, 1930	*	Do.
57. Washington, George	Pulaski	N	Nov. 14, 1930	*	Do.
58. Turnage, James	do	N	do	*	Do.
59. Davis, Willie	do	N	do	*	Do.
60. Long, Eddie	do	N	do	*	Do.
61. Lawson, James	Bradley	N	Jul. 31, 1931	*	Do.
62. McBryde, Louie	Clark	N	Jul. 8, 1932	*	Do.
63. Daniels, Freeling	Miller	N	Nov. 8, 1932	*	Rape.
64. Hill, James	Phillips	N	Jun. 20, 1933	*	Do.
65. Williams, Woodie	Pulaski	N	Jul. 14, 1933	*	Murder.
66. Banks, J. C.	do	N	Dec. 8, 1933	*	Do.
67. McDaniels, Len	Lonoke	N	do	*	Do.
68. Butler, Ben	Craighead	N	Feb. 9, 1934	*	Do.
69. Jackson, Luther	Pulaski	N	May 11, 1934	*	Do.
70. Mitchell, Purcell	Union	N	Nov. 2, 1934	*	Do.
71. Rose, Robert	Independence	N	Feb. 23, 1935	*	Do.
72. Barnes, Frank	Mississippi	N	Mar. 1, 1935	*	Do.
73. Shank, Mark	Saline	N	Mar. 8, 1935	*	Do.
74. Freeman, Tom	Chicot	N	Aug. 23, 1935	*	Do.
75. Nelson, Paul	Jackson	N	Sept. 28, 1935	*	Do.
76. Barnes, Bill	Mississippi	N	do	*	Do.
77. Dobbs, Frank	Saline	N	Nov. 11, 1935	*	Do.
78. Hawkins, Ben	Mississippi	N	Dec. 12, 1935	*	Do.
79. Nelson, Mack	do	N	do	*	Do.
80. House, Roy	Garland	N	Oct. 23, 1936	*	Do.
81. Turner, Dennis	Calhoun	N	Nov. 6, 1936	*	Do.
82. Smith, Willie	Drew	N	Dec. 11, 1936	*	Do.
83. White, Beverly	do	N	do	*	Do.
84. McCormick, F.	do	N	do	*	Do.

ARKANSAS STATE PENITENTIARY ELECTROCUTIONS—CONTINUED

Name	County	Race	Executed	Appeal	Crime
85. Mattock, Clinton	Calhoun	N	Apr. 23, 1937		Murder.
86. Austin, James	Garland	N	May 14, 1937	*	Do.
87. Hutto, Tom M.	Union	N	Sept. 3, 1937		Do.
88. Edwards, Sandy	Hempstead	N	Sept. 24, 1937		Do.
89. Amos, Jessie	Lonoke	N	Oct. 15, 1937	*	Rape.
90. Pigue, Duncan	do	N	Feb. 4, 1938		Murder.
91. Ware, Leroy	Ashley	N	Feb. 25, 1938		Do.
92. Noble, Willie	Miller	N	Mar. 11, 1938	*	Do.
93. Sims, Joe	Saline	N	Mar. 18, 1938	*	Do.
94. Brocklehurst, Lester	Lonoke		do		Do.
95. Thomas, Theo	Crittenden	N	June 24, 1938	*	Do.
96. Carter, Frank	do	N	do	*	Do.
97. Anderson, Joe	Garland		Mar. 10, 1939	*	Murder.
98. Dickson, Fred	do		May 19, 1939	*	Do.
99. Arnell, Fred	Miller	N	do		Rape.
100. Williams, Hilton	Pulaski	N	June 18, 1939		Murder.
101. Carruthers, James	Mississippi	N	June 30, 1939		Rape.
102. Clayton, Bubble	do	N	June 20, 1939		Do.
103. Williams, Sylvester	Jefferson	N	June 30, 1939	*	Murder.
104. Charles, James	Pulaski	N	Jan. 19, 1940	*	Do.
105. Manning, Otis	Union	N	Apr. 12, 1940		Do.
106. Gulley, Jack	Nevada	N	Nov. 15, 1940	*	Do.
107. Dillard, James	Desha	N	Dec. 13, 1940		Do.
108. Mooney, John	Woodruff	N	Jan. 24, 1941		Rape.
109. Peyton, A. C.	Crittenden	N	May 15, 1941		Murder.
110. Lewis, Percy	Phillips	N	June 6, 1941	*	Do.
111. Riney, John Henry	Desha	N	June 20, 1941		Rape.
112. Washington, John	White	N	Oct. 11, 1941		Murder.
113. Herron, Jimmie	Little River	N	Jan. 23, 1942		Do.
114. Adams, Ben	Woodruff		June 5, 1942	*	Do.
115. Jones, A. T.	Phillips	N	July 21, 1942	*	Do.
116. Luchyardo, A. D.	Lonoke	N	Nov. 20, 1942		Do.
117. Allison, Stoney	Desha	N	do	*	Rape.
118. Thomas, Adolph	Columbia	N	Mar. 19, 1943		Murder.
119. Thompson, Henry	Cleveland	N	Aug. 6, 1943	*	Do.
120. Mack, Seke	Mississippi	N	June 2, 1944		Do.
121. Hudson, Walker	Clark	N	July 7, 1944	*	Do.
122. Tacker, Jim	Crittenden		July 14, 1944		Do.
123. Clingham, Levi	do	N	Dec. 1, 1944	*	Do.
124. Brown, Tony	Mississippi	N	Mar. 30, 1945	*	Do.
125. Yeates, James	Arkansas	N	May 25, 1945		Do.
126. Hall, James Wayburn	Pulaski		Jan. 1, 1946		Do.
127. Riley, Willie	Chicot	N	Apr. 12, 1946		Do.
128. Chitwood, Elton	Polk		Nov. 22, 1946	*	Do.
129. Thomas, Andrew	Jefferson	N	Nov. 29, 1946	*	Do.
130. Holmes, Clifton	do	N	Jan. 10, 1947	*	Rape.
131. Hodges, Albert	Pulaski	N	Jan. 17, 1967	*	Do.
132. Henley, Jeff	Lee	N	Jan. 24, 1947	*	Murder.
133. Bates, Vollie Bill	Polk		May 16, 1947	*	Do.
134. Johnson, Gubie Lee	Pulaski	N	Aug. 8, 1947	*	Do.
135. Dukes, Lawrence W.	St. Francis	N	do		Do.
136. Hyde, James H.	Carroll		Feb. 13, 1948	*	Do.
137. Pugh, Mizell	Pulaski	N	July 2, 1948	*	Rape.
138. Palmer, Edward	do	N	June 17, 1949	**	Do.
139. Rorie, Harvie	Jefferson		July 22, 1949	*	Murder.
140. Pierce, Walter	Chicot	N	Dec. 9, 1949		Do.
141. Hiltbreth, Wesley	Phillips	N	Dec. 16, 1949		Rape.
142. Black, Thomas	Pulaski		Mar. 10, 1950	**	Murder.
143. Needham, Hollis	Mississippi		Mar. 17, 1950	*	Rape.
144. Smith, Robert L.	Pulaski		Apr. 28, 1950	*	Murder.
145. Ezell, Matthew	Mississippi	N	Feb. 23, 1951	*	Do.
146. Fergerson, George	Pulaski		do		Do.
147. Smith, Aubrey	Phillips	N	July 27, 1951	*	Do.
148. Dorsey, Pater	do	N	Nov. 23, 1951	**	Do.
149. Grays, Arthur	Mississippi	N	do	*	Do.
150. Maxwell, Herman	Hempstead	N	June 6, 1952	**	Rape.
151. Wright, Wilson	Dallas	N	Aug. 1, 1952		Murder.
152. Jenkins, Bill	Garland	Ind	May 7, 1954	*	Do.
153. Scarber, Leo	Nevada	N	Sept. 21, 1956	*	Rape.
154. Smith, Lawrence	Chicot	N	July 24, 1959	*	Murder
155. Lee, Leo	Pulaski	N	Sept. 25, 1959	*	Do.
156. Walker, Thomas	Crittenden	N	Oct. 2, 1959	*	Do.
157. Young, William	Mississippi	N	do	*	Do.
158. Mayes, Arthur	do	N	Oct. 23, 1959	*	Do.
159. House, J. T.	Phillips	N	do	*	Do.
160. Moore, James	Miller	N	May 13, 1960	**	Do.
161. Boone, Roger	do	N	do	**	Do.
162. Boyd, James	do	N	May 20, 1960	**	Do.
163. Byrd, Willie	do	N	do	**	Do.
164. Leggett, Emmett	Pulaski		Sept. 16, 1960	**	Do.
165. Nail, William	Jefferson		do	*	Do.
166. Moore, Lawrence	Crittenden	N	Oct. 28, 1960	*	Do.
167. Bracy, John	Chicot	N	do	*	Do.
168. Fields, Charles F.	Jefferson		Jan. 24, 1964	**	Rape.

¹ The prison records have no other information available on Sinner Brown. Inquiries to the Hempstead County district attorney fail to discover an execution date. Judgment was affirmed June 7, 1928 (Southwestern Reporter, v. 7, p. 10).

CALIFORNIA STATE PRISON, FOLSOM—HANGINGS

Name	County	Age	Executed	Appeal
1. Hane, Chin	Sacramento	35	Dec. 13, 1895	*
2. Kovalev, Iran	do.	29	Feb. 21, 1896	*
3. Craig, John	Los Angeles	42	June 12, 1896	*
4. Kamaume, Paulo	El Dorado	29	June 19, 1896	*
5. Howard, John E.	Tulare	37	July 17, 1896	*
6. Roberts, George W.	El Dorado	46	Sept. 4, 1896	*
7. Lopez, Benito	Calaveras	70	May 21, 1897	*
8. Barry, James	Stanislaus	38	Aug. 13, 1897	*
9. Raymond, C. H.	San Mateo	49	Apr. 8, 1898	*
10. Barthelman, John T.	Los Angeles	31	May 12, 1898	*
11. Belev, Franklin	Solano	40	June 16, 1898	*
12. Winters, Harry	San Mateo	48	Dec. 8, 1898	*
13. Puttman, George	Sacramento	25	Nov. 19, 1900	*
14. Haines, Frank M.	Marin	40	Sept. 26, 1902	*
15. Glover, William	Placer	28	Feb. 6, 1904	*
16. Hidaka, Kokichi	Sacramento	27	June 10, 1904	*
17. Lawrence, Charles	do.	26	Oct. 7, 1904	*
18. Yow, Sing	do.	30	Jan. 6, 1905	*
19. Murphy, Joseph	do.	26	July 14, 1905	*
20. Eldridge, Harry	do.	43	Dec. 1, 1906	*
21. Easton, George	Solano	25	Apr. 6, 1906	*
22. Gray, W. M.	Sacramento	32	Apr. 13, 1906	*
23. Weber, Adolph J.	Placer	32	Sept. 27, 1906	*
24. Cipolla, Antonio	Sacramento	26	Apr. 30, 1909	*
25. Benjamin, Wilbur	Yolo	22	Oct. 28, 1910	*
26. Leahy, Michael	Placer	33	Feb. 8, 1911	*
27. Delehantie, Edward	Marin	26	Dec. 6, 1912	*
28. Oppenheimer, Jacob	do.	35	July 11, 1913	***
29. Raber, Samuel J.	Sacramento	25	Jan. 15, 1915	*
30. Creeks, Frank	do.	32	Aug. 27, 1915	*
31. Fountain, David	do.	51	Sept. 10, 1915	*
32. Harris, Burr L.	Los Angeles	28	Oct. 8, 1915	*
33. Loomis, Earl M.	Sacramento	19	Nov. 5, 1915	*
34. Bargas, Rito	Kern	28	Jan. 21, 1916	*
35. Ung, Sing	San Joaquin	23	Feb. 18, 1916	*
36. Witt, Glenn	Los Angeles	23	Mar. 3, 1916	*
37. Kromphold, Kosta	Yuba	23	Sept. 12, 1916	*
38. Schoon, Joseph	San Joaquin	27	July 12, 1918	*
39. Negrete, Jesse	Sacramento	61	Nov. 29, 1918	*
40. Shortridge, William	Yuba	34	May 2, 1919	*
41. Tyren, James	Sacramento	59	May 23, 1919	*
42. Clifton, David	do.	35	Oct. 21, 1921	*
43. Bisquerre, Felipe	Plumas	20	Jan. 26, 1923	*
44. Donnelly, George	Sacramento	53	Feb. 23, 1923	*
45. Kels, Alex A.	San Joaquin	39	Jan. 4, 1924	*
46. Sliskovitch, Mike	Sacramento	30	Aug. 22, 1924	*
47. Matthew, Robert	Los Angeles	24	Dec. 12, 1924	*
48. Simnel, Joe	do.	23	Dec. 19, 1924	*
49. Geregac, John	do.	22	Jan. 16, 1925	*
50. Montijo, Ed.	do.	19	July 10, 1925	*
51. Connelly, John	Yuba	38	July 24, 1925	*
52. Ballinger, Alfred	do.	41	Oct. 9, 1925	*
53. Sloper, Felix	San Francisco	29	June 25, 1926	*
54. Peevia, Charles	Kern	53	Aug. 27, 1926	*
55. Arnold, Ray	Placer	28	Jan. 28, 1927	*
56. Sayer, Edward K.	do.	24	Feb. 4, 1927	*
57. Shannon, Willard C.	Amador	27	May 4, 1928	*
58. Kuryla, George	do.	41	Jan. 25, 1929	*
59. Randolph, Harrison H.	Kern	24	Feb. 8, 1929	*
60. Roland, Paul	Sacramento	36	Sept. 27, 1929	*
61. Brown, Anthony	do.	31	Jan. 3, 1930	***
62. Stokes, Roy E.	do.	24	Jan. 3, 1930	***
63. Burke, Walter E.	do.	33	Jan. 10, 1930	***
64. Gregg, James H.	do.	34	Jan. 10, 1930	***
65. Gleason, James	do.	30	Jan. 17, 1930	***
66. Boss, Alfred	do.	31	Dec. 5, 1930	*
67. Davis, George	do.	30	Dec. 5, 1930	*
68. Mott, Fred	San Francisco	36	July 17, 1931	*
69. McCabe, Wilbur	Los Angeles	40	July 24, 1931	*
70. Hudson, William	do.	25	Oct. 2, 1931	*
71. O'Neil, Robert	do.	21	Oct. 2, 1931	*
72. Burkhardt, William H.	do.	29	Jan. 29, 1932	*
73. Walker, Thomas H.	Kern	49	Aug. 19, 1932	*
74. Johnson, C. W.	San Francisco	28	Jan. 19, 1933	*
75. Farrington, Peter	do.	33	Mar. 24, 1933	***
76. Fleming, John C.	San Bernardino	42	Nov. 17, 1933	*
77. Villion, Dick	Santa Clara	29	Dec. 1, 1933	*
78. Harris, Daniel	Contra Costa	37	July 6, 1934	*
79. Nobles Pat.	Los Angeles	43	Nov. 23, 1934	*
80. Lani, Mike	Sacramento	29	Jan. 12, 1935	*
81. Bieber, Harold P.	Tulare	41	Feb. 1, 1935	*

See footnotes at end of table.

CALIFORNIA STATE PRISON, FOLSOM—HANGINGS—Continued

Name	County	Age	Executed	Appeal
82. McQuate, Tellie.....	San Diego.....	44	May 24, 1935	*
83. Bermijo, Anastacio.....	Sacramento.....	38	May 31, 1935	*
84. Lutz, Aldrich W.....	Siskiyou.....	19	June 21, 1935	*
85. Garcia, Harry.....	Sacramento.....	33	July 10, 1935	*
86. Hall, George.....	Siskiyou.....	26	Mar. 27, 1936	**
87. Kimball, Earl B.....	Placer.....	21	May 22, 1936	(?)
88. Stone, Elton H.....	Fresno.....	30	June 12, 1936	*
89. James, Charles.....	Sacramento.....	32	Aug. 14, 1936	*
90. Berryman, John B.....	do.....	42	Do.	*
91. Dale, Lloyd A.....	San Joaquin.....	34	Oct. 16, 1936	*
92. McGuire, Charles.....	Sacramento.....	30	Dec. 3, 1937	*

¹ Assault.² Automatic appeal.

Note: Effective Aug. 27, 1937, the gas chamber, to be located at San Quentin Prison, was adopted as the means of execution. Prisoners on death row at the time of the adoption of the gas chamber were to be executed according to their original sentences.

CALIFORNIA, SAN QUENTIN—HANGINGS

Name	County	Age	Executed	Appeal
1. Gabriel, Jose.....	San Diego.....	60	Mar. 3, 1893	*
2. Sing, Lu.....	San Francisco.....	26	Feb. 2, 1894	*
3. Sullivan, P. J.....	do.....	41	Apr. 21, 1894	*
4. Azoff, Anthony.....	Santa Cruz.....	32	June 7, 1895	*
5. Collins, Patrick J.....	San Francisco.....	36	do.....	*
6. Garcia, Emilio.....	San Bernardino.....	37	do.....	*
7. Fredericks, William M.....	San Francisco.....	22	July 26, 1895	*
8. Smith, Fremont.....	Colusa.....	47	Aug. 9, 1895	*
9. Hanson, Hans.....	Federal.....		Oct. 18, 1895	**
10. St. Clair, Thomas.....	do.....		do.....	**
11. Young, William.....	Monterey.....	23	Oct. 25, 1895	*
12. Miller, N. S.....	Yuba.....	50	Dec. 6, 1896	*
13. Sing, Chung.....	Mono.....	40	Feb. 17, 1897	*
14. Kloss, Frank C.....	San Francisco.....	27	Apr. 23, 1897	*
15. Allender, Harvey.....	Santa Clara.....	36	Dec. 10, 1897	*
16. Durrant, William H. T.....	San Francisco.....	24	Jan. 7, 1898	** ** *
17. Jung, Wee.....	do.....	42	Mar. 11, 1898	*
18. Hill, Benjamin I.....	Alameda.....	36	Apr. 6, 1898	*
19. Ebanks, Joseph J.....	San Diego.....	33	May 27, 1898	*
20. Miller, John.....	San Francisco.....	41	Oct. 14, 1898	*
21. Clark, George W.....	Napa.....	37	Oct. 21, 1898	*
22. Chavez, Manuel.....	San Diego.....	28	Apr. 15, 1899	*
23. Owens, George C.....	Stanislaus.....	48	Apr. 21, 1899	*
24. See, Go.....	Tulare.....	47	Jan. 5, 1900	*
25. Estabe, Joaquin.....	Alameda.....	29	Apr. 23, 1900	*
26. Flannelly, Thomas W.....	Santa Clara.....	31	June 29, 1900	*
27. Sullivan, William.....	Tuolumne.....	40	Nov. 16, 1900	*
28. Methever, E. V.....	Los Angeles.....	57	May 10, 1901	*
29. Daily, Isaac.....	Kings.....	45	Feb. 21, 1902	*
30. Wheelock, James.....	Butte.....	43	June 13, 1902	*
31. Keong, Chung.....	San Francisco.....	45	Aug. 1, 1902	*
32. Cota, Jose.....	San Benito.....	20	Feb. 13, 1903	*
33. Gonzales, Juan.....	do.....	36	do.....	*
34. Fischer, F. C.....	Riverside.....	31	July 14, 1903	*
35. Martinez, Julius.....	Calaveras.....	22	Dec. 11, 1903	*
36. Ross, Bert.....	San Luis Obispo.....	27	Dec. 18, 1903	*
37. Wardrip, Charles.....	Sacramento.....	21	Feb. 26, 1904	*
38. Ochoa, Francisco.....	Kern.....	38	June 10, 1904	*
39. Suesser, George.....	Santa Clara.....	23	July 15, 1904	*
40. Ong, Chew Lan.....	San Francisco.....	32	July 22, 1904	*
41. Milton, Henry.....	do.....	55	Jan. 6, 1905	*
42. Look, Lee.....	Santa Clara.....	26	May 19, 1905	*
43. Howard, Wilson R.....	do.....	27	June 9, 1905	*
44. Anthony, Miguel.....	San Bernardino.....	20	Sept. 29, 1905	*
45. Woods, Frank.....	San Francisco.....	29	Oct. 6, 1905	*
46. Snaldecki, Joe.....	Los Angeles.....	43	Oct. 27, 1905	*
47. Warner, William.....	Santa Barbara.....	18	Dec. 8, 1905	*
48. Trebilcox, W. J.....	Nevada.....	40	Aug. 9, 1906	*
49. Brown, Henry.....	Del Norte.....	18	Sept. 7, 1906	*
50. Soeder, Leon.....	San Francisco.....	38	Mar. 29, 1907	*
51. Willard, Frank.....	Mendocino.....	43	June 14, 1907	*
52. Grill, A. J.....	Sonoma.....	30	Nov. 7, 1907	*
53. Buck, Morris.....	Los Angeles.....	28	Dec. 13, 1907	*
54. Dabner, Louis.....	San Francisco.....	18	July 31, 1908	*
55. Seimsen, John.....	do.....	28	do.....	*
56. Albitre, Delfino.....	Los Angeles.....	27	Aug. 28, 1908	*
57. Borsel, C.....	do.....	27	Sept. 11, 1908	*

See footnotes at end of table.

