57th SESSION-NEVADA LEGISLATURE

THE DEATH PENALTY

ASSEMBLY JUDICIARY - - - JOINT HEARING - - - SENATE JUDICIARY

FEBRUARY 15, 1973

Mr. F. Dakin, representing the Legislative Counsel Bureau, addressed the Assembly and Senate Judiciary Committee Members concerning the Supreme Court Ruling on the Death Penalty.

"I don't think it would be possible to give meaningful brief synopsis to all of the learning set forth in these opinions, but as I understand the question, it is directed to what options are left to the legislatures of the states and the congress by the court's holding in these three consolidated cases." "Only two of the Justices expressed the opinion that the death penalty is invalid per se, and therefore could not be administered in any case." "That clearly is a minority view of the Court." "One other Justice expresses a view that if we must allow it to be administered at the whim, if you like, discretion, if you prefer, of the judge or jury trier of the fact, then it must be outlawed in every such case. Those three taken together are still a minority of the Court." "In order to overturn the death penalty in the cases actually presented it required the concurrence of two other Justices, each of whom opined merely that "as administered in the particular case", that is to say, as administered by a jury without explicit guidelines as to the circumstances under which it could be inflicted, the death penalty is unconstitutional." "Four Justices dissented, and they are the only ones who managed to agree with one another, holding that there was essentially nothing constitutionally wrong with the death penalty as it exists in the statutes of the several states." "Therefore I think you can say that Congress and the legislature have these options open to them: "Of course they may abolish the death penalty, nothing requires them to retain it." "They may continue to provide that it be imposed if they define the cases in which it may be imposed and leave no discretion to the trier of fact except to find whether or not the defendant is guilty of the offense charged, or third, "there seems to benothing in the opinions which went to make up the majority which would prevent the legislature from providing that the death penalty may be imposed for a certain offense if certain specified facts in connection with the commission of that offense are found by the trier of facts as fact and then if he finds such fact he has no further discretion in imposing the penalty." "I think, Mr. Chairman, that is about as good a summary of the holding that their nature permits them to make." "I rely upon Chief Justice Berger who indicated that he would not attempt to bind the limits of the holding and I think that his learning far surpasses mine."

JOINT HEARING ON THE PROPOSAL OF REINSTATING THE DEATH PENALTY
SENATE JUDICIARY COMMITTEE
ASSEMBLY JUDICIARY COMMITTEE
MINUTES OF MEETING HELD

15th DAY OF FEBRUARY, 1973

The meeting was called to order at 9:20 a.m. Senator Close in the Chair.

PRESENT: Senator Foley
Senator Bryan
Senator Dodge
Senator Hecht
Senator Swobe
Senator Wilson
Assemblyman Barengo
Assemblyman Hayes
Assemblyman Hickey
Assemblyman Lowman
Assemblyman Huff
Assemblyman Glover

Mr. Frank Daykin, Legislative Counsel Bureau
Mr. Grant Sawyer, former Governor of Nevada
Senator Joe Neal
Father Maurice Welsh, Catholic Diocese of Reno
Mr. Richard Siegel, American Civil Liberties Union
Mr. Tom Beatty, Public Defender, Clark County
Mr. William Neely, Student
Bishop Frensdorff, Episcopal
Ms. Emily Griel
Mr. Mike Fondi, District Attorney, Carson City
Mr. Don Bell, Seven Steps Foundation
Senator Raggio
Mr. Howard McKibbon, District Attorney, Douglas County

Chairman Close asked Mr. Frank Daykin of the Legislative Counsel Bureau to give a brief synopsis of the Supreme Court decision.

Mr. Daykin: I don't think it would be possible to give a real brief synopsis of all the learning that has been set forth in these opinions, but as I understand the question is directed to what options are left open to the legislatures of the States and the Congress by the Court's holding in these three consolidated cases. In that light, I believe we can answer it relatively briefly.

Only two of the Justices expressed the opinion that the death penalty is invalid per say, and therefore, cannot be administered in any case. That clearly is a minority view, of course, one other justice expresses the view that if we must allow it to be administered at the whim or discretion of the jury or judges prior to the fact, then it must be outlawed in every such case. Those three taken together are still a minority opinion. In order to overturn the death penalty, it was part of the concurrence of two other justices that administered in that particular case by a jury without explicit guidelines as to the circumstances under which it could be inflicted, the death penalty is unconstitutional.

Four justices dissented, and they are the only ones who managed to agree with one another and join in one another's opinion. Their opinion was that there was nothing constitutionally wrong with the death penalty as it exists in the Statutes of the several States.