CALIFORNIA, SAN QUENTIN—HANGINGS—Continued

Name	County	Age	Executed	Appeal
58. Fallon, Thomas P.	San Francisco	40	Jan. 8, 1909	*
59. Baldesar, Charley	San Joaquin	36	Jan. 29, 1909	
60. Wirth, Ernest	Los Angeles	49	June 17, 1910	
61. Magana, Juan	Tulare	24	June 16, 1911	
62. Treschenko, Demitry	San Francisco	52	Aug. 4, 1911	*
63. Wilkins, Mark A.	Alameda	62	Jan. 13, 1912	*
64. Szafcsur, Alex.	San Francisco	45	Nov. 22, 1912	*
65. Williams, Ed	Butte	28	Nov. 29, 1912	*
66. Louis, Willie	San Luis Obispo	44	Dec. 26, 1912	*
67. Rogers, John S.	San Francisco	29	Dec. 27, 1912	*
68. Prantikos, Poolis	do	28	Mar. 14, 1913	*
69. Bauweraerts, Frank	Riverside	37	July 11, 1913	*
70. Green, Thomas	do	23	Apr. 3, 1914	*
71. Allen, Jerry	Colusa	39	Apr. 10, 1914	*
72. Chin, Lee Nam	San Joaquin	30	Apr. 17, 1914	*
73. Bostic, John	Los Angeles	24	Jan. 15, 1915	*
74. Larson, Louis A.	do	46	Jan. 22, 1915	*
75. Bundy, Louis	do	19	Nov. 5, 1915	*
76. Coutcure, Lawrence	San Luis Obispo	46	Jan. 7, 1916	*
77. Oxnam, Charles E. T.	Los Angeles	17	Mar. 3, 1916	*
78. Fortine, Louis	Ventura	31	July 21, 1916	*
79. Wilt, Joseph Vance	Glenn	37	Feb. 9, 1917	*
80. Hadley, Lon	Los Angeles	22	Oct. 5, 1917	*
81. Miller, Fred	Ventura	33	Aug. 9, 1918	*
82. Quiroz, Damasco	Tulare	31	Feb. 28, 1919	*
83. Collins, Clarence	Tuolumne	20	June 20, 1919	*
84. Rogers, Joe	do	26	do	*
85. Furuysa, M.	San Joaquin	37	July 11, 1919	*
86. Morisawa, R.	Sonoma	43	July 18, 1919	*
87. Rico, Pedro	San Bernardino	36	Sept. 19, 1919	*
88. Bellon, Tom	Merced	42	Oct. 17, 1919	*
89. Newell, Lafayette	El Dorado	36	Jan. 2, 1920	*
90. Niino, T.	Kings	40	Aug. 27, 1920	*
91. Gibson, Moses	Orange	36	Sept. 24, 1920	*
92. Collins, Arthur	Los Angeles	22	Oct. 29, 1920	*
93. Foo, Ong Mon	San Francisco	22	Dec. 3, 1920	*
94. Singh, Maher	Contra Costa	30	Dec. 17, 1920	*
95. Clark, James C.	Yolo	43	Feb. 4, 1921	*
96. Nakis, Ernest	Fresno	34	Feb. 18, 1921	*
97. Williams, George	San Francisco	53	June 3, 1921	*
98. Guillen, Louis	Riverside	19	Feb. 24, 1922	*
99. Valcalda, John	Amador	40	May 26, 1922	*
100. Sisneres, Marcis	Orange	50	Sept. 22, 1922	*
101. Manriquez, Miguel	Imperial	27	Oct. 6, 1922	*
102. Fat, Lew	San Francisco	28	Nov. 24, 1922	*
103. Chavez, Gregorio	Imperial	50	Mar. 2, 1923	*
104. Mohammed, Ullah	Sonoma	32	Apr. 13, 1923	*
105. Marui, T.	Monterey	45	May 4, 1923	*
106. Campbell, Lawrence C.	Imperial	18	June 22, 1923	*
107. Parisi, Mauro	Fresno	28	June 29, 1923	*
108. Sam, Jung	Monterey	35	Aug. 3, 1923	*
109. Pompa, Aurelio	Los Angeles	23	Mar. 7, 1924	*
110. Hendriz, J. V.	San Diego	53	Apr. 11, 1924	*
111. Thompson, Willard	Los Angeles	40	Apr. 21, 1924	*
112. Bringhurst, William	do	38	do	*
113. Casarez, Mariano	Imperial	69	May 9, 1924	*
114. Champion, A. F.	Los Angeles	29	Aug. 15, 1924	*
115. Yeager, Walter	Madera	42	Jan. 9, 1925	*
116. Sears, John	Los Angeles	21	Jan. 16, 1925	*
117. Ferdinand, Jack	do	30	do	*
118. Casade, Francisco	do	42	Feb. 13, 1925	*
119. Reid, Clarence	do	21	Apr. 24, 1925	*
120. Erno, Ronald C.	Siskiyou	26	May 8, 1925	*
121. Bailey, Tom	Los Angeles	22	July 10, 1925	*
122. Perry, Lewis	do	19	do	*
123. Craig, Charles	Tehama	23	July 31, 1925	*
124. Garbutt, Harry	Los Angeles	38	Feb. 13, 1926	*
125. Wolfgang, Isaac	do	57	Sept. 10, 1926	**
126. Adams, Willie	do	23	Oct. 8, 1926	*
127. Ricon, Alfonso	do	24	Oct. 18, 1926	*
128. Watts, Joseph H.	San Bernardino	32	Oct. 15, 1926	*
129. Trinidad, Mauricio	do	33	do	*
130. Slater, William J.	do	24	Jan. 7, 1927	*
131. Adams, Sydney	Los Angeles	40	Jan. 21, 1927	*
132. Clark, Earl J.	do	37	Sept. 23, 1927	*
133. Vukich, Milan	Placer	37	Oct. 7, 1927	*
134. Sieber, Charles	Los Angeles	38	Oct. 21, 1927	*
135. Kelley, Clarence	San Francisco	23	May 11, 1928	*
136. Dowell, Mark	do	24	Aug. 17, 1928	**
137. Hickman, William E.	Los Angeles	20	Oct. 19, 1928	**
138. Malone, John J.	do	30	Dec. 7, 1928	*
139. Lapierre, Edgar	Alameda	31	Feb. 15, 1929	*

See footnotes at end of table.

CALIFORNIA, SAN QUENTIN—HANGINGS—Continued

Name	County	Age	Executed	Appeal
140. Coen, Perry	Kings	27	Mar. 22, 1929	*
141. Thomas, Samuel	Alameda	30	do	*
142. Fook, Leong	Tulare	54	Apr. 5, 1929	*
143. Beltzel, Russell S.	Los Angeles	28	Aug. 2, 1929	*
144. Price, Jack H.	do	42	Aug. 30, 1929	*
145. Costello, George	Alameda	27	Dec. 13, 1929	*
146. Negra, Antone	Merced	48	do	*
147. Croce, Mario	Mendocino	40	Dec. 20, 1929	*
148. Lazarus, Louis	Alameda	37	Jan. 3, 1930	*
149. Chandler, James	Los Angeles	48	Feb. 10, 1930	*
150. Reilly, Alphonse Dan.	do	22	Mar. 14, 1930	*
151. Boltares, Armando	Los Angeles	24	May 16, 1930	*
152. Lehew, Thomas	Mendocino	33	Aug. 1, 1930	*
153. Gomes, John	Alameda	22	Aug. 15, 1930	*
154. Northcott, Gordon S.	Riverside	22	Oct. 2, 1930	*
155. Ryley, George	Alameda	21	Dec. 5, 1930	*
156. Simpson, Charles H.	San Francisco	18	July 17, 1931	*
157. La Verne, Edward	Alameda	25	July 24, 1931	*
158. Brown, Benjamin F.	Los Angeles	27	July 31, 1931	*
159. Magsaysay, Clarence	Fresno	40	Nov. 13, 1931	*
160. King, Clarence	Humboldt	26	Dec. 4, 1931	*
161. Lacang, Tres	Fresno	24	Apr. 15, 1932	*
162. Franco, Frank	Santa Clara	53	May 13, 1932	*
163. Farolan, Victor	do	46	June 10, 1932	*
164. Monroe, Billy	Lassen	30	Oct. 28, 1932	*
165. Hatamoto, Koji	Los Angeles	38	May 19, 1933	*
166. Pagica, Frank J.	do	29	June 30, 1933	*
167. Fuller, Albert	Madera	44	July 14, 1933	*
168. Regan, Joseph F.	Los Angeles	26	Aug. 18, 1933	*
169. Smith, George	Alameda	23	Sept. 22, 1933	*
170. Egan, Dallas	Los Angeles	40	Oct. 20, 1933	*
171. Forbes, Claude	Alameda	25	Dec. 8, 1933	*
172. Shick, Quang	Colusa	41	Feb. 9, 1934	*
173. Williams, George	San Bernardino	26	June 29, 1934	*
174. Mick, John	do	22	July 6, 1934	*
175. Rippy, Walker	do	24	July 13, 1934	*
176. Aragon, Jose	Riverside	25	July 13, 1934	*
177. Alosi, Peter	Lassen	42	Oct. 5, 1934	*
178. Murphy, Leo Dwight	Los Angeles	41	Dec. 7, 1934	*
179. Sisson, Eulogia B.	Yuba	28	Jan. 25, 1935	*
180. Rogan, James S.	Los Angeles	35	Feb. 8, 1935	*
181. Anderson, Edward	San Francisco	25	Feb. 15, 1935	*
182. Griffin, Rush	Los Angeles	19	Apr. 5, 1935	*
183. Lang, Edward L.	do	26	June 7, 1935	*
184. Ramos, Augustin	Monterey	32	Aug. 16, 1935	**
185. McNabb, Ethan ¹	Marin	37	Sept. 6, 1935	**
186. Bagley, William ¹	do	43	do	**
187. Hawkins, John	Los Angeles	25	Oct. 24, 1935	*
188. Latona, Ellis J.	do	41	Dec. 6, 1935	*
189. West, Arthur D.	San Francisco	33	Dec. 13, 1935	*
190. De Moss, Clarence ²	Merced	42	Apr. 3, 1936	*
191. Dugger, Thomas E. ³	Los Angeles	30	May 1, 1936	*
192. Kristy, Joe ³	Marin	27	May 22, 1936	**
193. McKay, Alexander ³	do	29	do	**
194. Boulton, J. C.	Butte	48	June 5, 1936	*
195. Gosden, Louis	Alameda	33	June 19, 1936	*
196. Ottey, Irwin B.	Monterey	33	July 10, 1936	*
197. Cabrera, Tony	San Bernardino	22	July 24, 1936	*
198. Sam, Bill	San Joaquin	33	Sept. 11, 1936	*
199. Kellogg, John	Fresno	21	Sept. 18, 1936	*
200. Walter, Albert, Jr.	San Francisco	28	Dec. 4, 1936	*
201. Joven, Joe	Santa Clara	32	Jan. 8, 1937	*
202. Shaver, Louis R.	Alameda	51	Jan. 15, 1937	*
203. Valenzuela, Natividad	Orange	24	Jan. 22, 1937	*
204. Pacren, Petronillo	San Joaquin	40	Mar. 31, 1937	*
205. Hart, Fred	Riverside	44	Apr. 16, 1937	*
206. Woods, John	Alameda	49	May 28, 1937	*
207. McNeill, John D.	Riverside	52	July 9, 1937	*
208. Wilhelm, Frank	Los Angeles	24	Jan. 7, 1938	*
209. Righthouse, Roy Leon	Fresno	27	Feb. 18, 1938	*
210. Goodwin, Lee Grant	Los Angeles	28	do	*
211. Aguirre, Afrncisco	Riverside	30	Sept. 2, 1938	*
212. Dyer, Albert	Los Angeles	33	Sept. 16, 1938	*
213. Wells, Harrison	Plumas	47	Oct. 14, 1938	*
213. Wells, Harrison	Plumas	47	Oct. 14, 1938	*
214. Kessell, Albert	Sacramento (lethal gas not given)		Dec. 2, 1938	*
215. Cannon, Robert Lee	do		do	*
216. Barnes, Fred	do		do	*
217. Eudy, Wesley E.	do		do	*
218. Davis, Ed.	do		Dec. 16, 1938	*
219. David, Claude	Tehama		July 21, 1939	*

See footnotes at end of table.

CALIFORNIA, SAN QUENTIN—HANGINGS—Continued

Name	County	Age	Executed	Appeal
220. Smith, William G. ^{4 5}	Sacramento		Sept. 8, 1939	
221. McLachlan, Charles	Los Angeles		Sept. 15, 1939	
222. Green, William	Fresno		Oct. 20, 1939	
223. Williams, James Charles	Riverside		Feb. 16, 1940	
224. Anderson, Neil	Fresno		Mar. 15, 1940	
225. Spinelli, Vergilio	Los Angeles		May 17, 1940	
226. Perry, Robert C.	San Diego		July 19, 1940	
227. Parman, Everett Gilbert	Placer		Aug. 16, 1940	
228. Greig, Rodney	Alameda		Aug. 23, 1940	
229. Cook, DeWitt Clinton	Los Angeles		Jan. 31, 1941	
230. Smith, Thomas B.	Stanislaus		Apr. 18, 1941	
231. Kay, Wong Don	Placer		July 11, 1941	
232. Hawk, Eldon Richard	Yolo		Aug. 29, 1941	
233. Lininger, John	Tehama		Sept. 29, 1941	
234. Johansen, William	San Francisco		Sept. 5, 1941	
235. Reed, John	San Bernardino		Sept. 26, 1941	
236. Spinelli, Eithel Leta ⁶	Sacramento		Nov. 21, 1941	
237. Simone, Mike	do.		Nov. 28, 1941	
238. Hawkins, Gordon	do.		do.	
239. Clark, Dewey	San Joaquin		Apr. 10, 1942	
240. Jones, Henry E.	do.		do.	
241. Lisenba, Major Raymond ^{4 7}	Los Angeles		May 1, 1942	
242. Briggs, Maurice Louis	do.		Aug. 7, 1942	**
243. Crimm, Steve	Sacramento		Aug. 21, 1942	
244. Arnold, Delmar	San Francisco		Nov. 13, 1942	
245. Hoyt, Barzen	do.		do.	
246. Frazier, Arthur	do.		Nov. 20, 1942	
247. Wells, Albert	San Bernardino		Dec. 4, 1942	
248. Gireth, Leslie B.	Alameda		Jan. 22, 1943	
249. Cramer, Warren	San Francisco		May 14, 1943	
250. Coleman, John L.	San Diego		Aug. 13, 1943	
251. Bautista, Marcellino	Tulare		Jan. 21, 1944	
252. Hill, Farrington Graham	Los Angeles		Jan. 28, 1944	
253. Brown, Glenard	Placer		Feb. 15, 1944	
254. Kolez, Daniel	Lassen		May 12, 1944	
255. Shawl, William	San Bernardino		June 16, 1944	
256. Alcalde, Florencio	Santa Clara		Aug. 18, 1944	
257. Baa, Charles Ivan	San Diego		Nov. 3, 1944	
258. Gonzales, Theodore	Los Angeles		Jan. 5, 1945	
259. Anderson, Rollie Lee	Lassen		do.	
260. Nagle, Djory	Alameda		Mar. 2, 1945	
261. Keeling, Ernest	Monterey		do.	
262. Glenn, Hurschel	do.		do.	
263. Kelso, Silas J.	Los Angeles		May 25, 1945	
264. Bolden, Emery	Monterey		June 22, 1945	**
265. Harper, McElwee	do.		do.	**
266. Diaz, Manuel Nino	San Joaquin		Aug. 14, 1944	
267. Brigance, Thomas E.	Alameda		Sept. 15, 1945	**
268. Whitson, Benjamin H.	do.		do.	**
269. Jackson, Louie Lee	San Francisco		Oct. 5, 1945	
270. Simeone, Albert	Los Angeles		Nov. 30, 1945	
271. Ming, Robert Lee	Kern		Apr. 12, 1946	
272. Williams, Sam ¹	Marin		Apr. 26, 1946	
273. Wilson, Otto Stephen	Los Angeles		Sept. 20, 1946	
274. Bernard, Charlie	do.		Sept. 27, 1946	
275. De La Roi, Wilson ¹	Sacramento		Oct. 25, 1946	
276. Crain, William	Los Angeles		Nov. 29, 1946	
277. Honeycutt, John T.	do.		Feb. 17, 1947	
278. Hilton, Thomas	Santa Barbara		Feb. 26, 1947	
279. Simmons, Alger	Los Angeles		Mar. 21, 1947	
280. Peete, Louise L. ⁶	do.		Apr. 11, 1947	**
281. Dunn, Ernest	Sacramento		June 6, 1947	
282. Caetano, Joe	Humboldt		Aug. 2, 1947	
283. Barnes, Francis Paul	Los Angeles		Nov. 14, 1947	
284. Sanchez, Jose R.	Imperial		Jan. 26, 1948	
285. McMoingie, Thomas H.	Santa Cruz		Feb. 20, 1948	
286. Peterson, John J.	Los Angeles		Apr. 9, 1948	** ***
287. Isby, George	Alameda		Apr. 16, 1948	
288. Winton, Paul C.	Mendocino		May 28, 1948	
289. Trujillo, Jose	San Francisco		Oct. 1, 1948	**
290. Eggers, Arthur R.	Los Angeles		Oct. 15, 1948	**
291. Thompson, Miran Edgar	Federal N.D., Calif.		Dec. 3, 1948	*** **
292. Shockley, Sam Richard	do.		do.	*** **
293. Ochoa, Carlos Romero	do.		Dec. 10, 1948	*** **
294. Mehaffey, Robert F.	San Bernardino		Dec. 31, 1948	**
295. Shorts, Robert R.	Alameda		Jan. 7, 1949	**
296. Tuthill, Marvin James	Riverside		Jan. 28, 1949	
297. Bowie, Maxwell I.	Alameda		Feb. 18, 1949	**
298. Williams, Henry A.	do.		do.	**
299. Campbell, Clayburne	Los Angeles		Apr. 1, 1949	
300. Harrison, Joel	do.		do.	

See footnotes at end of table.

CALIFORNIA, SAN QUENTIN—HANGINGS—Continued

Name	County	Age	Executed	Appeal
301. Zatzke, Daniel Jerome ¹	Los Angeles	July	1, 1949	
302. Sanford, William H.	San Francisco	July	15, 1949	
303. Adamson, Admiral Dewey	Los Angeles	Dec.	9, 1949	** ***
304. Murphey, Jesse A.	Fresno	Dec.	16, 1949	
305. Nixon, Albert E.	do.	do.		
306. Corrales, Victoriano	Sacramento	Feb.	24, 1950	
307. Letourneau, Armand	San Francisco	Mar.	31, 1950	
308. Huizenga, Edward Albert	Sacramento	June	2, 1950	
309. Hooper, Henry	Stanislaus	Aug.	4, 1950	
310. Avery, Herman	San Diego	Oct.	6, 1950	
311. Gulbrandsen, Henry	Sonoma	do.		
312. Gutierrez, Paul	Fresno	Dec.	1, 1950	
313. Jackson, Monroe Arthur	Tulare	Mar.	2, 1951	
314. Sexton, Harold	Alameda	Mar.	16, 1951	
315. Odie, John Calvin	Orange	Aug.	17, 1951	
316. Osborn, Claude L.	Fresno	Sept.	14, 1951	
317. Cullen, Ray	Riverside	Nov.	2, 1951	
318. Chavez, Felix	Colusa	Nov.	30, 1951	
319. Phyle, William Jerome	San Diego	Feb.	29, 1952	**
320. Miller, Doil	Alameda	Mar.	7, 1952	
321. Coefield, William Thomas	do.	Mar.	21, 1952	
322. Sampsell, Lloyd Edison	San Diego	Apr.	25, 1952	**
323. Buckowski, Stanley	Los Angeles	May	9, 1952	**
324. Martinez, Aurelio	Tulare	June	30, 1952	
325. Strobbe, Fred	Los Angeles	Aug.	25, 1952	**
326. Gilliam, Bernard	Fresno	Oct.	31, 1952	
327. Cook, William E.	Imperial	Dec.	12, 1952	
328. Dessauer, Robert Gene	Los Angeles	Feb.	2, 1953	**
329. Riley, Leandress	Sacramento	Feb.	20, 1953	**
330. Reed, Diamond	Alameda	Apr.	17, 1953	
331. Barclay, Lovell	Contra Costa	May	15, 1953	
332. Amaya, Dario	Alameda	May	22, 1953	
333. Gomez, Lloyd	Sacramento	Oct.	16, 1953	
334. Harrison, Johnnie	Riverside	Oct.	23, 1953	
335. Lawrance, John Chauncey	do.	Oct.	30, 1953	
336. Thomas, Evan Charles	Los Angeles	Jan.	29, 1954	
337. McCracken, Henry Ford	Orange	Feb.	19, 1954	**
338. Daugherty, Joseph Arthur	Los Angeles	Mar.	5, 1954	**
339. Ortega, Florentino	do.	do.		
340. Decaillet, Henry	Yolo	Apr.	2, 1954	
341. McGarry, Charles Leo	Los Angeles	July	2, 1954	
342. Wolfe, James Franklin	Sacramento	July	30, 1954	
343. Johansen, Joseph	do.	do.		
344. Dusseldorf, Alfred	Alameda	Sept.	10, 1954	** ***
345. Byrd, Walter Thomas	Ventura	Feb.	4, 1955	
346. Jensen, Richard John ²	Los Angeles	Feb.	11, 1955	**
347. Caldwell, Johnson William	Riverside	May	6, 1955	
348. Baldwin, Leonard	San Bernardino	May	13, 1955	**
349. Zilbauer, Anthony	Los Angeles	May	18, 1955	
350. Graham, Barbara ³	do.	June	3, 1955	**
351. Santo, John A. ⁴	do.	June	3, 1955	**
352. Perkins, Emmet	do.	do.		**
353. Berry, Harold E. ¹	Monterey	Sept.	20, 1955	
354. Pierce, Robert O.	Alameda	Apr.	6, 1956	
355. Jordan, Smith E.	do.	do.		
356. Cavanaugh, Michael T.	San Diego	Apr.	13, 1956	**
357. Morlock, Eugene A.	do.	June	15, 1956	
358. Thomas, Henry	Siskiyou	July	13, 1956	** ***
359. Smith, Louis Franklin ¹	Sacramento	Feb.	8, 1957	**
360. Allen, John ¹	do.	do.		**
361. Abbott, Burton W.	Alameda	Mar.	15, 1957	
362. Johnston, Thomas Lynn	Sacramento	June	28, 1957	
363. Cheary, John E.	Stanislaus	July	19, 1957	
364. Hardenbrook, David J.	Imperial	Aug.	16, 1957	
365. Dement, Foster S.	Los Angeles	Oct.	2, 1957	
366. Simpson, Henry C.	Stanislaus	Oct.	4, 1957	**
367. Bashoi, Donald Keith	Los Angeles	Oct.	11, 1957	
368. Reese, James	San Francisco	Feb.	14, 1958	
369. Rogers, James Alonzo	Marin	Apr.	15, 1958	** ***
370. Burwell, Eugene T.	do.	do.		** ***
371. Tipton, John Calvin	Orange	Sept.	26, 1958	
372. Caritativo, Bart Luis	Marin	Oct.	24, 1958	**
373. Rupp, William Francis, Jr.	Ventura	Nov.	7, 1958	** ***
374. Feldkamp, James Lewis	Los Angeles	Feb.	27, 1959	
375. Riser, Richard G.	Stanislaus	May	22, 1959	**
376. Duncan, Vender Lee	San Francisco	May	29, 1959	
377. Ward, Cecil Herman	Kern	June	26, 1959	
378. Nash, Stephen A.	Los Angeles	Aug.	21, 1959	
379. Glatman, Harvey Murray	San Diego	Sept.	18, 1959	
380. Hamilton, Philip Henry	San Francisco	Jan.	8, 1960	

See footnotes at end of table.

CALIFORNIA, SAN QUENTIN—HANGINGS—Continued

Name	County	Age	Executed	Appeal
381. Jones, Jimmie Lee	do	Jan. 8, 1960		
382. Wade, Lawrence Leroy	Alameda	Apr. 22, 1960		
383. Chessman, Caryl Whittier ¹	Los Angeles	May 2, 1960	**	***
384. Hooten, James Eugene	do	May 13, 1960		
385. Cooper, Richard Thomas	San Francisco	July 8, 1960		
386. Harmon, Robert S. ¹	Monterey	Aug. 9, 1960		
387. Scott, George Albert	Los Angeles	Sept. 7, 1960		
388. Cartier, Raymond L.	San Diego	Dec. 28, 1960	**	
389. Robillard, Alexander, XIV	San Mateo	Apr. 26, 1961		
390. Rittger, Ronald	Monterey	June 29, 1961	**	
391. Linden, Marion James	Los Angeles	July 12, 1961	**	***
392. Combes, David Allen	Ventura	Oct. 18, 1961		
393. Kendrick, James	San Bernardino	Nov. 3, 1961		
394. Lindsey, Richard Arlen	Kern	Nov. 14, 1961		
395. Monk, Billy Wesley ²	Los Angeles	Nov. 21, 1961	**	
396. Gonzales, Jose Angel	Riverside	Nov. 29, 1961		
397. Wright, Rudolph ¹	Monterey	Jan. 1, 1962	**	
398. Carter, Elbert Lyndon	San Joaquin	Jan. 17, 1962	**	
399. Lane, Henry Roy, Jr.	San Mateo	Mar. 7, 1962		
400. Hughes, Robert Green	Los Angeles	Apr. 18, 1962		
401. Busch, Henry Adolph ²	Los Angeles	June 6, 1962		
402. Duncan, Elizabeth Ann ³	Ventura	Aug. 8, 1962	**	***
403. Baldonado, Augustine	do	do	**	***
404. Moya, Luis Estrada	do	do	**	***
405. Garner, Lawrence C.	San Bernardino	Sept. 4, 1962	**	
406. Darling, Melvin T.	San Francisco	Oct. 1, 1962		
407. Ditson, Allen	Los Angeles	Nov. 21, 1962	**	
408. Bentley, James Abner	Fresno	Jan. 23, 1963		

¹ Assault by lifer.² Automatic appeal.³ Kidnaping.⁴ Hanged.⁵ Crime, Jan. 27, 1936.⁶ Female.⁷ Crime, Aug. 5, 1935.

Note: Courtesy, Associate Warden James W. L. Park, San Quentin Prison.

COLORADO STATE PENITENTIARY

Name	County	Executed	Appeal
HANGINGS			
1. Criego, Noverto	Las Animas	Nov. 8, 1890	
2. Joyce, James T.	Arapahoe	Jan. 17, 1891	
3. Davis, William C.	Pueblo	Sept. 22, 1891	*
4. Smith, Charles	Huerfano	Dec. 14, 1891	
5. Lawton, Thomas	El Paso	May 6, 1892	
6. Jordan, Thomas	Arapahoe	May 11, 1895	*
7. Augusta, Peter	do	do	*
8. Taylor, Abe	Conejos	Dec. 13, 1895	*
9. Ratcliff, Benjamin	Chaffee	Feb. 6, 1896	*
10. Holt, William	Las Animas	June 26, 1896	*
11. Noble, Albert	do	do	*
12. Romero, Deonicio	do	do	*
13. Galbraith, Azel ¹	Gilpin	Mar. 6, 1905	*
14. Arnold, Fred	Denver	June 16, 1905	*
15. Andrews, Newton	do	do	*
16. Johnson, Joseph	Las Animas	Sept. 13, 1905	*
17. McGarvey, John	Mesa	Jan. 12, 1970	
18. Alia, Guiseppe	Denver	July 15, 1908	
19. Lynn, Jones	Pueblo	Oct. 8, 1908	
20. Wechter, Lewis	Denver	Aug. 31, 1912	*
21. Hillen, Harry E.	do	June 24, 1915	*
22. Quinn, George	do	Jan. 28, 1916	*
23. Cook, Oscar	do	Feb. 26, 1916	*
24. Bosko, George	Pueblo	Dec. 10, 1920	*
25. Borich, Daniel	Routt	Aug. 18, 1922	*
26. McGonigal, Joe	Las Animas	Apr. 26, 1924	*
27. Shank, R. F.	Denver	Sept. 18, 1926	*
28. Casias, Antonio	Rio Grande	Nov. 12, 1926	*
29. Noakes, Jasper R.	Grand	Mar. 30, 1928	*
30. Osborn, Arthur	do	do	*
31. Ives, Edward	Denver	Jan. 10, 1930	*
32. Weiss, Harold I.	do	May 28, 1930	*

See footnote at end of table.

COLORADO STATE PENITENTIARY—Continued

Name	County	Executed	Appeal
HANGINGS			
33. Fleagle, Ralph E.	Prowers	July 10, 1930	*
34. Abshier, George J.	do	July 18, 1930	*
35. Royston, Howard L.	do	do	*
36. Herrera, Amelio	Denver	Aug. 20, 1930	*
37. Moya, William	do	Dec. 12, 1930	*
38. Halliday, Andrew	Kiowa	Jan. 30, 1931	*
39. Walker, John	do	do	*
40. Ray, Claude	do	do	*
41. Foster, James V.	Weld	Dec. 11, 1931	
42. Farmer, E. J.	Moffat	Mar. 18, 1932	*
43. Meastas, Joe	Costilla	May 27, 1932	*
44. Moss, Nelwelt	Gunnison	Mar. 10, 1933	*
45. Jones, Walter	Mesa	Dec. 1, 1933	*
LETHAL GAS			
46. Kelly, William C.	Delta	June 22, 1934	
47. Pacheco, John	Weld	May 31, 1935	*
48. Pacheco, Louis	do	do	*
49. Belongia, Leonard	do	June 21, 1935	*
50. McDaniel, Otis	San Miguel	Feb. 14, 1936	
51. Aguilar, Frank	Pueblo	Aug. 13, 1937	
52. Arridy, Joe	do	Jan. 6, 1939	*
53. Agnes, Angelo	Denver	Sept. 29, 1939	*
54. Catalina, Pete	Chaffee	do	*
55. Leopold, Harry	Denver	Dec. 8, 1939	*
56. Coates, Joe	do	Jan. 10, 1941	*
57. Stephans, James	Montezuma	June 20, 1941	*
58. Su Kie, Martin	El Paso	May 22, 1942	*
59. Fearn, Donald H.	Pueblo	Oct. 23, 1942	*
60. Sullivan, John	El Paso	Sept. 20, 1943	*
61. Honda, George	Denver	Oct. 8, 1943	*
62. Potts, Howard C.	do	June 22, 1945	*
63. Silliman, Charles F.	Arapahoe	Nov. 9, 1945	*
64. Martz, Frank H.	do	Nov. 23, 1945	*
65. Brown, John H.	Denver	May 23, 1947	*
66. Gillette, Harold	Larimer	June 20, 1947	*
67. Battalino, Robert S.	Jefferson	Jan. 7, 1949	
68. Schneider, Paul F.	Washington	Dec. 16, 1949	**
69. Berger, John J., Jr.	Denver	Oct. 26, 1951	**
70. Martinez, Besalirez	Eagle	Sept. 7, 1956	*
71. Graham, John Gilbert	Denver	Jan. 11, 1957	*
72. Leick, LeeRoy A.	do	Jan. 22, 1960	***
73. Early, David F.	Arapahoe	Aug. 11, 1961	**
74. Wooley, Harold D.	Jefferson	Mar. 9, 1962	*
75. Hammill, Walter D.	Denver	May 25, 1962	*
76. Bizup, John, Jr.	Pueblo	Aug. 14, 1964	***

¹ Capital punishment abolished 1897; capital punishment restored 1901.

CONNECTICUT STATE PRISON

Name	County	Age	Executed	Appeal
HANGINGS				
1. Cronin, John	Hartford	38	Dec. 18, 1894	*
2. Hertlein, Kapar	do	40	Dec. 3, 1896	
3. Kippie, Thomas	New Haven	42	July 14, 1897	
4. Fuda, Gussippi	Fairfield	31	Dec. 3, 1897	
5. Imposino, Nicodemo	do	24	Dec. 17, 1897	
6. Bainay, Charles	do	34	Apr. 14, 1898	
7. Willis, Benjamin	do	20	Dec. 30, 1898	*
8. Brockhaus, Frederick	do	21	Sept. 6, 1899	*
9. Cross, Charles	do	18	July 20, 1900	*
10. Misik, Paul	Hartford	34	Feb. 11, 1904	
11. Watson, Joseph ¹	do	18	Nov. 17, 1904	
12. Marx, Gershon	New London	73	May 18, 1905	*
13. Sherouk, Ephriam	Tolland	24	Jan. 9, 1906	*
14. Bailey, Henry	Middlesex	40	Apr. 16, 1907	*
15. Herman, Alexander	Fairfield	26	May 10, 1907	
16. Washelesky, John	New Haven	32	July 1, 1908	*
17. Rossi, Lorenzo	Hartford	31	July 24, 1908	
18. Zett, John	Tolland	48	Dec. 21, 1908	
19. Campagnolo, Giuseppe	New Haven	28	Feb. 24, 1909	
20. Carfaro, Raefaele	do	19	do	

See footnotes at end of table.

CONNECTICUT STATE PRISON—Continued

Name	County	Age	Executed	Appeal
HANGINGS				
21. Zawodziancyk, John	Hartford	28	Feb. 9, 1910	
22. Tanganelli, Andrea	New Haven	26	Mar. 29, 1912	
23. Redding, George	Hartford	21	Nov. 1, 1912	
24. Saxon, Louis	do	29	July 27, 1913	*
25. Plew, James	New Haven	48	Mar. 4, 1914	
26. Rikteraites, Matyius	New Haven-Waterbury	29	May 8, 1914	
27. Buonomo, Joseph	Fairfield	24	June 30, 1914	*
28. Bergeron, Joseph	New Haven	40	Aug. 11, 1914	*
29. Montoid, Bernoid	Hartford	23	Aug. 6, 1915	
30. Grela, Frank	do	41	Aug. 13, 1915	
31. Williams, Isaac	Litchfield	30	Mar. 3, 1916	*
32. Rowe, Harry	do	22	do	*
33. Zuppa, Pasquale	New Haven	28	Mar. 10, 1916	
34. Vetere, Francesco	do	24	Oct. 5, 1917	*
35. Castelli, Joseph	do	25	do	*
36. Don Vanso, Giovanni	Hartford	21	Nov. 16, 1917	
37. Buglione, Stephen	do	20	do	
38. Wise, Carmine	do	24	Dec. 14, 1917	
39. Lanzillo, Carmine	New Haven	24	June 17, 1918	
40. Pisanelli, Carmine	do	21	do	
41. Dusso, Francesco	do	25	do	
42. Perretta, Erasmo	Hartford	28	June 27, 1919	*
43. Perretta, Joseph	do	33	do	*
44. Nechesnook, Nikitor	New Haven-Waterbury	28	Dec. 3, 1919	
45. Cerrone, Daniel	New Haven	31	July 5, 1920	
46. Wade, Elwood B.	Fairfield	24	May 20, 1921	*
47. Kacearauskas, John	New Haven	36	May 27, 1921	
48. Schutte, Emil	Middlesex	55	Oct. 24, 1922	*
49. Chapman, Gerald	Hartford	35	Apr. 6, 1926	** ** **
50. Lung, Chin ²	do	33	Nov. 8, 1927	*
51. Wing, Soo Hoo ²	Hartford	19	Nov. 8, 1927	*
52. Feltovic, John	Fairfield	20	Dec. 10, 1929	*
53. Di Battista, Frank	Hartford	27	Feb. 21, 1930	*
54. Lorenzo, Henry	do	26	Aug. 12, 1930	*
55. Simborski, John	New Haven	30	Apr. 7, 1936	*
ELECTROCUTIONS				
56. McElroy, James J.	New Haven	44	Feb. 10, 1937	
57. Palka, Frank J.	Fairfield	25	Apr. 12, 1938	* **
58. Cots, Vincent	Middlesex	33	Apr. 29, 1940	*
59. Weaver, Ira Allen	do	36	Apr. 29, 1940	*
60. Gurski, Peter	Litchfield	26	Feb. 23, 1943	
61. Funderburk, Wilson H.	Hartford	37	Apr. 20, 1943	
62. DeCaro, Carlo James	do	19	May 3, 1944	
63. Rossi, Nicholas J.	do	32	June 18, 1945	*
64. McCarthy, James J.	do	21	Oct. 1, 1946	*
65. Tommaselli, Arthur	do	25	Oct. 1, 1946	*
66. Lewis, Raymond	do	19	Oct. 1, 1946	*
67. Bradley, Robert	New Haven	37	Apr. 12, 1948	**
68. Lorain, William	Hartford	23	July 11, 1955	*
69. Donahue, John B.	Fairfield	33	July 18, 1955	*
70. Maim, Robert Nelson	Hartford	31	July 18, 1955	*
71. Davies, George James	New Haven-Waterbury	41	Oct. 20, 1959	**
72. Wojculewicz, Frank ³	Hartford	42	Oct. 27, 1959	** ** *
73. Taborsky, Joseph L. ⁴	do	36	May 17, 1960	**

¹ Negro.² Chinese.³ Wojculewicz was permanently crippled by gunshots during the commission of his crime, and was carried into the execution chamber on a stretcher. The electric chair was specially altered to receive him.⁴ Taborsky had been freed from death row in 1955 on charges of an earlier murder. He subsequently confessed that he was guilty of that one.

DISTRICT OF COLUMBIA

Name	Race	Executed	Appeal ¹	Crime
HANGINGS				
1. Woodward, Daniel		Sept. 2, 1853		Murder.
2. Powers, James W.		June 1, 1859		Do.
3. Hendricks, Jeremiah		Apr. 1, 1864		Do.
4. Pollard, Emmanuel		July 8, 1864		Do.
5. Gordon, Peter		do		Do.
6. Tuell, Cornelious		do		Do.
7. Grady, James		Mar. 24, 1871		Do.

See footnotes at end of table.

DISTRICT OF COLUMBIA—Continued

Name	Race	Executed	Appeal ¹	Crime
HANGINGS				
8. Jenkins, George W.	N	Oct. 31, 1872		Murder.
9. Wood, Barney		Dec. 6, 1872		Do.
10. Johnson, Charles	N	Dec. 10, 1872		Do.
11. Wright, Thomas	N	June 6, 1873		Do.
12. Young, Henry	N	Nov. 28, 1873		Do.
13. Stone, James M. W.	N	Apr. 2, 1880		Do.
14. Queenan, Edward	N	Nov. 19, 1880		Do.
15. Bedford, Joseph	N	do.		Do.
16. Guiteau, Charles Julius		June 30, 1882		Do.
17. Shaw, Charles	N	Jan. 19, 1883		Do.
18. Langster, John	N	May 15, 1885		Do.
19. Sommerfield, Louis		Apr. 30, 1886		Do.
20. Lee, Richard	N	do.		Do.
21. Nardello, Antonio		May 28, 1888		Do.
22. Green, Albert	N	Apr. 5, 1889		Do.
23. Colbert, Nelson	N	May 17, 1889		Do.
24. Hawkins, Benjamin	N	May 29, 1890		Do.
25. Schneider, Howard J.		Mar. 17, 1893		Do.
26. Crumpton, Thomas	N	Apr. 27, 1894		Do.
27. Travers, James L.	N	July 27, 1895		Do.
28. Beam, Joseph A.	N	July 26, 1895		Do.
29. Harris, John	N	Feb. 14, 1896		Do.
30. Ford, Irvin	N	June 26, 1896		Do.
31. Strathers, William	N	May 5, 1899	**	Do.
32. Winston, Charles	N	do.	**	Do.
33. Smith, Edward	N	May 12, 1899	**	Do.
34. Horton, George W.		Dec. 8, 1899		Do.
35. Snell, Benjamin H.		June 29, 1900		Do.
36. Vale, Nelson	N	July 6, 1900		Do.
37. Fubk, Frank W.		Nov. 9, 1900		Do.
38. Chapman, Elijah	N	May 23, 1902		Do.
39. St. Clair, John T.	N	Jan. 30, 1903		Do.
40. Hill, Benjamin G.		July 24, 1903		Do.
41. Burley, John W.	N	Aug. 26, 1904		Rape.
42. Shapper, Augustus L.		Feb. 10, 1905		Murder.
43. Hamilton, William W.	N	Feb. 2, 1906		Do.
44. Grant, Edward	N	Nov. 16, 1906		Do.
45. Burge, William	N	Apr. 23, 1907		Do.
46. Paolenshini, Joseph		Mar. 23, 1908		Do.
47. Brown, Albert	N	June 29, 1908		Do.
48. Gregory, Richard	N	Feb. 15, 1909		Do.
49. Rauen, Samuel W.		Feb. 14, 1913		Do.
50. Green, Nathaniel	N	June 9, 1913		Rape.
51. Allen, James F.	N	Sept. 12, 1917	***	Murder.
52. Jackson, James H.	N	Mar. 2, 1920	***	Do.
53. Bowman, Frank	N	Oct. 22, 1920	***	Do.
54. Campbell, William H.	N	Mar. 11, 1921	***	Do.
55. McHenry, Thomas		Mar. 17, 1922	***	Do.
56. Shands, Ernest A.	N	Mar. 9, 1923	***	Do.
57. Price, Charles	N	May 3, 1923	***	Do.
58. Banton, George S.	N	Apr. 20, 1923	***	Do.
59. Epps, George S.	N	May 24, 1923	***	Do.
60. Gordon, Rufus	N	June 23, 1923	***	Do.
61. Thomas, Ralph	N	Jan. 15, 1925	***	Do.
62. Copeland, Herbert L.	N	Jan. 23, 1925	***	Do.
ELECTROCUTIONS				
63. Jackson, Philip	N	May 29, 1928	***	Rape.
64. Eagles, Nicholas L.		June 22, 1928	***	Murder.
65. Mareno, Sam		do.		Do.
66. Proctor, John R.		do.		Do.
67. Hawkins, Andrew J.	N	June 5, 1930	***	Do.
68. Bell, Cardoza	N	Mar. 6, 1931	***	Do.
69. Aldridge, Alfred S. ²	N	May 6, 1932	***	Do.
70. Logan, John	N	June 29, 1932	***	Do.
71. Borum, John	N	do.	***	Do.
72. Morris, Charles	N	Dec. 2, 1932	***	Do.
73. Robinson, William C.	N	Oct. 27, 1933	***	Do.
74. Lowry, James H.	N	Nov. 1, 1933	***	Do.
75. Washington, Charles E.	N	Nov. 24, 1933	***	Do.
76. Montague, Benjamin	N	Dec. 1, 1933	***	Do.
77. Murray, Irving	N	Jan. 12, 1934	***	Do.
78. Jackson, Joseph J.	N	do.	***	Do.
79. Holmes, Ralph E.	N	do.	***	Do.
80. Bolden, Ernest H.	N	June 1, 1934	***	Do.
81. Pitmond, George H.	N	do.	***	Do.
82. Goodman, Joe	N	do.	***	Do.

See footnotes at end of table.

DISTRICT OF COLUMBIA—Continued

Name	Race	Executed	Appeal ¹	Crime
ELECTROCUTIONS				
83. Preston, Albert	N	Mar. 20, 1936	***	Murder.
84. Cummings, John R.	N	Apr. 23, 1937	***	Do.
85. Marcus, Willett	N	do.	***	Do.
86. Robinson, Norman W.	N	Mar. 18, 1938	***	Do.
87. Kinard, Will	N	Feb. 3, 1939	***	Do.
88. Haupt, Herbert Hans ²		Aug. 8, 1942		
89. Heinck, Heinrich Harm ²		do.		Do.
90. Kerling, Edward John ²		do.		Do.
91. Neubauer, Herman Otto ²		do.		Do.
92. Quirin, Richard ²		do.		Do.
93. Thiel, Werner ²		do.		Do.
94. Robinson, William I.	N	Oct. 9, 1942	***	Rape.
95. Mumford, William T.	N	Dec. 18, 1942	*** *	Murder.
96. Catoe, Jarvis T. R.	N	Jan. 15, 1943	***	Rape-murder.
97. Neely, Monroe D.	N	Dec. 14, 1945	*** *	Murder.
98. McFarland, Earl		July 19, 1946	*** *	Do.
99. Copeland, William	N	Dec. 20, 1946	*** *	Do.
100. Fisher, Julius	N	do.	*** *	Do.
101. Medley, Joseph		do.	*** *	Do.
102. Hawkins, Alfred L.	N	Oct. 31, 1947	*** *	Do.
103. Patton, Jesse	N	Dec. 10, 1948		Do.
104. Wheeler, Reginald J.	N	do.		Do.
105. Harris, Shirley	N	Jan. 14, 1949	*** *	Do.
106. Hall, John H.	N	Feb. 23, 1949	***	Carnal knowledge.
107. Holmes, Theodore M.	N	Mar. 15, 1949	***	Rape.
108. Garner, Lawrence	N	July 29, 1949	*** *	Murder.
109. Pritchard, Fred S.		Feb. 15, 1952		Do.
110. Tyler, William A.	N	July 25, 1952	*** *	Do.
111. Allen, Albert	N	Mar. 20, 1953	*** *	Do.
112. Carter, Robert E.	N	Apr. 26, 1957	*** *	Do.

¹ Appeals were taken to the Supreme Court of the District of Columbia. In 1920, the decisions of this court were printed in the Federal Reporter.

² New trial.

³ These men were Nazi spies and saboteurs, convicted by a military commission. A writ of habeas corpus was denied by the U.S. Supreme Court.

FLORIDA STATE PRISON, RAIFORD—ELECTROCUTIONS

Name	County	Race	Age	Executed	Appeal	Crime
1. Johnson, Frank	Duval	N		Oct. 7, 1924	*	Murder.
2. Coachman, J. C.	Manatee	N		May 6, 1925		Rape.
3. Champion, Will	Duval	N		Jan. 28, 1926		Murder.
4. Dunwood, Roy	do.	N		May 12, 1926		Do.
5. Simmons, John	do.	N		May 18, 1926		Do.
6. Scrimm, Harry	Dade			May 25, 1926		Rape.
7. Taylor, Philip	do.	N		Oct. 28, 1926		Murder.
8. Green, Willie	do.	N		Nov. 23, 1926		Do.
9. Williams, Arthur	do.	N		Dec. 11, 1926	*	Do.
10. Salter, Lloyd Odell	Duval	N		Mar. 1, 1927	*	Do.
11. Stone, Raymond	do.	N		Mar. 8, 1927	*	Do.
12. Chesser, Rufus	Clay			Mar. 23, 1927		Do.
13. London, Earl	Polk	N		Apr. 7, 1927		Do.
14. Ferguson, Fortune	Alachua	N	16	Apr. 27, 1927		Rape.
15. Levins, Benjamin F.	Hillsborough			Nov. 22, 1927		Murder.
16. Thomas, Louis	Pinellas			Nov. 29, 1927	*	Do.
17. Costello, Thomas	Hillsborough			Dec. 13, 1927		Do.
18. Henderson, William B.	do.			Dec. 21, 1927	*	Do.
19. Pittman, Robert C.	Seminole	N		June 13, 1928	*	Do.
20. Vaughn, Will	Duval	N		Aug. 28, 1928		Do.
21. Johnson, Melvin	Dade	N		Sept. 4, 1928		Rape.
22. Crumpler, Paul	Hillsborough	N	29	Sept. 18, 1928		Do.
23. Turner, James	Calhoun	N		Sept. 25, 1928		Murder.
24. Davis, George	Putnam	N		Oct. 9, 1928	*	Do.
25. Harvey, Herbert	Baker	N	21	Oct. 23, 1930		Do.
26. Kirkland, Roosevelt	do.	N		Oct. 30, 1928	*	Do.
27. Funderbirk, Boss	Franklin	N		Mar. 19, 1930		Do.
28. Bel I, Clayton	Volusia	N		Jan. 27, 1931		Do.
29. Southworth, T.	Palm Beach			Feb. 12, 1931	*	Do.
30. Burton, Nathan	Alachua			Feb. 24, 1931		Do.
31. McQuagge, Robert	Jackson			May 27, 1931		Do.
32. Graham, John	Marion	N		June 18, 1931		Rape.

FLORIDA STATE PRISON, RAIFORD—ELECTROCUTIONS—Continued

Name	County	Race	Age	Executed	Appeal	Crime
33. Johnson, Henry	Lake	N	-----	June 24, 1931	*	Murder.
34. Collins, Jim	Dade	N	-----	Nov. 12, 1931	-----	Rape.
35. Jacobs, Lee	Marion	N	22	Mar. 26, 1932	*	Do.
36. Xangara, Guiseppe	Dade	-----	33	Mar. 20, 1933	*	Murder.
37. Jeffcoat, Elvin E.	Pinellas	-----	40	Mar. 24, 1933	*	Do.
38. Palmer, Victor	Hillsborough	-----	26	July 10, 1933	*	Do.
39. Leavine, Louis	do	-----	33	do	*	Do.
40. Heidt, Norman	do	-----	26	do	*	Do.
41. Williams, Walter	Dade	N	31	Oct. 8, 1934	-----	Rape.
42. Jefferson, Thomas	Duval	N	23	Jan. 22, 1935	*	Murder.
43. Anderson, Fred	do	N	24	do	*	Do.
44. Robinson, George	Seminole	N	46	Feb. 25, 1935	*	Rape.
45. Smith, Herman	Orange	-----	36	Apr. 5, 1935	*	Murder.
46. Jarvis, Martin	Sarasota	-----	36	Apr. 11, 1935	*	Do.
47. Hasty, Monroe	Volusia	N	17	Sept. 16, 1935	*	Do.
48. Green, Lonnie	Bradford	N	28	Jan. 7, 1936	-----	Do.
49. Bradley, Ed	Santa Rosa	-----	57	June 29, 1936	-----	Do.
50. Dixon, George	Seminole	N	27	Aug. 24, 1936	-----	Do
51. Casey, Clarence D.	Dade	-----	23	Oct. 19, 1936	*	Murder.
52. Milligan, James	do	-----	24	do	-----	Do.
53. Padgett, L. D.	Santa Rosa	-----	28	do	*	Do.
54. Clark, Lee	Escambia	N	30	do	*	Do.
55. Scroggins, George W.	Dade	N	41	Oct. 26, 1936	*	Do.
56. Johnson, Rufus	Seminole	N	20	do	-----	Do.
57. Williams, Richard	Pinellas	N	32	Dec. 14, 1936	*	Do.
58. Walker, James W.	do	N	30	do	*	Do.
59. Walker, Willie	Nassau	N	33	Apr. 23, 1937	-----	Rape.
60. Fields, Simee Lee	Hillsborough	N	21	May 10, 1937	*	Murder.
61. Powell, Marcus C.	Duval	-----	50	July 12, 1937	*	Do.
62. McDonald, Preston	do	N	28	July 19, 1937	*	Do.
63. Williams, Walter	do	N	38	do	*	Do.
64. Hinds, Robert	Leon	N	17	July 23, 1937	-----	Rape.
65. Williams, Orson	Hillsborough	N	28	June 20, 1938	*	Murder.
66. Randolph, Willie	Duval	N	34	July 5, 1938	-----	Do.
67. Bungs, Paul	Hillsborough	-----	53	Feb. 20, 1939	-----	Do.
68. McCall, Franklin Pierce	Dade	-----	21	Feb. 24, 1939	*	Kidnap.
69. Smith, Johnny	Indian River	N	30	May 12, 1939	*	Murder.
70. McGraw, Hervey	Santa Rosa	-----	20	Sept. 4, 1939	-----	Do.
71. Parker, Clarence	Gilchrist	N	29	June 5, 1940	*	Do.
72. Goddard, Herbert	Palm Beach	-----	29	July 29, 1940	*	Do.
73. Williams, Ivory Lee	Alachua	N	18	Nov. 11, 1940	*	Do.
74. Smith, Richard	Brevard	N	48	Apr. 15, 1941	*	Do.
75. Ormond, Dan J.	Jackson	-----	52	Oct. 6, 1941	-----	Do.
76. Crews, William R.	Duval	-----	36	do	*	Do.
77. Henderson, Charlie	Orange	N	34	do	*	Do.
78. McLaren, Frizell	Dade	N	34	do	*	Do.
79. Ranson, Mack	Duval	N	38	Oct. 27, 1941	-----	Do.
80. Mardorff, Paul H.	Dade	-----	50	do	*	Do.
81. Walker, Nathaniel	Duval	N	17	Dec. 29, 1941	*	Do.
82. Powell, Edward	do	N	16	do	*	Do.
83. Clay, Willie B.	do	N	16	do	*	Do.
84. Newson, George	Leon	N	29	Mar. 2, 1942	*	Do.
85. Roberson, Worth	Gilchrist	-----	22	Mar. 23, 1942	-----	Do.
86. Gaingetti, Angie Michael	Volusia	-----	50	do	-----	Do.
87. Crawford, Jicy	Duval	N	28	do	*	Do.
88. Roberson, Walter	Dixie	N	42	do	-----	Do.
89. Stanton, John A.	Dade	-----	44	May 18, 1942	*	Do.
90. Hysler, Clyde	Duval	-----	23	June 15, 1942	**	Do.
91. Baker, James	do	N	32	do	*	Do.
92. Hudgins, Byrdl.	Dade	-----	23	July 20, 1942	-----	Do.
93. Williams, Willie M.	Taylor	N	37	do	*	Do.
94. Robinson, Ernest James	Duval	N	20	Aug. 17, 1942	*	Do.
95. Saylor, Forrest	Pinellas	N	35	Jan. 18, 1943	-----	Do.
96. Christy, Vincent J.	Dade	-----	32	Mar. 1, 1943	-----	Do.
97. Parker, Cornelius E.	Hillsborough	N	24	Oct. 4, 1943	-----	Do.
98. Leundon, Buffie	Alachua	N	44	Oct. 25, 1943	-----	Do.
99. Young, James A.	Hillsborough	N	32	do	-----	Do.
100. James, G. W.	Polk	N	54	Oct. 29, 1943	**	Rape.
101. Acree, Perry	Levy	-----	43	Nov. 22, 1943	*	Murder.
102. Flowers, Edgar	Hillsborough	N	21	June 26, 1944	**	Rape.
103. Thompson, Edward	Duval	-----	25	Aug. 19, 1944	*	Murder.
104. Thompson, Earl	do	-----	33	do	*	Do.
105. Williams, James C.	Alachua	N	25	Oct. 9, 1944	*	Rape.
106. Lane, Freddie Lee	do	N	18	do	*	Do.
107. Davis, James	do	N	16	do	*	Do.
108. Mix, Tom	Citrus	N	37	Dec. 28, 1944	*	Murder.
109. Sparks, Henry	Palm Beach	N	33	Jan. 15, 1945	-----	Rape.
110. Green, Albert	Lake	N	28	Feb. 12, 1945	*	Murder.
111. Anderson, William H.	Broward	N	23	July 25, 1945	-----	Rape.
112. Warren, Ernest	Dade	N	29	Oct. 29, 1945	-----	Do.
113. Dixon, Pleas	Holmes	N	31	do	*	Murder.
114. Reed, James	Dade	N	28	Jan. 14, 1946	-----	Rape.
115. Holloway, Charlie	Pinellas	N	30	do	-----	Murder.
116. Sullivan, George L.	Marion	-----	37	do	-----	Do.

FLORIDA STATE PRISON, RAIFORD—ELECTROCUTIONS—Continued

Name	County	Race	Age	Executed	Appeal	Crime
117. Lewis, Eddie.....	Broward.....	N	52	Apr. 22, 1946	.....	Murder.
118. Webb, Jacob Sugg.....	do.....	N	26	Sep. 30, 1946	.....	Rape.
119. Patterson, Wilbur Paul.....	Volusia.....	N	24	Mar. 17, 1947	* **	Murder.
120. Green, Lewis.....	Dade.....	N	19	Apr. 21, 1947	.....	Rape.
121. Henderson, Leroy.....	Palm Beach.....	N	36	June 16, 1947	.....	Murder.
122. Maxwell, James Andrew.....	Broward.....	N	31	Aug. 4, 1947	.....	Rape.
123. Ferguson, Joe.....	do.....	N	42	do.....	*	Do.
124. Melson, Tom.....	Duval.....	N	32	do.....	*	Do.
125. Harper, Reuben.....	Columbia.....	N	30	Jan. 5, 1948	.....	Do.
126. Wiles, Alexander H.....	Duval.....	N	41	Jan. 14, 1948	* **	Murder.
127. Washington, Alonzo, Jr.....	do.....	N	25	Mar. 23, 1948	* **	Do.
128. Harper, Ernest Eugene.....	Polk.....	N	30	Sept. 6, 1948	*	Do.
129. Enmond, Alphonso.....	Dade.....	N	35	Sept. 6, 1948	*	Rape.
130. Watson, David J.....	Federal.....	N	23	Sept. 15, 1948	* ** *	Murder.
131. Talley, Lonnie Lee.....	Duval.....	N	25	Oct. 5, 1948	*	Rape.
132. Stewart, Lacy.....	St. Lucie.....	N	17	Oct. 25, 1948	*	Murder.
133. Combs, Felix.....	Pinellas.....	N	23	Jan. 24, 1949	.....	Rape.
134. Quince, Aaron.....	Volusia.....	N	22	Feb. 7, 1949	*	Murder.
135. Berry, Arthur Edward.....	Pasco.....	N	23	Apr. 4, 1949	* **	Do.
136. Griffin, Flem.....	Nassau.....	N	30	Aug. 8, 1949	*	Do.
137. Tiliiman, Henry V.....	Duval.....	N	51	June 3, 1950	*	Do.
138. McDonald, Walter.....	Bradford.....	N	21	Jan. 8, 1951	*	Do.
139. Robinson, L. D.....	do.....	N	46	do.....	*	Do.
140. Wolfork, George, Jr.....	do.....	N	28	do.....	*	Do.
141. Gifford, R. Charlie.....	Pinellas.....	N	72	Feb. 21, 1951	.....	Do.
142. Hilton, Jessie.....	Volusia.....	N	33	June 4, 1951	.....	Do.
143. Washington, John, Jr.....	do.....	N	25	do.....	*	Do.
144. Felton, James Edward.....	Lake.....	N	25	Aug. 6, 1951	*	Do.
145. London, Willie.....	do.....	N	42	do.....	*	Do.
146. McCann, Coy.....	Manatee.....	N	48	Apr. 7, 1952	*	Do.
147. James, Saul.....	Hillsborough.....	N	28	Apr. 21, 1952	.....	Rape.
148. Leiby, Merlin James.....	Collier.....	N	25	June 30, 1952	*	Murder.
149. Story, George W.....	Duval.....	N	52	Sept. 8, 1952	* **	Do.
150. Brown, Jimmie Lee.....	do.....	N	30	July 6, 1953	* **	Murder.
151. Brooks, Ed.....	Franklin.....	N	61	Sept. 7, 1953	*	Do.
152. Brock, Tanner.....	Columbia.....	N	57	Sept. 18, 1954	.....	Do.
153. Johnson, Orion Nath.....	Alachua.....	N	19	do.....	* **	Do.
154. North, A. Ellwood.....	Polk.....	N	37	Oct. 4, 1954	*	Do.
155. Henderson, James.....	Leon.....	N	47	do.....	*	Do.
156. Bailey, George.....	do.....	N	36	do.....	.....	Do.
157. Williams, Leroy.....	Palm Beach.....	N	37	Nov. 8, 1954	*	Do.
158. Beard, Abraham.....	Leon.....	N	18	do.....	.....	Rape.
159. McVeigh, John H.....	Duval.....	N	34	Apr. 18, 1955	* **	Murder.
160. Gillard, Louis.....	Hillsborough.....	N	54	Aug. 29, 1955	.....	Do.
161. Dyer, Chester F.....	Sarasota.....	N	20	Oct. 31, 1955	.....	Do.
162. Hornbeck, Samuel J.....	Duval.....	N	38	Dec. 12, 1955	*	Do.
163. Anderson, George.....	Dade.....	N	32	Feb. 20, 1956	*	Do.
164. Ambrister, Percy.....	do.....	N	25	do.....	.....	Do.
165. Barwicks, Herman.....	Polk.....	N	28	do.....	*	Do.
166. Copeland, Charlie Jr.....	Duval.....	N	24	Apr. 28, 1956	*	Rape.
167. LaVoie, Edgar J.....	Putnam.....	N	55	Aug. 20, 1956	.....	Murder.
168. Colson, Robert Lee.....	Alachua.....	N	25	Oct. 1, 1956	*	Rape.
169. Dunmore, Moses Lee.....	do.....	N	21	do.....	*	Do.
170. Ezzell, Joseph L.....	Duval.....	N	42	Jan. 21, 1957	*	Murder.
171. Raulerson, William O.....	Columbia.....	N	49	July 15, 1957	.....	Do.
172. Rhone, Roosevelt.....	Marion.....	N	33	Sept. 30, 1957	*	Do.
173. Nelson, Bozzie.....	Palm Beach.....	N	45	May 26, 1958	*	Do.
174. Everett, George L.....	Bay.....	N	23	June 13, 1958	*	Do.
175. Long, Harry Frank.....	Duval.....	N	35	Sept. 29, 1958	*	Do.
176. Horne, Willie.....	do.....	N	25	Jan. 12, 1959	*	Rape.
177. Thomas, Jimmie Lee.....	do.....	N	35	Jan. 19, 1959	*	Do.
178. Withers, Dallas E.....	Bay.....	N	38	Feb. 2, 1959	*	Murder.
179. Connor, Harley A.....	Gilchrist.....	N	59	June 1, 1959	*	Do.
180. Frazier, John.....	Union.....	N	44	do.....	*	Do.
181. Peterson, Frank.....	Holmes.....	N	33	do.....	*	Do.
182. Odum, Sam Wiley.....	Lake.....	N	20	Aug. 28, 1959	*	Rape.
183. Daniels, E. C.....	Columbia.....	N	49	do.....	*	Murder.
184. Paul, John Edward.....	Pinellas.....	N	24	Nov. 13, 1959	*	Rape.
185. City, Willie George.....	do.....	N	22	do.....	*	Do.
186. Williams, Ralph.....	do.....	N	25	Feb. 1, 1960	*	Do.
187. Brooks, James E.....	Palm Beach.....	N	29	June 20, 1960	*	Murder.
188. Mackiewicz, Norman D.....	Dade.....	N	32	Aug. 7, 1961	*	Do.
189. Davis, Robert Wesley.....	Leon.....	N	26	do.....	.....	Rape.
190. Jefferson, Robert Lee.....	Bay.....	N	22	May 12, 1962	*	Murder.
191. Hill, Johnnie.....	Escambia.....	N	28	do.....	*	Do.
192. Johnson, Samuel.....	Putnam.....	N	42	Sept. 6, 1962	*	Do.
193. Leach, William E.....	Union.....	N	22	Sept. 24, 1962	*	Do.
194. Smith, Joe.....	St. Johns.....	N	21	do.....	*	Do.
195. Lee, Charle H.....	Levy.....	N	35	July 18, 1963	*	Do.
196. Dawson, Sie.....	Gadsden.....	N	40	May 12, 1964	*	Do.
197. Blake, Emmett C.....	Bay.....	N	31	do.....	*	Do.

GEORGIA STATE PRISON ELECTROCUTIONS

Name	County	Race	Age	Executed	Appeal	Crime
1. Henson, Howard	DeKalb	N		Sept. 13, 1924		Murder.
2. Williams, Alex.	Jones	N		May 15, 1925		Do.
3. Jackson, Frank	Rabun	N		Sept. 26, 1925	*	Do.
4. Walton, Charlie	Fulton	N	39	Mar. 11, 1926		Do.
5. Coggeshall, Ted	Putnam	N	21	Mar. 25, 1926	*	Do.
6. McClelland, Floyd	do	N	20	do	*	Do.
7. Stewart, Amos	Worth	N		June 18, 1926		Do.
8. Glover, Ed	Bibb	N		Sept. 9, 1926		Do.
9. Johnson, Tom	Jefferson	N	48	Sept. 24, 1926	*	Do.
10. Williams, Pringle	Emanuel	N	17	Oct. 8, 1926	*	Rape.
11. Johnson, James	Fulton	N		Nov. 13, 1926		Murder.
12. Gore, Mell	do	N	22	June 3, 1927	*	Do.
13. Fennell, Herbert	Liberty	N	30	do	*	Do.
14. Mars, Oscar	Ben Hill	N	46	June 6, 1927	*	Do.
15. Rounsaville, John	Chatoga	N	20	July 12, 1927	*	Do.
16. Stewart, Cellus	Early	N	35	July 15, 1927	*	Do.
17. Chambles, Lee	Bartow	N	40	Oct. 14, 1927		Do.
18. Galloway, Wilbur	Dodge	N	28	do		Do.
19. Parker, Mose	Pike	N	35	do		Do.
20. Pryor, Roy	Monroe	N	24	Oct. 26, 1927		Rape.
21. Clark, George	Jasper	N	26	Nov. 11, 1927		Do.
22. Sanders, John	Fulton	N	44	Nov. 18, 1927		Do.
23. Fuller, Garfield	Pike	N	41	Jan. 13, 1928		Murder.
24. Quinn, Albert	Terrell	N	25	Jan. 20, 1928	*	Do.
25. Coates, Robert	Jefferson	N	36	Feb. 21, 1928	*	Do.
26. Ellis, Henry	Fulton	N	25	Apr. 18, 1928	*	Do.
27. Price, Edgar	Grady	N	24	May 4, 1928	*	Do.
28. Grant, James E	Fulton	N	27	May 18, 1928	*	Do.
29. Hicks, Charlie	do	N	21	June 8, 1928	*	Do.
30. Jones, Robert	Bibb	N	22	June 28, 1928	*	Do.
31. Hammond, Harold	Fulton	N	36	July 6, 1928	*	Do.
32. McCloud, Medie	Decatur	N	29	do	*	Do.
33. Gower, Sam	Gwinnett	N	42	July 13, 1928	*	Do.
34. Taylor, Preddis	Fulton	N	33	do	*	Do.
35. Thompson, Clifford	Murray	N	22	Aug. 3, 1928	*	Do.
36. Moss, Jim	do	N	27	do	*	Do.
37. Shepard, R. H.	Fulton	N	57	Dec. 19, 1928		Do.
38. Reddick, Marshall	Coweta	N	40	Jan. 18, 1929		Do.
39. George, Willie C	Fulton	N	23	do	*	Do.
40. Capers, Ed	do	N	19	do	*	Do.
41. Gillom, Willie	do	N	21	do	*	Do.
42. Grinstead, Griff	Montgomery	N	56	Feb. 22, 1929	*	Do.
43. Clark, John	McIntosh	N	44	Mar. 20, 1929	*	Do.
44. Grumady, James	Colquitt	N	25	May 17, 1929	*	Do.
45. Dozier, Jeff	Floyd	N	60	July 22, 1929	*	Do.
46. Morrow, Malcolm	Glynn	N	31	Sept. 11, 1929	*	Do.
47. Simpson, Homer C.	do	N	40	do	*	Do.
48. Bryant, Willie	Ware	N	23	Oct. 4, 1929	*	Rape.
49. Merritt, Alvin T	Fulton	N	25	do	*	Do.
50. Ellen, John	Floyd	N	41	Jan. 27, 1930	*	Murder.
51. Barker, James	Bibb	N	23	Feb. 14, 1930	*	Do.
52. Kelly, Edmond	Grady	N	28	Feb. 21, 1930	*	Do.
53. Screven, Renty	Chatham	N	50	Mar. 21, 1930	*	Do.
54. Jolley, Angeline	Bibb	N	23	June 20, 1930	*	Do.
55. Van Duzer, Emory	Fulton	N	24	June 27, 1930	*	Do.
56. Smith, Wash	Ben Hill	N	21	Nov. 22, 1930	*	Do.
57. Jenkins, Edgar	Early	N	22	Jan. 16, 1931	*	Rape.
58. Biggers, William	Fulton	N	36	Jan. 27, 1931	*	Murder.
59. West, Henry	Floyd	N	21	Mar. 13, 1931	*	Do.
60. Newsome, L. B.	Peach	N	21	Mar. 27, 1931	*	Do.
61. Cox, Willie Lee	Fulton	N	27	Apr. 17, 1931	*	Do.
62. Glaze, Gilbert	do	N	30	do	*	Do.
63. Perry, Marvin	Early	N	40	Apr. 29, 1931	*	Do.
64. Griffin, Fred	Campbell	N	18	May 18, 1931	*	Do.
65. Green, Willie	Richmond	N	27	May 22, 1931	*	Do.
66. Adams, Burley	Columbia	N	34	do	*	Do.
67. Dudley, Eugene	Walton	N	21	July 17, 1931	*	Do.
68. Higgins, Willie	Fulton	N	28	Sept. 11, 1931	*	Do.
69. Stevens, Clark	Morgan	N	24	Oct. 16, 1931	*	Do.
70. Chrisolm, Robert L	Peach	N	20	do	*	Rape.
71. Searcy, William	Talbot	N	32	Oct. 30, 1931	*	Murder.
72. Hendrix, O. C	Fulton	N	34	Oct. 31, 1931	*	Do.
73. Gaskins, English	Candler	N	50	Dec. 21, 1931	*	Do.
74. March, Eddie	Dougherty	N	16	Feb. 9, 1932	*	Do.
75. Johnson, Major	do	N	44	do	*	Do.
76. Parker, J. H.	Ware	N	38	Apr. 8, 1932	*	Do.
77. Rounds, Willie	Houston	N	27	June 10, 1932	*	Do.
78. Jones, Willie	Richmond	N	24	Aug. 8, 1932	*	Do.
79. Jackson, Albert	Peach	N	22	Oct. 7, 1932	*	Do.
80. Baker, Paschall	Webster	N	32	Oct. 28, 1932	*	Rape.
81. Green, Charlie, Jr.	do	N	32	do	*	Do.

GEORGIA STATE PRISON ELECTROCUTIONS—Continued

Name	County	Race	Age	Executed	Appeal	Crime
82. Hulsey, Fred	Polk	N	31	Nov 4, 1932	*	Murder.
83. Hulsey, William	do.	N	55	do	*	Do.
84. Humphreys, John L.	Stewart	N	21	Nov. 5, 1932	*	Do.
85. Jackson, J. C.	Early	N	23	Nov. 16, 1932	*	Do.
86. Welch, Lawrence	do.	N	46	Apr. 4, 1933	*	Do.
87. Todd, Johnny	Greene	N		May 19, 1933		
88. Randall, Pat.	Randolph	N		May 20, 1933	*	
89. Davis, Raider	Fulton	N		June 14, 1933	*	Do.
90. Morris, Richard	do.	N	18	Aug. 11, 1933	*	Do.
91. Sims, Richard	do.	N	18	do	*	Do.
92. White, Mose	do.	N	18	do	*	Do.
93. McClough, Thomas A.	Fayette	N	58	Aug. 25, 1933		Do.
94. Key, Eugene	Houston	N	25	do	*	Do.
95. Jackson, Rochelle	Worth	N	27	Sept. 8, 1933	*	Do.
96. Simpson, Harry	Clinch	N	34	Oct. 20, 1933		Do.
97. Brooks, Grady	Pickens	N	19	Oct. 27, 1933		Do.
98. Zuber, George	do.	N	29	do		Do.
99. Barbee, James F.	Pulaski	N	47	Dec. 29, 1933	*	Do.
100. Osborne, Will	Fulton	N	18	Jan. 12, 1934		Rape.
101. Short, Homer Lee	Marion	N	24	Mar. 2, 1934		Murder.
102. Downer, John	Elbert	N	28	Mar. 16, 1934	*	Rape.
103. Walker, Sandy	Worth	N	48	do		Murder.
104. Lively, Mitty W.	Fulton	N	47	Apr. 20, 1934		Do.
105. James, Mack	Banks	N	29	May 11, 1934		Murder and rape.
106. Patrick, Hosea	Fulton	N	30	May 15, 1934		Do.
107. Hicks, Claude	do.	N	27	do	*	Murder.
108. South, Floyd	do.	N	22	June 15, 1934	*	Do.
109. Castleberry, Reese	Pickens	N	24	do	*	Do.
110. Duncan, Clifford	Candler	N	26	Sept. 14, 1934	*	Rape.
111. Johnson, Frank	Johnson	N	42	Oct. 4, 1934	*	Murder.
112. Street, Mose	Chatham	N	29	Nov. 15, 1934	*	Do.
113. Dodson, Charlie	Schley	N	17	Jan. 21, 1935	*	Do.
114. Hammett, J. T.	Troup	N	47	Feb. 11, 1935	*	Do.
115. Barfield, Archie	Gwinnett	N	22	Feb. 15, 1935	*	Do.
116. Wright, John Henry	McDuffie	N	28	Mar. 1, 1935	*	Do.
117. Reese, Rack	do.	N	55	do		Do.
118. Tucker, Joe	Meriwether	N		Mar. 5, 1935	*	Do.
119. Brown, D. W.	Webster	N		Mar. 7, 1935	*	Do.
120. Bell, Arthur	do.	N		do	*	Do.
121. Hargeoves, Robert	Effingham	N	26	Mar. 15, 1935	*	Do.
122. Pierce, Victor	Clayton	N	35	Mar. 29, 1935	*	Do.
123. Rivers, Albert	Soreven	N	41	Apr. 5, 1935	*	Rape.
124. Ashley, Isaiah	Appling	N	18	do	*	Murder.
125. Harden, Hebry	Washington	N	24	May 10, 1935	*	Do.
126. Stone, Charlie	Fulton	N	30	do	*	Rape.
127. Beasley, Charlie	Troup	N	50	June 14, 1935		Murder.
128. Mullinax, Robert	Floyd	N	34	do	*	Do.
129. Hicks, Cleveland	Mitchell	N	30	July 12, 1935		Do.
130. Reese, J. B.	Jackson	N	19	July 19, 1935	*	Rape.
131. Gaines, Simmie	Oglethorpe	N	35	Oct. 10, 1935	*	Murder.
132. McRae, George	Cherokee	N	24	Oct. 18, 1935	*	Do.
133. Mattox, Jack	Oglethorpe	N	26	Nov. 22, 1935	*	Do.
134. Honea, Marvin	Fulton	N	30	Dec. 20, 1935	*	Do.
135. White, John Will	Cobb	N	24	do	*	Do.
136. Bowen, Eddie B.	Douglas	N	18	Mar. 6, 1936	*	Do.
137. Simmons, John Henry	Camden	N	50	Mar. 20, 1936		Do.
138. Nelson, Thomas	do.	N	38	do	*	Do.
139. Lowman, Julius	Chatham	N	32	Mar. 25, 1936	*	Do.
140. McLemore, Hamp	Muscogee	N	21	Apr. 10, 1936	*	Rape.
141. Thomas, John Henry	Clarke	N	21	Aug. 6, 1936	*	Murder.
142. Daniel, John	Hall	N	24	Aug. 21, 1936	*	Do.
143. Charles, Damps	do.	N	28	do	*	Do.
144. Coombs, Arthur	Henry	N	20	Nov. 12, 1936	*	Rape.
145. Boyer, Winton	Hancock	N		Dec. 4, 1936	*	Murder.
146. Sloan, John Henry	Colquitt	N	25	Dec. 31, 1936	*	Do.
147. Burden, Arthur	Bibb	N	28	Feb. 24, 1937	*	Do.
148. Burke, James	Richmond	N	24	Apr. 19, 1937	*	Do.
149. Goodman, J. P.	DeKalb	N	21	May 14, 1937	*	Do.
150. Lacy, Will	Cook	N	41	May 21, 1937	*	Do.
151. Melton, Eli	Muscogee	N	34	do	*	Rape.
152. Brown, Leonard	Richmond	N	18	May 24, 1937	*	Murder.
153. Trammell, Mose	Troup	N	36	May 28, 1937	*	Do.
154. Hopkins, Willie	Burke	N	27	June 14, 1937	*	Rape.
155. Rose, Edgar	Dougherty	N	27	June 18, 1937	*	Murder.
156. Worthy, James	Fulton	N	24	do	*	Do.
157. Young, Charlie	Burke	N	35	June 25, 1937	*	Do.
158. Jackson, Mitchell	Fulton	N	26	July 9, 1937	*	Do.
159. Douberty, Willie E.	Chatham	N	25	July 30, 1927	*	Do.
160. Ward, Lawrence	Jeff Davis	N	25	Aug. 13, 1927	*	Do.
161. Pinson, Clinton	Fulton	N	40	Sept. 29, 1937	*	Do.
162. Daniels, Willie Frank	Clarke	N	25	Dec. 27, 1937		Do.
163. Haywood, Archie	Worth	N	37	May 6, 1938		Do.
164. Thomas, George	Fulton	N	21	May 13, 1938		Do.

GEORGIA STATE PRISON ELECTROCUTIONS—Continued

Name	County	Race	Age	Executed	Appeal	Crime
165. Rozier, Leavy L.	Ware	.....	38	June 17, 1938	*	Rape.
166. Benton, Ralph	Fulton	N	40	Oct. 28, 1938	*	Murder.
167. Menton, Walter	Charlton	N	31	do	*	Do.
168. McBride, Isaac	Clinch	N	31	Nov. 4, 1938	*	Do.
169. Etheridge, Buck	Henry	N	20	Nov. 10, 1938	*	Do.
170. Knight, Frank	Bryan	N	26	Nov. 25, 1938	*	Rape.
171. Gilbert, George	Troup	N	28	Nov. 30, 1938	.....	Do.
172. Rucker, Charlie	Butts	N	18	Dec. 9, 1938	.....	Murder.
173. Russell, Willie D	Cobb	N	31	do	.....	Do.
174. Carter, Raymond	Butts	N	24	do	.....	Do.
175. Perry, Arthur	Muscogee	N	25	do	*	Do.
176. Mack, Arthur	do	N	26	do	*	Do.
177. Williams, John Henry	Butts	N	21	do	*	Do.
178. Wright, Wilson	Chatham	N	20	Jan. 25, 1939	*	Do.
179. Harvey, Floyd Nelson	Ware	.....	36	June 23, 1939	.....	Do.
180. Vaughn, J. D.	Walton	N	25	July 7, 1939	*	Rape.
181. Barker, Arthur E.	Gwinnett	.....	35	July 26, 1939	*	Murder.
182. Hunter, Marion	Chatham	N	25	Aug. 4, 1939	*	Do.
183. Sheffield, Clarence	Ware	N	36	Sept. 29, 1939	*	Do.
184. Bruno, Sheppard	Dougherty	N	45	Nov. 17, 1939	*	Do.
185. Bivins, James	Schley	N	19	Nov. 21, 1939	.....	Do.
186. Fisher, James	Newton	N	27	Feb. 9, 1940	.....	Do.
187. Mathis, Joe	do	N	27	do	.....	Do.
188. Mims, William L.	Bibb	N	38	Mar. 22, 1940	*	Do.
189. Brown, Robert	Jefferson	N	26	May 17, 1940	*	Do.
190. Barkley, Curtis	Fulton	N	34	Aug. 16, 1940	*	Rape.
191. Fields, Oscar	do	N	24	do	*	Do.
192. Josey, Charlie	Pike	N	20	Aug. 23, 1940	*	Murder.
193. Brown, Eddie	Lowndes	N	29	do	*	Robbery.
194. Anderson, Fred	Laurens	N	19	Oct. 4, 1940	*	Murder.
195. Hicks, Henry William	Thomas	N	18	Oct. 18, 1940	*	Rape.
196. Sutton, John William	Whitfield	N	22	Nov. 8, 1940	.....	Murder.
197. Lawrence, Buddie	Bacon	N	28	Dec. 13, 1940	.....	Do.
198. Brannon, Robert Lee	Floyd	N	39	do	*	Do.
199. Wadell, Jennings	Toombs	N	34	Dec. 27, 1940	.....	Do.
200. Error in numbering Georgia executions. 201 back up 1 number.						
201. Watson, Johnnie	Coweta	N	33	Jan. 3, 1941	*	Do.
202. Hayes, Eddie Bennie	do	N	19	do	.....	Do.
203. Bland, William Henry	Henry	N	23	May 12, 1941	*	Rape.
204. Anderson, Charlie	Fulton	N	18	May 23, 1941	*	Murder.
205. Jenkins, Willie	do	N	23	do	*	Do.
206. Alford, Albirt	Hart	N	32	Oct. 10, 1941	*	Rape.
207. Shivers, James	Fayette	N	38	Jan. 30, 1942	.....	Do.
208. Strickland, Charlie	Terrell	N	25	Jan. 31, 1942	.....	Murder.
209. Morton, Edward Leroy	Jefferson	N	28	Feb. 6, 1942	*	Do.
210. Miller, John	DeKalb	N	35	Mar. 6, 1942	.....	Rape.
211. Cone, Howard O.	Thomas	.....	24	Mar. 11, 1942	*	Murder.
212. Williams, Norman	Elbert	N	28	May 15, 1942	*	Do.
213. Moore, Dock	Fulton	N	25	July 2, 1942	*	Do.
214. Mosley, S. T.	Taylor	N	23	July 10, 1942	.....	Do.
215. Martin, Charles E.	DeKalb	.....	24	Oct. 16, 1942	.....	Do.
216. Shaw, Buster	Brantley	N	20	do	.....	Do.
217. Lewis, Y. Z.	Thomas	N	26	Nov. 26, 1942	*	Do.
218. Dowdell, Raymond	Muscogee	N	31	Jan. 15, 1943	*	Do.
219. Smith, Richard	Fulton	N	21	Feb. 4, 1943	*	Do.
220. Coates, Charles	Catoosa	.....	29	Mar. 12, 1943	*	Do.
221. Wilcoxon, Lewis	Cobb	N	20	Mar. 26, 1943	.....	Rape.
222. Palmer, Joel Luther	Tift	.....	30	May 28, 1943	*	Murder.
223. Franklin, Bernice	Wayne	N	17	do	.....	Rape.
224. Sims, Mose	Fulton	N	23	June 10, 1943	*	Do.
225. Reed, Edmond	Bibb	N	26	July 19, 1943	*	Murder.
226. Johnson, Adel	Fulton	N	21	Aug. 10, 1943	*	Rape.
227. Pittan, Eugene	Polk	N	28	Aug. 20, 1943	*	Murder.
228. Russell, John Thomas	Paulding	.....	43	do	.....	Do.
229. Sexton, Charlie	Fulton	N	27	do	.....	Do.
230. Hancock, Marlin	Paulding	N	16	do	*	Do.
231. Hodo, Serina	Meriwether	N	23	Sept. 24, 1943	.....	Do.
232. Mathis, Tommie Lee	Spalding	N	23	Oct. 22, 1943	*	Do.
233. Williams, Robert	Laurens	N	20	Oct. 23, 1943	*	Do.
234. Allison, S. A.	Meriwether	N	17	Dec. 11, 1943	.....	Do.
235. Johnson, H. T.	Henry	N	22	Dec. 31, 1943	*	Do.
236. Hubbard, Willie	Bibb	N	28	Jan. 5, 1944	*	Rape.
237. Irwin, Isaac	do	N	28	Jan. 7, 1944	*	Murder.
238. Hicks, Willie	Fulton	N	18	Feb. 3, 1944	*	Rape.
239. Lee, Marvin Lewis	do	N	22	Mar. 7, 1944	*	Do.
240. Hooten, Rock	Taylor	N	24	Mar. 17, 1944	.....	Murder.
241. Rozier, Herbert	Laurens	N	72	Apr. 7, 1944	*	Do.
242. Walker, Robert	Bibb	N	26	Apr. 28, 1944	*	Rape.
243. Reed, Oscar	do	N	26	do	*	Murder.
244. Ellison, Grady	Burke	N	36	May 25, 1944	*	Do.

GEORGIA STATE PRISON ELECTROCUTIONS—Continued

Name	County	Race	Age	Executed	Appeal	Crime
245. Stroup, William B.	Fulton		41	July 28, 1944	*	Rape.
246. Glass, Henry	do	N	21	Jan. 19, 1945	*	Murder.
247. Tye, Jimmie Lee	do	N	22	do	*	Do.
248. Jackson, Willie	do	N	28	Mar. 2, 1945	*	Rape.
249. Fowler, Walter	Forsyth		22	do	*	Murder.
250. Error in number Georgia executions. 251 backup 1 number.						
251. Baker, Lena (female)	Randolph	N	44	Mar. 5, 1945	*	Do.
252. Johnson, L. C.	Newton		19	Mar. 9, 1945	*	Do.
253. Smith, E. V.	Pike		39	do	*	Do.
254. Gilbert, Ulysses	Houston	N	24	Apr. 27, 1945	*	Do.
255. Lamar, Nathaniel	Bibb	N	21	May 11, 1945	*	Do.
256. Watkins, David	Cobb	N	18	do	*	Do.
257. Green, Edward Lee	Houston	N	23	June 1, 1945	*	Rape.
258. Green, Jack Roy	Sumter	N	40	June 29, 1945	*	Do.
259. Smithwick, Albert	Chatham		26	July 28, 1945	*	Murder.
260. Gunnelis, Robert R.	Baldwin		40	Aug. 24, 1945	*	Do.
261. Hayes, Henry	Fulton	N	27	do	*	Robbery.
262. Johnson, Charlie	Early	N	27	Sept. 21, 1945	*	Rape.
263. Collins, Noah	Chatham	N	29	Nov. 9, 1945	*	Murder.
264. Graiton, Jesse	Fulton	N	23	do	*	Do.
265. Taylor, Nathaniel	Laurens	N	37	Nov. 30, 1945	*	Do.
266. Daniels, Eddie	Grady	N	34	Feb. 8, 1946	*	Do.
267. Bonner, Isaac	Bibb	N	19	Mar. 29, 1946	*	Do.
268. Lewis, Leon	Fulton	N	26	do	*	Rape.
269. Jones, Willie	Ware	N	28	Apr. 19, 1946	*	Murder.
270. Bryant, Early	Fulton	N	30	May 31, 1946	*	Rape.
271. Burke, Anderson	Oglethorpe	N	28	July 5, 1946	*	Do.
272. Nappier, Aaron	Laurens	N	41	July 19, 1946	*	Murder.
273. McKethan, James R.	Chatham		22	Aug. 2, 1946	*	Do.
274. Yearwood, Walter H.	Clarke		23	Oct. 22, 1946	*	Do.
275. Murray, Alton	Candler		29	Nov. 8, 1946	*	Do.
276. Allen, Lee James	Fulton	N	16	Nov. 15, 1946	*	Rape.
277. Burns, Johnnie	Lee	N	22	Nov. 22, 1946	*	Murder.
278. Stevenson, Willie	do	N	17	do	*	Do.
279. Williams, James Rufus	Irvin	N	19	Nov. 29, 1946	*	Do.
280. Parker, Albert	Cook	N	29	Dec. 13, 1946	*	Do.
281. Hill, J. C.	Ware	N	19	Dec. 20, 1946	*	Do.
282. Brown, Arthur, Jr.	Chatham	N	23	Feb. 8, 1947	*	Do.
283. Dorsey, Morris	do	N	23	do	*	Do.
284. Knapp, Homer R.	do		38	Apr. 18, 1947	*	Do.
285. Porter, Lauren	Oglethorpe	N	38	Apr. 25, 1947	*	Do.
286. Barnes, Willis	Ben Hill		29	do	*	Do.
287. Daniel, Quiller	Franklin	N	30	May 2, 1947	*	Do.
288. Brown, James	Screven	N	24	June 17, 1947	*	Do.
289. Reddick, Herbert L.	Bibb	N	17	June 30, 1947	*	Do.
290. Scott, Ebenezer	Chatham	N	27	Aug. 1, 1947	*	Do.
291. Stanford, Robert L.	Richmond	N	25	do	*	Do.
292. Loughbridge, Terrell	Jefferson	N	18	Aug. 9, 1947	*	Do.
293. Moore, Roosevelt	Stewart	N	26	Aug. 15, 1947	*	Do.
294. Owen, Jim	Warren	N	43	Oct. 6, 1947	*	Do.
295. Ford, Oscar L.	Dougherty	N	21	Oct. 10, 1947	*	Do.
296. Bryant, Sweetie	Mitchell	N	29	do	*	Do.
297. Morakes, Nick	Morgan		53	Nov. 18, 1947	*	Do.
298. Scrutchens, Leroy	Sumter	N	37	Jan. 2, 1948	*	Do.
299. There has been an error in numbering the Georgia executions. Starting with 301, back up 2 numbers.						
300. Do						
301. Porter, Joe	Sumter	N	27	do	*	Do.
302. Brown, Eddie, Jr.	Carroll	N	23	Feb. 13, 1948	*	Do.
303. Torbett, J. W.	Randolph	N	37	Feb. 16, 1948	*	Do.
304. Mangum, James	Fulton	N	18	Mar. 5, 1948	*	Rape.
305. Campbell, L. P.	Floyd	N	26	Mar. 26, 1948	*	Murder.
306. Numm, Red Lamar	Jefferson	N	43	Aug. 13, 1948	*	Do.
307. Whitt, Sam	Fulton	N	22	Aug. 16, 1948	*	Do.
308. Davis, William C.	Carroll	N	55	Oct. 15, 1948	*	Do.
309. Beetles, J. B.	do	N	32	do	*	Do.
310. Eller, Jewell	Towns		21	Nov. 5, 1948	*	Do.
311. Garrett, Charlie	do		26	do	*	Do.
312. Brown, L. C.	Greene	N	25	Nov. 26, 1948	*	Do.
313. Carroll, Jessie C.	Muscogee		44	Apr. 8, 1949	*	Do.
314. Moore, Junior	Bibb	N	25	Apr. 20, 1949	*	Do.
315. Persons, Morgan	Worth	N	39	May 20, 1949	*	Do.
316. Williams, A. C.	Fulton	N	33	June 1, 1949	*	Do.
317. Dorsey, Andrew	do	N	23	Aug. 19, 1949	*	Rape.

GEORGIA STATE PRISON ELECTROCUTIONS—Continued

Name	County	Race	Age	Executed	Appeal	Crime
318. Jones, John A. Jr.	Sumter	N	17	Sept. 12, 1949	*	Murder.
319. Jones, Wilbur G.	do	N	18	do	*	Do.
320. Brown, Lindsey	Burke	N	26	Dec. 16, 1949	*	Do.
321. Houser, Eddie, Jr.	Peach	N	22	Jan. 27, 1950	*	Do.
322. Wyatt, Jessie	DeKalb	N	39	Apr. 21, 1950	*	Do.
323. Carrigan, John P.	Fulton	N	29	Apr. 28, 1950	*	Do.
324. Bryan, Robert F.	Chatham	N	19	May 28, 1950	**	Do.
325. Cade, Charlie L.	Richmond	N	20	Aug. 18, 1950	*	Do.
326. Mays, Lincoln	do	N	24	do	*	Do.
327. Wynn, Curtis, Jr.	do	N	20	do	*	Do.
328. McKay, George	Fulton	N	30	Sept. 29, 1950	*	Do.
329. Gardner, Jimmie Lee	Clay	N	27	Oct. 28, 1950	*	Robbery
330. Wallace, John	Coweta	N	54	Nov. 3, 1950	*	Murder.
331. Richardson, Jimmie	Crisp	N	47	do	*	Do.
332. Lynch, Thomas	Chatham	N	31	Nov. 21, 1950	*	Do.
333. Kersey, George	do	N	27	do	*	Do.
334. Harris, Willie B.	Worth	N	47	Mar. 2, 1951	*	Do.
335. Williams, Jimmy C.	Clinch	N	28	May 25, 1951	*	Rape.
336. Solesbee, George W.	do	N	26	July 27, 1951	** ***	Murder.
337. McLendon, E. B., Jr.	Richmond	N	37	Oct. 5, 1951	*	Do.
338. Ballard, Willie Ford	Gwinnett	N	19	Nov. 2, 1951	*	Rape.
339. Parks, Jim	Pike	N	45	Dec. 14, 1951	*	Murder.
340. McBurnett, Vester	Floyd	N	43	Dec. 17, 1951	*	Do.
341. Brock, Henry	do	N	39	Feb. 21, 1952	*	Do.
342. Almond, Homer	DeKalb	N	48	Mar. 1, 1952	*	Do.
343. Williams, Clifton	Richmond	N	30	Mar. 14, 1952	*	Do.
344. Reese, Pat	White	N	33	Apr. 4, 1952	*	Do.
345. Griffin, Eli	Putnam	N	42	Apr. 17, 1952	*	Do.
346. Darden, Arthur	Grady	N	22	Apr. 25, 1952	*	Do.
347. Wise, Napoleon	Emanuel	N	20	June 6, 1952	*	Do.
348. Blackstone, James, Jr.	Coffee	N	30	July 25, 1952	*	Do.
349. Thornton, John Henry	Fulton	N	24	July 11, 1952	*	Do.
350. Johnson, Horace	Jones	N	29	Oct. 7, 1952	*	Do.
351. Savage, Henry	Chatham	N	35	Nov. 21, 1952	*	Do.
352. Pinckney, Abraham	Berrien	N	67	Feb. 27, 1953	*	Do.
353. Starr, Jesse	Floyd	N	26	Apr. 16, 1953	*	Rape.
354. Patrick, Amos	Clarke	N	34	May 8, 1953	*	Murder.
355. Strickland, Robert	Chatham	N	20	Aug. 24, 1953	*	Do.
356. Bowens, Samuel	Screven	N	23	Aug. 28, 1953	*	Do.
357. Burgess, Willie	Chatham	N	56	Nov. 14, 1953	*	Do.
358. Calhoun, Robert E.	Coweta	N	31	Dec. 18, 1953	*	Do.
359. Harris, Isaiah	Ware	N	33	Dec. 23, 1953	*	Rape.
360. Wright, Paul	Walton	N	19	Jan. 22, 1954	*	Murder.
361. Scott, Doyal	Glynn	N	30	Feb. 5, 1954	*	Do.
362. Heard, Lindsey	Cherokee	N	20	May 25, 1954	*	Rape.
363. Jones, Ozzie	Chatham	N	32	June 11, 1954	*	Do.
364. Miller, Herman Lee	Baldwin	N	18	June 15, 1954	*	Do.
365. Jackson, Willie	do	N	17	do	*	Do.
366. Seymour, Sylvester	Richmond	N	35	Aug. 6, 1954	*	Murder.
367. Booker, Howard L.	Fulton	N	35	Sept. 17, 1954	*	Robbery.
368. Simon, Elliott	Colquitt	N	55	Nov. 5, 1954	*	Murder.
369. Jones, Joe Lee	Upson	N	17	Nov. 19, 1954	*	Do.
370. King, Charles L.	do	N	19	do	*	Do.
371. Davis, Calvin E.	Schley	N	19	Nov. 12, 1954	*	Do.
372. Morgan, James W.	Richmond	N	18	Jan. 7, 1955	*	Do.
373. Jackson, Howard	Coweta	N	44	Apr. 15, 1955	*	Do.
374. Williams, Tom	Colquitt	N	53	do	*	Do.
375. Fuller, Sylvester	Calhoun	N	25	June 17, 1955	*	Robbery.
376. Philpot, Walter	Muscogee	N	39	Jan. 27, 1956	*	Murder.
377. Williams, Aubrey	Fulton	N	29	Mar. 30, 1956	**	Do.
378. Cochran, Willie Grady	Calhoun	N	37	Apr. 13, 1956	*	Do.
379. Turner, James	Bartow	N	27	June 8, 1956	*	Do.
380. Mosley, Frederick	Fulton	N	25	June 29, 1956	*	Rape.
381. Cooper, Paul	Worth	N	48	Sept. 21, 1956	*	Murder.
382. Reese, Amos	Cobb	N	25	Jan. 4, 1957	*	Rape.
383. Corbin, John F.	Fulton	N	32	Feb. 8, 1957	*	Murder.
384. Fields, Jennings E.	DeKalb	N	32	Mar. 5, 1957	*	Do.
385. Newberry, John	Miller	N	47	Mar. 8, 1957	*	Do.
386. Domingo, Leon I.	Muscogee	N	23	Mar. 15, 1957	*	Do.
387. Styles, Isaac	Burke	N	34	do	*	Do.
388. Coleman, Don Mitchell	Fulton	N	18	Mar. 19, 1957	*	Do.
389. Toler, James	do	N	39	do	*	Do.
390. Elder, Robert Lee	do	N	37	do	*	Do.
391. Hill, Harold E.	Richmond	N	25	Mar. 25, 1957	*	Do.
392. Justice, Grady	Fulton	N	29	July 26, 1957	*	Rape.
393. Mullins, Fred G.	Harris	N	41	Sept. 6, 1957	*	Murder.
394. DuPree, Lem	Laurens	N	59	Sept. 16, 1957	*	Do.
395. White, John Henry	Berrien	N	26	Oct. 4, 1957	*	Rape.
396. Krull, George	Federal	N	Oct. 21, 1957	*** **	Do.	
397. Krull, Mike	Federal	N	do	*** **	Do.	
398. Smith, Edward S.	Richmond	N	23	Jan. 17, 1958	*	Do.

See footnote at end of table.

GEORGIA STATE PRISON ELECTROCUTIONS—Continued

Name	County	Race	Age	Executed	Appeal	Crime
399. Golden, William	Chatham	N	23	Apr. 18, 1958		Murder.
400. Curry, Albert	Harris	N	26	Sept. 19, 1958		Do.
401. Dobbs, Leroy	Cobb	N	36	Nov. 7, 1958		Do.
402. Adams, Otha A.	Colquitt		54	Nov. 14, 1958		Do.
403. Woods, Henry R.	Fulton	N	20	Dec. 19, 1958		Do.
404. Murray, J. C.	Bryan	N	54	Feb. 6, 1959		Do.
405. Hill, Frank Junior	Dougherty	N	36	June 5, 1959		Do.
406. Charlton, William	Chatham	N	23	Aug. 7, 1959		Do.
407. Wilson, Eddie	Atkinson	N	37	Dec. 18, 1959		Do.
408. Bunkley, Homer	Talbot	N	26	Jan. 15, 1960		Do.
409. Albert, Ernest	Columbia		34	Mar. 4, 1960		Do.
410. Wilson, Frank	Warren	N	54	June 10, 1960		Do.
411. Davis, Herring	Meriwether	N	40	June 24, 1960		Do.
412. Johnson, Nathaniel	Richmond	N	25	July 1, 1960		Do.
413. Wims, Oscar J.	Fulton	N	44	Nov. 21, 1960		Do.
414. Mullins, Roy Lee	Fannin		24	Jan. 20, 1961		Do.
415. Johnson, Thurmond	Richmond	N	26	Mar. 24, 1961		Do.
416. Watt, George	Muscogee	N	21	Aug. 11, 1961		Do.
417. Smith, Sammie Lee	Houston	N	27	Nov. 14, 1962		Do.
418. Jones, Orelander	Jasper	N	19	Oct. 4, 1963		Do.
419. Chandler, Ollie	Lowndes	N	21	Oct. 18, 1963		Do.
420. Pugh, J. W.	DeKalb		35	Jan. 14, 1964		Do.
421. Dye, Bernard	McDuffie		34	Oct. 16, 1964		Do.

13 trials.

IDAHO STATE PRISON

Name	County	Executed	Appeal
HANGINGS			
1. Rice, Edward	Shoshone	Nov. 30, 1901	*
2. Connors, James	Kootenai	Dec. 16, 1904	
3. Bond, William H. H.	Ada	Aug. 10, 1906	*
4. Seward, Fred M.	Moscow	May 7, 1909	
5. Arnold, Noah ¹	Bonner	Dec. 19, 1924	*
6. Jurko, John	Twin Falls	July 9, 1926	*
7. Powell, Troy D.	Ada	Apr. 13, 1951	*
8. Walrath, Ernest Lee	do.	do.	*
9. Snowden, Raymond Allen	do.	Oct. 18, 1957	*

¹ Negro.

ILLINOIS STATE PENITENTIARY JOLIET

Name	County	Executed	Appeal
ELECTROCUTIONS			
1. Clark, Calude ¹	Lake (at Old Prison)	Dec. 15, 1928	
2. Brown, John I.	Lake	do.	
3. Bressette, Dominick ²	do.	do.	
4. Preston, John	DuPage	Oct. 9, 1931	*
5. Blink, Fred	Whiteside	Apr. 23, 1935	
6. Thielan, Arthur	LaSalle	May 10, 1935	
7. Gerner, Fred	do.	do.	
8. Hauff, John	do.	do.	
9. Thompson, Gerald	Peoria	Oct. 15, 1935	
10. Jelliga, John	Will	Oct. 21, 1938	
11. Wood, Elvyn	Grundy	Apr. 14, 1939	
12. Jordon, Leo	Whiteside	May 13, 1942	
13. Weber, Herman Frederick	Peoria (at Stateville)	Sept. 16, 1949	***

¹ Negro.² Indian.

Note. Prisoners from the counties (except Cook) north of Springfield are executed at Joliet. Those from counties south of Springfield are executed at Menard.

ILLINOIS STATE PENITENTIARY MENARD

Name	County	Age	Executed	Appeal
ELECTROCUTIONS				
1. Johnson, Murley J	Coles	26	Oct. 20, 1931 ..	
2. Johnson, Hazel ¹	Macou	23	Dec. 11, 1931 ..	*
3. Pannier, Henry	Randolph	57	do	
4. Green, Willie ¹	St. Clair	31	do	
5. Jackson, James ¹	do	25	Dec. 11, 1935 ..	
6. Gray, Elmer	Wayne	42	Aug. 27, 1932 ..	
7. Smith, James ¹	St. Clair	25	Sept. 23, 1932 ..	
8. Shelby, Harry	Jasper	45	Dec. 22, 1933 ..	
9. Allen, John	do	26	do	
10. Gray, Martin ¹	Marion	28	do	
11. Little, Warren	Hamilton	22	June 26, 1934 ..	
12. Lehne, Thomas J	Madison	42	Apr. 23, 1935 ..	*
13. Dedmon, VanBuren	St. Clair	25	July 9, 1935 ..	
14. Balbin, Edward	do	19	do	
15. Drue, John	do	21	do	
16. Mitchell, Allen ¹	do	32	Feb. 26, 1937 ..	
17. Porter, Marie ²	do	22	Jan. 28, 1938 ..	
18. Giancola, Angelo	do	38	do	

¹ Negro.² Female.

COOK COUNTY JAIL, CHICAGO, ILL.

On July 6, 1927, legislation was enacted making electrocution the means of executing the death sentence. Counties over 1,000,000 inhabitants were to have their own electric chairs. Cook County exercises concurrent jurisdiction with the State penitentiaries in this matter, and is included.

Name	Executed	Appeal
ELECTROCUTIONS		
1. Grecco, Anthony	Feb. 20, 1929	
2. Walz, Charles	do	
3. Glover, Napoleon	June 20, 1929	
4. Swan, Morgan	do	
5. Woodward, Aaron	Apr. 11, 1930 ..	*
6. Vogel, August	May 9, 1930 ..	
7. Shadlow, Leonard	Oct. 3, 1930 ..	
8. Fisher, Lafon	do	*
9. Brown, Leon	Nov. 28, 1930 ..	*
10. Lenhardt, William	Dec. 12, 1930 ..	*
11. Jordan, Frank	Oct. 16, 1931 ..	*
12. Rocco, Charles	do	*
13. Popescue, John	do	*
14. Sullivan, Richard	do	*
15. Bell, Frank	Jan. 8, 1932 ..	*
16. Norsingle, Ben	Jan. 15, 1932 ..	
17. Reed, John	do	
18. Cohen, Morris	Oct. 13, 1933 ..	
19. Smith, Kenneth	Oct. 16, 1933 ..	
20. Scheck, John	Apr. 20, 1934 ..	*
21. Dale, George	do	*
22. Francis, Joseph	do	*
23. McNeil, Alonzo	Oct. 12, 1934 ..	
24. Walker, George	do	
25. Baulen, Herman	Dec. 15, 1934 ..	
26. Dittman, Walter	do	
27. Novak, Chester	Mar. 21, 1935 ..	
28. Bogacki, Andrew	Oct. 21, 1936 ..	
29. Korczykowski, Frank	do	
30. Swain, Rufe	Feb. 26, 1937 ..	
31. Rappaport, Joseph	Mar. 2, 1937 ..	*
32. Murawski, Stanley	Apr. 16, 1937 ..	
33. Whyte, Frank	do	
34. Schuster, Joseph	do	
35. Chrisoules, Peter	Oct. 15, 1937 ..	*
36. Scott, J. C.	Apr. 19, 1938 ..	
37. Seadlund, John Henry ¹	July 14, 1938 ..	*** **
38. Nixon, Robert	June 16, 1939 ..	*
39. Cygan, Steve	Oct. 13, 1939 ..	
40. Price, Charles	Oct. 27, 1939 ..	**
41. Poe, Howard	Apr. 19, 1940 ..	*
42. Wnukowski, Victor	May 17, 1940 ..	
43. Michalowski, Frank	do	

COOK COUNTY JAIL, CHICAGO, ILL.—Continued

Name	Executed	Appeal
ELECTROCUTIONS		
44. Schroeder, Robert.....	Dec. 13, 1940	
45. Riley, Edward.....	June 20, 1941	* **
46. Watson, Orville.....	do.....	* **
47. Parks, Earl.....	Jan. 15, 1942	
48. Sawicki, Bernard.....	Jan. 17, 1942	
49. Pantano, John.....	Sept. 18, 1942	
50. Wishon, Ernest.....	Nov. 26, 1943	
51. Williams, Paul.....	Mar. 15, 1944	
52. Krause, Alvin.....	Sept. 15, 1944	
53. Breedlove, Kermit.....	Oct. 19, 1945	
54. Crosby, Charles.....	June 20, 1947	
55. Gaither, Ernest.....	Oct. 24, 1947	
56. Morelli, James.....	Nov. 26, 1949	
57. Varela, Fred.....	Apr. 21, 1950	* **
58. Najera, Alfonso.....	do.....	* **
59. Trulove, Willard.....	Nov. 17, 1950	
60. Jenko, Raymond.....	Jan. 25, 1952	*
61. Williams, Harry.....	Mar. 14, 1952	*
62. Lindsay, LeRoy.....	Oct. 17, 1952	*
63. Davis, Berenice.....	do.....	*
64. Scott, Emanuel.....	Mar. 19, 1953	*
65. Carpenter, Richard D.....	Dec. 19, 1958	* **
66. Ciucci, Vincent.....	Mar. 23, 1962	* ** ***
67. Dukes, James.....	Aug. 24, 1962	* ** ***

¹ Federal kidnapping.

Note. Courtesy Virgil W. Peterson, Director, Chicago Crime Commission.

INDIANA STATE PRISON

Name	County	Race	Age	Executed	Appeal
HANGINGS					
1. Jones, Henry.....	Marion.....	N	27	May 7, 1897	*
2. Keith, Joseph.....	Gibson.....		40	Nov. 15, 1901	
3. Rinkard, John.....	Wabash.....		62	Jan. 17, 1902	*
4. Wheeler, Willis B.....	Warrick.....		45	June 6, 1902	*
5. Russell, Lewis.....	Gibson.....	N	48	Sept. 26, 1902	
6. Alexander, Matthew.....	Vigo.....	N	27	Apr. 16, 1903	
7. Copenhaver, Ora.....	Marion.....		27	June 12, 1903	*
8. Jackson, William.....	Vanderburgh.....	N	do.....		
9. Hoover, Edward.....	Marion.....		26	Nov. 13, 1903	*
10. Springs, Benjamin.....	Vigo.....	N	34	July 1, 1904	
11. Duggins, Jerry.....	do.....	N	29	July 8, 1904	
12. Smith, Berkeley.....	Marion.....	N	31	June 30, 1905	*
13. Williams, George.....	do.....		28	Feb. 8, 1907	
ELECTROCUTIONS					
14. Chirka, John.....	Lake.....		40	Feb. 20, 1914	
15. Rascio, Harry.....	Vigo.....		35	do.....	
16. Collier, Robert.....	Vanderburgh.....	N	34	Oct. 16, 1914	
17. Robinson, Kelly.....	Marion.....	N	28	Feb. 1, 1916	*
18. Ray, William.....	do.....	N	18	Aug. 5, 1920	
19. Thornton, Will.....	Lake.....	N	21	Dec. 10, 1920	
20. Donovan, William.....	Montgomery.....		35	June 1, 1922	
21. Brooks, Ben.....	Bartholomew.....		33	Dec. 1, 1922	*
22. Diamond, Harry.....	Porter.....		25	Nov. 14, 1924	
23. Vergolini, Peter.....	Lake.....		29	Jan. 30, 1925	
24. Koval, John.....	do.....		32	Oct. 16, 1925	
25. Stewart, Edward.....	Marion.....	N	25	Jan. 18, 1926	
26. Jankowski, Peter.....	Lake.....		26	Jan. 22, 1926	
27. Smith, Henry.....	Porter.....	N	26	Mar. 26, 1926	
28. Hicks, Roosevelt.....	Marion.....	N	23	July 29, 1927	*
29. Gryzb, John.....	Elkhart.....		20	Apr. 10, 1928	*
30. Britt, James.....	Lake.....	N	42	Mar. 21, 1930	
31. Saragoza, Ignacio.....	La Porte.....		26	June 24, 1931	
32. Johnson, Herbert.....	Lagrange.....		33	Feb. 12, 1932	
33. Macknezzar, Ulysses.....	Porter.....	N	31	July 1, 1932	*
34. Moore, John.....	Blackford.....		28	Mar. 2, 1933	
35. Shustrom, Glenn.....	Lake.....		23	July 28, 1933	*
36. Witt, Charles.....	Boone.....		28	Nov. 24, 1933	*
37. Edwards, Harley.....	Jackson.....		40	Mar. 2, 1934	*
38. Hamilton, Louis.....	Boone.....		28	Sept. 28, 1934	*
39. Perkins, Richard.....	Hancock.....	N	33	Oct. 1, 1934	*
40. Coffin, Edward.....	Clark.....		22	Oct. 9, 1934	

INDIANA STATE PRISON—Continued

Name	County	Race	Age	Executed	Appeal
ELECTROCUTIONS					
41. Griggs, Olivett	Lake	N	32	June 14, 1935	
42. Chapman, Richard	do		21	Nov. 19, 1935	*
43. Slaughter, Gaston	Vigo	N	37	Apr. 17, 1936	*
44. Thomas, Clarence	Whitley		31	Oct. 19, 1936	
45. Singer, Harry	Wabash		25	Dec. 26, 1936	
46. Arkuszewski, Chester	La Porte		24	Mar. 12, 1937	
47. Kuhlman, William	Franklin		28	June 19, 1937	
48. Williams, Frank	do		39	do	
49. Poholsky, John	do		35	do	
50. Fortune, Raymond	Huntington		27	Sept. 17, 1937	*
51. Fuller, Willis	Vigo		28	Jan. 14, 1938	*
52. White, Monroe	Newton	N	32	May 3, 1938	
53. Hicks, Heber	Franklin		39	May 6, 1938	
54. Smith, John	Whitley		22	June 1, 1938	
55. Shaw, Robert	Lagrange		28	June 28, 1938	
56. Marshall, Hugh	Shelby		20	July 8, 1938	*
57. Neal, Vurtis	do		22	do	*
58. Noelke, Henry	Vanderburgh		32	Sept. 30, 1938	*
59. Dalhover, R. James	Federal		32	Nov. 17, 1938	***
60. Easton, Orelle	La Porte		25	June 3, 1939	*
61. Swain, James	Vanderburgh	N	18	June 23, 1939	*
62. Miller, Adrian	Allen		31	Aug. 16, 1939	
63. Hawkins, Milton	Floyd		25	Nov. 14, 1941	*
64. Carter, Virginus	Dearborn		33	Feb. 10, 1942	
65. Greathouse, Cleveland	Lake	N	64	Nov. 26, 1945	
66. Quarles, Frank	Vanderburgh	N	44	Apr. 2, 1946	*
67. Brown, Robert O	Jasper		37	Feb. 23, 1949	**
68. Badgley, Frank	do		49	do	**
69. Kallas, Thomas	Lake		57	Mar. 29, 1949	**
70. Click, Franklin	Allen		31	Dec. 30, 1950	*
71. Watts, Robert A.	Bartholomew	N	27	Jan. 16, 1951	**
72. Liefer, Richard Allen ¹	Allen		41	June 15, 1961	***

¹ New trial.

IOWA STATE PENITENTIARY, HANGINGS

Name	County	Race	Age	Executed	Appeal
1. Dooley, James	Adams		18	Oct. 19, 1894	*
2. Cumberland, J. K.	Shelby		45	Feb. 8, 1895	*
3. Smith, Joseph C.	Monroe	N	44	Apr. 20, 1906	*
4. Jenkins, John	Appanoose	N	24	July 29, 1910	*
5. Pavey, Ira	Sioux		31	Sept. 8, 1922	*
6. Weeks, Eugene	Polk			Sept. 15, 1922	*
7. Cross, Orrie	do		26	Nov. 24, 1922	*
8. Thorst, Earl	Allamakee			Mar. 9, 1923	*
9. Olan Der, William ²	Webster			Sept. 7, 1923	*
10. Maupin, Roy	Polk		27	Jan. 18, 1924	*
11. Burris, Archie	Wapello		32	Jan. 2, 1925	*
12. Simons, Harland	Scott		26	Nov. 16, 1925	*
13. Altringer, J. A. R.	Dubuque			Nov. 6, 1931	*
14. Griffin, Pat	Black Hawk		36	June 5, 1935	*
15. Brewer, Elmer	do			do	*
16. Tracy, Reginald S.	Delaware		53	Nov. 29, 1935	*
17. Mercer, John M.	Cedar		29	Jan. 24, 1938	*
18. Wheaton, Allen B.	Pottawattamie		21	do	*
19. Heinz, Marlo	Dubuque		32	Apr. 19, 1938	*
20. Jacobsen, Franz A.	Wapello		30	do	**
21. Rhodes, Walter	Johnson		32	May 7, 1940	**
22. Sullivan, Ivan L.	Lee		30	Nov. 12, 1941	*
23. Kaster Stanley M.	Bremer		36	Dec. 29, 1944	*
24. Jarrett, William	Webster		54	Feb. 23, 1945	*
25. Heincy, Philip (father)	Dickinson		72	Mar. 29, 1946	*
26. Heincy, William H. (son)	do		45	do	*
27. Bruntlett, Corliss R.	Pottawattamie		52	July 6, 1949	*
28. Beckwith, Edward James ³	Black Hawk		31	Aug. 4, 1952	*
29. Brown, Charles Noel	Pottawattamie		29	July 24, 1962	*
30. Kelley, Charles Edwin	Mills		21	Sept. 6, 1962	*
31. Feguer, Victor Harry ³	Federal		27	Mar. 15, 1963	***

¹ Capital punishment abolished 1965.² New trial.³ Kidnapping.

KANSAS STATE PENITENTIARY, HANGINGS

Name	County	Executed	Appeal
1. Hoefgen, Ernest L.	Marion	Mar. 10, 1944	
2. Brady, Fred L.	Cowley	Apr. 15, 1944	*
3. Knox, Clark B.	Wyandotte	do.	
4. Tate, Cecil	Kingman	July 29, 1947	
5. Guntow, George F.	do.	do.	
6. Miller, George	Miami	May 6, 1950	*
7. McBride, Preston	Reno	Apr. 6, 1951	*
8. Lammers, James	Donaphin	Jan. 5, 1952	*
9. Germany, Nathaniel	Wyandotte	May 21, 1954	**
10. Martin, Merle William	Johnson	July 16, 1954	*
11. Andrews, Lowell Lee	Wyandotte	Nov. 30, 1962	** ***
12. Hickock, Richard E.	Finney	Apr. 14, 1965	** ***
13. Smith, Perry Edward	do.	do.	** ***
14. York, George Ronald	Russell	June 22, 1965	** ***
15. Latham, James Douglas	do.	do.	** ***

KENTUCKY STATE PENITENTIARY, ELECTROCUTIONS

Name	County	Race	Executed	Appeal	Crime
1. Buckner, James	Marion	N	July 8, 1911		Murder.
2. Penman, Sandy	Lincoln	N	Aug. 5, 1911		Rape.
3. Looks, Oliver	Jefferson	N	Aug. 22, 1911		Murder.
4. Kelly, Matthew	do.	N	Sept. 28, 1911		Do.
5. Howard, Charles	Franklin	N	Jan. 31, 1912		Do.
6. Richardson, Willard	Carlise		Apr. 19, 1912		Do.
7. Miracle, Cal	Bell		Aug. 31, 1912		Do.
8. Smith, Charles	Mason	N	Sept. 27, 1912	*	Do.
9. Smith, James	do.	N	do.	*	Do.
10. Ellis, James	Pulaski	N	Nov. 22, 1912		Do.
11. Williams, Silas	Woodford	N	Mar. 21, 1913		Do.
12. Wilson, William	Jefferson	N	Mar. 24, 1913	*	Do.
13. Bowman, John	Marion		Apr. 11, 1913		Rape.
14. Tolferraz, Isom	Todd	N	Apr. 18, 1913		Do.
15. Brown, Jim	Clark	N	Apr. 25, 1913		Murder.
16. Martin, Tom	Shelby	N	June 20, 1913	*	Do.
17. Lawson, Tom	do.	N	do.	*	Do.
18. May, General	Laurel		June 27, 1913		Do.
19. Graham, Turner	Hardin		July 30, 1915		Do.
20. Lane, Will	Bell	N	do.		Do.
21. Smathers, Wallace	Clark	N	Sept. 3, 1915		Rape.
22. Henry, John	Boyd	N	Nov. 19, 1915	*	Murder.
23. Garrison, Harry	Campbell	N	Nov. 17, 1916	*	Rape.
24. Blue, John H.	Jefferson	N	Aug. 10, 1917	*	Murder.
25. Collins, Melvin	Carter		July 12, 1918		Do.
26. Lawler, James	Kenton		Feb. 21, 1919	*	Do.
27. Carney, Pat	do.		do.	*	Do.
28. Howard, James	McCracken	N	June 6, 1919	*	Do.
29. Holmes, Lennie	Calloway	N	do.		Do.
30. Martin, Lube	do.	N	July 25, 1919	*	Do.
31. Music, Charles	Boyd		Mar. 10, 1920	*	Do.
32. Lockett, Will	Fayette	N	Mar. 11, 1920	*	Rape.
33. Ellison, Lee	Hopkins	N	Jan. 31, 1921	*	Murder.
34. Brown, Dave	Pike		Nov. 16, 1922	*	Do.
35. Nichols, Tom	Christian	N	Jan. 26, 1923	*	Do.
36. Bibbs, Benny	do.	N	do.	*	Do.
37. Banks, Henry S	Scott	N	May 15, 1923	*	Do.
38. Powers, James	Kenton		June 18, 1923	*	Do.
39. Chambers, Will	Bargen	N	Mar. 7, 1924		Do.
40. Thomas, Frank	Jefferson		May 9, 1924	*	Do.
41. Weick, George	do.		do.	*	Do.
42. Miller, Charles	Breckinridge		do.	*	Do.
43. Davis, Sid	Fayette	N	Mar. 20, 1925	*	Do.
44. Griffin, Leonard	Harlan	N	do.	*	Do.
45. Hall, Elmer	Bourbon		June 26, 1925	*	Do.
46. Newhouse, Richard	do.		do.	*	Do.
47. Farrell, George	do.		do.	*	Do.
48. Armond, Harry	Jefferson	N	July 3, 1925	*	Do.
49. Lake, Edward	do.		May 28, 1926	*	Do.
50. Sloan, Elisha	Perry		do.	*	Do.
51. Baker, John	Jefferson	N	do.	*	Do.
52. Brannon, Roger	Fayette		Dec. 17, 1926	*	Do.
53. Harry, Smokey	Christian	N	do.	*	Do.
54. Davis, Raymond	Fayette		Sept. 16, 1927	*	Do.
55. Mitra, Charles P.	Jefferson		July 13, 1928	*	Do.
56. Seymoure, Red	do.		do.	*	Do.
57. Dockery, Hascue	Harlan		do.	*	Do.

KENTUCKY STATE PENITENTIARY, ELECTROCUTIONS—Continued

Name	County	Race	Executed	Appeal	Crime
58. Lawson, Milford	Knox		do	*	Do.
59. Moore, Willie	Jefferson	N	do	*	Do.
60. Howard, James	do	N	do	*	Do.
61. McQueen, Clarence	do	N	do	*	Do.
62. Hoard, Carl	do		Sept. 13, 1929	*	Do.
63. Hutsell, Ivan	Oldham		do	*	Do.
64. Ratcliffe, Ballard	Jefferson		June 13, 1930	*	Do.
65. Edmonds, Richard	do	N	do	*	Do.
66. Cooksey, A. P.	Hopkins	N	Apr. 29, 1932	*	Do.
67. Rogers, Charles	Hardin	N	do	*	Do.
68. Holmes, Walter	do	N	do	*	Do.
69. Covington, Jeff	Madison	N	Dec. 17, 1932	*	Do.
70. Carson, Frank	Nelson		Apr. 7, 1933	*	Do.
71. McGee, Sam	McCracken	N	do	*	Do.
72. Pope, Kermit R.	Jefferson	N	Apr. 14, 1933	*	Do.
73. Gaines, Richard	Caldwell	N	do	*	Do.
74. Young, John	Jefferson		do	*	Do.
75. Waters, William	Montgomery	N	Nov. 3, 1933	*	Do.
76. Scott, Ishmael	Floyd		do	*	Do.
77. Bouton, Harve	Elliott		do	*	Do.
78. Dewberry, Walter	Hardin	N	Nov. 10, 1933	*	Do.
79. Chaney, Will	Jefferson	N	Aug. 24, 1934	*	Do.
80. Tinscher, George W.	Scott		do	*	Do.
81. Glenday, Francis	do		Dec. 7, 1934	*	Do.
82. Graves, Wiley	Fayette	N	Feb. 22, 1935	*	Do.
83. Williams, Charlie	Christian	N	Mar. 1, 1935	*	Do.
84. Smith, James	Fayette	N	May 24, 1935	*	Do.
85. Young, Bill	Harlan		June 28, 1935	*	Do.
86. Lotheridge, Eulie	Carroll	N	Dec. 6, 1935	*	Do.
87. Bowman, Neal	Mercer		Jan. 10, 1936	*	Do.
88. Tate, Calvin	Jefferson		Jan. 17, 1936	*	Do.
89. Hall, Willard	do		do	*	Do.
90. Matthews, James	McCreary		Jan. 31, 1936	*	Do.
91. Lee, Bennie	Bell	N	Feb. 21, 1936	*	Do.
92. Whitehead, Erleson	Barren		Mar. 20, 1936	*	Do.
93. Simmons, Roy	McCracken	N	May 15, 1936	*	Do.
94. Drake, Alfred	Jefferson	N	do	*	Do.
95. Woodford, James R.	Fayette	N	May 29, 1936	*	Do.
96. Young, Homer	Bell	N	June 5, 1936	*	Do.
97. Underwood, George B.	Bullitt		Feb. 19, 1937	*	Do.
98. Franklin, Sam	Jefferson	N	Mar. 19, 1937	*	Armed robbery.
99. Clift, Arnold	Laurel		July 16, 1937	*	Murder.
100. Marion, Perry	do		Nov. 12, 1937	*	Armed robbery.
101. Triplett, Tony	Letcher		May 20, 1938	*	Murder.
102. Denny, Parkie	Madison		Sept. 2, 1938	*	Do.
103. Mosley, Leonard	Meade	N	Oct. 20, 1938	*	Rape.
104. Warner, Sy vester	Casey		Feb. 10, 1939	*	Murder.
105. Powell, Arnold	Estill		Mar. 3, 1939	*	Do.
106. Griffin, Bonnie	do		do	*	Do.
107. Waters, Willie	Jefferson		Mar. 24, 1939	*	Do.
108. Rice, Arvil	Bell		July 7, 1939	*	Do.
109. Smith, Charles H.	Lyon		July 14, 1939	*	Do.
110. Davis, Jack	Leslie		July 21, 1939	*	Do.
111. Higging, Edward	Mercer	N	July 25, 1939	*	Rape.
112. Phillips, Henry	Jefferson	N	July 26, 1940	*	Murder.
113. Houston, Ernest	do	N	Aug. 30, 1940	*	Do.
114. Richardson, Columbus	McCracken	N	Jan. 20, 1941	*	Do.
115. Chism, Grover	Hardin		July 4, 1941	*	Do.
116. Smiddy, Bill	Whitley		Aug. 29, 1941	*	Do.
117. Satterfield, James	Jefferson	N	Feb. 20, 1942	*	Do.
118. Burman, Eugene	Fayette	N	Mar. 27, 1942	*	Rape.
119. Williams, Robert	do	N	June 5, 1942	*	Do.
120. Robertson, James Lee	do	N	Aug. 7, 1942	*	Murder.
121. Sanders, Jess	Jefferson	N	Aug. 28, 1942	*	Do.
122. Smith, Otis Peter	do		do	*	Do.
123. Combs, McCoy	Perry		Jan. 15, 1943	*	Do.
124. Sexton, Burnett	do		do	*	Do.
125. Anderson, Robert	Fayette		Feb. 26, 1943	*	Do.
126. Penny, Tom	do		do	*	Do.
127. Baxter, Raymond S.	do		do	*	Do.
128. Trent, Ernest	Breathitt		do	*	Do.
129. Gray, William Carson	Fayette	N	June 25, 1943	*	Do.
130. Simpson, Archie	do	N	do	**	Do.
131. Nelson, Tommy	Pike		Mar. 16, 1945	**	Do.
132. Bass, Thomas	Jefferson	N	do	**	Do.
133. Fox, Carl	Campbell	N	Apr. 6, 1945	*	Rape.
134. Hambrick, Ed	do	N	May 25, 1945	*	Do.
135. Adkins, Anderson	Pike		Mar. 15, 1946	*	Murder.
136. Warner, Thomas Earl	Mason	N	Mar. 22, 1946	*	Do.
137. Jones, Arthur	do	N	do	*	Do.
138. Calhoun, Edward	Garrard		May 24, 1946	*	Do.
139. Tungett, Earl L.	Lyon		July 11, 1947	**	Do.
140. Williams, Luther	Pulaski	N	Feb. 27, 1948	*	Do.

KENTUCKY STATE PENITENTIARY, ELECTROCUTIONS—Continued

Name	County	Race	Executed	Appeal	Crime
141. Nease, Jasper.....	Jefferson.....		July 30, 1948	*	Armed robbery.
142. McPeak, Daniel T.....	do.....		Nov. 5, 1948	*	Do.
143. Pool, Charlie.....	Christian.....	N	Jan. 28, 1949	*	Murder.
144. Workman, Herbert H.....	Jefferson.....		Mar. 4, 1949	*	Armed robbery.
145. Lightfoot, Lawrence B.....	Campbell.....		June 24, 1949	*	Murder.
146. Ellison, Raymond.....	Muhlenburg.....		do.....	*	Do.
147. Webb, Columbus.....	Martin.....		June 16, 1950	*	Do.
148. Shelkels, Albert.....	Jefferson.....	N	June 8, 1951	*	Armed robbery.
149. Robinson, James I.....	do.....		Jan. 18, 1952	*	Murder.
150. Bircham, Earl D.....	do.....		Feb. 1, 1952	**	Do.
151. Quarles, Jessie Lee.....	Christian.....	N	Apr. 4, 1952	*	Do.
152. Spears, Roosevelt.....	Campbell.....		Feb. 27, 1953	*	Do.
153. Read, Thomas William.....	Jefferson.....	N	June 4, 1954	*	Do.
154. Tarrence, Roy.....	do.....		Mar. 18, 1955	**	Do.
155. Tarrence, Leonard.....	do.....		do.....	**	Do.
156. Milam, Ed.....	Christian.....	N	Sept. 16, 1955	**	Do.
157. Merrified, Chester.....	Jefferson.....		Dec. 23, 1955	**	Do.
158. Nichols, David.....	do.....	N	do.....	*	Do.
159. Bowman, James F.....	do.....	N	Nov. 30, 1956	*	Do.
160. DeBerry, Charles C.....	do.....	N	do.....	*	Do.
161. Sheckles, Robert Lee.....	do.....	N	do.....	*	Rape.
162. Hoss, Kelly.....	Henderson.....		Mar. 2, 1962	*	Murder.

[In 1920, following the rape murder of a little girl by Will Lockett (No. 32), a law was passed requiring that executions for rape would be by hanging in the county jail yards, in the presence of at least 50 witnesses. This law was repealed in 1938. The following is an incomplete list.]

Name	County	Executed	Race	Appeal
1.....		1925.....	N	
2.....		1926.....	N	
3.....		1927.....	N	
4.....		1927.....	N	
5. DeBoe, Willard T.....	Livingston.....	Apr. 19, 1935	N	*
6. Bethea, Rainey.....	Davless.....	Aug. 14, 1936	N	
7. Montjo, John.....	Kenton.....	Dec. 17, 1937	N	** ** *
8. Van Verison, Harold.....	do.....	June 13, 1938	N	*

DEATH ROW POPULATIONS AS OF JAN. 1, 1968

Alabama.....	21	Nebraska.....	1
Arizona.....	13	Nevada.....	6
Arkansas.....	10	New Hampshire.....	2
California.....	60	New Jersey.....	20
Colorado.....	4	New Mexico.....	0
Connecticut.....	2	New York.....	10
Delaware.....	2	North Carolina.....	5
District of Columbia.....	0	Ohio.....	18
Florida.....	51	Oklahoma.....	4
Georgia.....	25	Pennsylvania.....	19
Idaho.....	0	South Carolina.....	12
Illinois.....	13	South Dakota.....	0
Indiana.....	8	Tennessee.....	7
Kansas.....	2	Texas.....	24
Kentucky.....	10	Utah.....	4
Louisiana.....	37	Virginia.....	4
Maryland.....	22	Washington.....	7
Massachusetts.....	8	Wyoming.....	1
Mississippi.....	3		
Missouri.....	3	Total.....	438
Montana.....	0		

[From the New York Post, Jan. 2, 1968]

THE DEATH PENALTY

(By Clayton Fritchey)

WASHINGTON.—When the first Congress of the U.S. was considering the Bill of Rights (the first 10 Amendments to the new Constitution), it was warned that the prohibition against “cruel and unusual punishment” in the Eighth Amendment might some day rule out capital punishment. That was over 175 years ago, but that day may soon be here.

The California Supreme Court this month, for the first time in the history of the country, is going to review the constitutionality of legal execution on the grounds that it violates the Eighth Amendment. No matter what the verdict is, it will probably be appealed to the U.S. Supreme Court, and if it finds that the death penalty is excessively cruel then at one blow capital punishment would be struck down in all 50 states.

This emotional issue has always sharply divided Americans, but in recent years the trend has been against the death sentence. Alaska, Hawaii, Iowa, Maine, Michigan, Minnesota, Oregon, West Virginia and Wisconsin have all abolished it. New York, North Dakota, Rhode Island and Vermont retain it only for a second-time murderer, or for the slaying of a police officer, or for murder by a lifer.

Even in the states which still permit the death penalty, there has been a growing revulsion against it. From a peak of 199 executions in 1935, there has been a steady drop to 37 in 1962, 21 in 1963, 15 in 1964, 7 in 1965, and one in 1966. It's hard to know what the number might have been in 1967 for the 60 prisoners in San Quentin's death row have all been given a stay of execution by the California Supreme Court pending its ruling on the state's capital punishment law.

This novel legal approach has been fostered by the persuasive pleading of Gerald Gottlieb, a California legal scholar, whose thesis is that the death penalty is unconstitutional because essentially it is torture, and serves only the purpose of revenge. His view is that the only legal justification for execution is deterrence, but, since it doesn't deter effectively, it simply becomes unnecessary cruelty.

"If there is no necessity for it," he says, "it becomes unconstitutional and cannot be imposed legally. The death penalty is the most dramatic symbol of barbarism present in our national domestic life."

The U.S. Supreme Court has said the amendment "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society . . . The basic concept underlying the Eighth Amendment is nothing less than the dignity of man. While the state has the power to punish, the amendment stands to assure that this limit be exercised within the limits of civilized standards."

Any comparison of 18th and 20th century standards shows "an explosive expansion of the concept of cruelty." Children were once subject to the same criminal treatment as adults, and were worked 12 hours a day. Corporal punishment of the insane and feeble-minded was common practice. Flogging was widespread. Slavery flourished. All that has now changed.

Today the death penalty is not only cruel to the victim but to the jurist who has to impose it. Shortly before Christmas an Ohio judge openly wept on the bench when a jury brought in a mandatory death sentence against a 16-year-old boy who had fatally stabbed his foster father. The boy cried uncontrollably when the jury foreman read the verdict calling for the electric chair.

"I'm scared," he said. "I never expected the death penalty. I hold nothing against my mother. Nothing against my father, either. I was scared during the whole trial. I'm really scared." The judge covered his face and said, "I have never had to pronounce such a sentence."

[From the Economist, Sept. 30, 1967]

DEATH IN COURT

With extraordinary frequency these days the soft shuffle of a man condemned to death is heard along the concrete corridors in San Quentin prison which lead to the double-locked visitors' room where lawyers may be consulted. It is a special sound, this tread of the all-but-dead, because in California these men wear felt slippers. But their footfalls are stirring up echoes in the courts which are likely to reach the Supreme Court itself. They have brought to a temporary halt executions threatening over a hundred men and may signal a turning point in American criminal justice. For the first time there is a long range, carefully financed and strongly supported drive to eradicate capital punishment as unconstitutional because it is a "cruel and unusual" penalty which falls with especial weight upon the poor.

The court maneuvers are the work of the Legal Defence Fund of the National Association for the Advancement of Coloured Peoples and of the American Civil Liberties Union. They have mustered an array of eager young lawyers, including

one of America's most brilliant trial lawyers, Professor Anthony Amsterdam of the University of Pennsylvania. ----- Though Negroes believe that in certain states black men are more likely than white men to be sentenced to death, the NAACP's Legal Defence Division is acting for all the poor, irrespective of race.

Florida and California are the states with the largest number of men under sentence of death—51 in Florida, 60 in California—out of a total of about 400 in the whole country. Though juries continue to order capital punishment, their orders are seldom carried out. In both states in recent years the courts and Governors opposed to the death penalty have stayed the executions. But this year new Governors were sworn in who declared themselves willing to let the death penalty be exacted—Governor Kirk in Florida, Governor Reagan in California, both Republicans who replaced Democrats. With ordinary people frightened by the increase in crime, State Legislatures have been incapable of abolishing capital punishment. "It was the prospect of wholesale slaughter which stirred us to act", said one NAACP lawyer.

Petitions were filed in Florida in March and in California in July and have been accepted by federal judges in both states, at least to the point of ordering certain facts to be examined, a process which appears to ensure a halt to all executions until the two suits are settled. Like most momentous constitutional controversies this promises to take years and is full of fine points which are hard for the layman to understand. But the main ones are that people who favour the death penalty are allowed to serve on juries without being challenged while those who oppose it are subject to dismissal by the prosecutor; that legal aid is not available to conduct appeals after a man is convicted; and that at present the law sets no standards for arriving at the death penalty, apart from the unguided judgment of a judge or jury. It all boils down to the assertion that the death penalty is "cruel and unusual" punishment of the kind forbidden by the Constitution. Unusual it has certainly become. So far this year there has been only one execution (in California) ; last year there was only one.

[From the Washington (D.C.) Evening Star, Mar. 21, 1968]

NOT TOO YOUNG TO DIE—SENATE WITNESS CITES PARADOX IN EXECUTIONS

(By William Grigg)

Four teen-agers, none old enough to qualify as a witness for executions, are now facing death sentences in the United States, the chairman of a college group opposing capital punishment told a Senate subcommittee today.

Douglas Lyons, 20, chairman of Citizens Against Legalized Murder, a group organized at the University of California at Berkeley, said one of the four is a 16-year-old who, when 15, killed his father with a bayonet in Ohio.

"I suppose there are people who would say that by executing this boy we are deterring other children from bayoneting their parents," Sen. Philip A. Hart, D-Mich., said.

He mentioned those who cite the phrase in the Bible, "an eye for an eye and a tooth for a tooth . . ."

What these people may not know, Lyons said, is that " 'an eye for an eye' was a reform. It used to be two eyes," the punishment being more extreme than the crime.

Rep. Phale Hale, a member of the Ohio House of Representatives, testified that of the more than 3,000 executions in U.S. history, 178 of those executed have been teenagers.

Of the total executions, he continued, eight since 1893 have been proved to be of innocent persons.

Former Michigan Gov. G. Mennen Williams testified that there is no evidence that the death penalty serves as a deterrent to crime.

Asked about his kidnaping by inmates while on a visit to a state penitentiary, Williams said, "I don't think that either (kidnaper) would have been deterred by the death penalty." The state abolished the penalty in 1846.

In testimony yesterday, Clinton T. Duffy, former warden of San Quentin, said "There are no humane ways to kill."

In an electric chair execution, the prisoner cringes from torture, his flesh burns and smells and his eyeballs may literally pop out, Duffy said as he testified in support of legislation to abolish the death penalty for federal crimes.

A hanging can be particularly gruesome, Duffy said, when the neck is not broken and the convicted man slowly strangles.

All the testimony was before the Senate Subcommittee on Criminal Law. Its hearing on the death penalty is believed the first in the Senate's history, despite pleas from men going back to the time of Thomas Jefferson that the death penalty be abolished.

The bill before the subcommittee was introduced by Sen. Hart whose state is one of 13 that have abolished the penalty.

The District of Columbia death penalty also would be eliminated by the Hart bill. It was last used in 1957 when Robert E. Carter, a Negro, was electrocuted for the murder of a policeman in 1953.

The Hart bill also would end the death penalties for military crimes such as desertion and cowardice.

[From the Washington Post, Feb. 19, 1968]

TAKING LIFE

There was a nobility and moral fervor in Theodore R. McKeldin's derogation of himself for having permitted four executions while he was Governor of Maryland that commanded the highest respect and the fullest forgiveness. "I am ashamed to say I hanged four men," the former Governor told a legislative hearing at Annapolis on Wednesday. "The public clamor was such that I yielded to it. May God forgive me."

Not Theodore McKeldin alone but every citizen of the Free State shared in the barbarism and blasphemy of those executions. Like all executions, they were barbarous because they constituted an application of the law of the jungle—the stark retribution of an eye for an eye. And as Mr. McKeldin observed, "There's no evidence that the execution of one murderer ever deterred another from committing a similar crime." They were blasphemous because they arrogated to mere humans a divine authority. "The vengeance that sends a man out of this world into eternity is not ours but the Lord's," Mr. McKeldin said.

Maryland has had an object lesson just lately in the reckless folly of capital punishment. It came very close to executing John and James Giles and Joseph Johnson for a crime they probably did not commit and for which, in any case, they were convicted by grossly improper means. No rectification would have been possible had they been sent to the gas chamber.

Maryland is now considering two bills to abolish the death penalty. The time is overdue for its citizens to acknowledge the limitations of human judgment and to bring the state into conformity with the civilized restraints on punishment now accepted in a number of states and under consideration in many more. The conclusive argument against capital punishment in our view is that it constitutes an official denial of the sanctity of life. Thus it fosters the very irreverence it is intended to prevent.