Therefore, I think we can say that Congress and the legislature have these options open to them. Of course, they may abolish the death penalty since nothing requires them to retain it. They may continue to provide that it be imposed, if they define the cases in which it may be imposed, and leave no discretion to the prior of fact except whether or not the defendant is guilty of the offense charged. Or third, provide that the death penalty may be imposed for a certain offense if certain specified facts in connection with the commission of that offense are found by the prior of fact as fact, and then finding such fact no discretion in imposing the penalty.

I think, Mr. Chairman, that is about as good a summary of the holdings as their nature permits me to make. I rely upon Mr. Chief Justice Burger who indicated that he did not attempt to bind the limits of the holding, and I think that this learning far surpasses mine.

Mr. Grant Sawyer's statement in opposition to reinstating the death penalty is attached hereto as Exhibit A.

Senator Joe Neal's statement in opposition to reinstating the death penalty is attached hereto as Exhibit B.

Father Maurice Welsh's statement which he presented on behalf of Bishop Joseph Green is attached hereto as Exhibit C.

Mr. Richard Seigel presented his testimony in opposition to reinstating the death penalty.

It was the American Civil Liberties Union together with the National Association for the Advancement of Colored People which had the primary responsibility for carrying the death penalty situation to its present state and it will be those two organizations that will ultimately establish that capital punishment will be declared finally unconstitutional in the United States. I have been in contact with the representatives of the American Civil Liberties Union who were represented in the Furman case and discussed the situation as they saw it. Some of my comments will reflect that opinion, particularly the opinion of Professor Anthony Amsterdam of Stanford University.

I want to call your attention first, in regard to the Furman case, to two comments which drew a much greater question to the idea of the mandatory death sentence than I think was suggested by the representative of the Legislative Council Bureau. The Harvard Law Review of November, 1972, Page 85, states in reviewing the Furman case, "many statutes which appear to be mandatory may actually be discretionary or as arbitrary in application as those struck down in Furman for the following reasons: First, if mandatory death senten-

ces allow the jury to decide the defendant's state of mind; second, if a mandatory death sentence asks the jury to decide whether the victim actually belonged to a class of persons; and lastly, and I think this is the decisive one, such mandatory death sentences are susceptible to abuse because the death penalty could be withheld by means of conviction of a lesser offense or even by acquittal. In other words, just the fact that the jury has the option of the death sentence in a homicide case, second degree murder, or acquittal, or any other option -- this will be enough of an arbitrary situation. There is a great deal of evidence that juries will take that option of second degree murder or acquittal.

Juries have shown a great unwillingness to use the death sentence. I doubt very much they they will vote to execute people by going ahead with a first degree ruling in the majority of cases. I believe that mandatory death sentence will perhaps double the rate of execution. Many cases will be moved from first degree murder with life to second degree murder and the sentences overall will be less. What will happen to the other cases? I can assure you that they will not be executed in the next ten years. We have at least 19 appeals that we can use by most recent statement and 19 years of tremendous expense to everyone involved. We have at least 5 different types of appeals that the NAACP and the ACLU will be using, and as we have done for the past 10 years, we will stretch this out considerably. At the end of those 10 years, I sincerely believe that those people who are left will be finally reduced to a life sentence. I think you have a very self defeating proposal in a mandatory death sentence situation. I think you should refrain from it for these reasons.

I note in support of the self defeating idea of this a statement by Justice Blackman in dissent on the Furman decision. He makes no point in dissent that there is room for the death sentence in situations where the federal statutory structure previously permitted it. I must responsively point out that there is some contrary statements in Justice Burger's opinion but there is a debate within the dissent between Justice Burger and Justice Blackman. Justice Marshall relates first of all to the question of prison guards and prisoners. All of the highly regarded evidence is overwhelming, that police are no safer in communities which retain the sanction of death than in those which have abolished it.

My final point is Justice Marshall's point about the expense involved in the death penalty relating to the loss of productive work by the men who are in prison on death row, the cost of the execution itself, up to 19 appeals and the question of detecting and curing mental illness in so many cases in the 10 years before possible execution comes. He concludes "when all is said and done, there can be no doubt that it costs more to execute a man than to keep him in prison for life."

Mr. Tom Beatty presented his statement on how the death penalty bill should best be formulated.

It is probably clear from both the number of bills introduced and from the interest shown that there will be a death penalty reenacted in the State of Nevada. With this assumption, I think this Committee should formulate the best and most practical bill. Practicality would have at least three aspects as I would see it: (1) The question of deterrent. Perhaps no case can ever be made that any death penalty bill will have a deterrent effect, but if it does, I would suspect it would relate to those kinds of cases where there would be the best possibility of deterrence. For example, possibly the law enforcement officer situation, possibly the person in prison already serving life imprisonment, possibly the contract killing or the killing for hire. (2) The impact upon the courts. The first impact is the constitutionality. The Furman opinion runs some 75 pages depending upon the version which you have. Like former Governor Grant Sawyer and Mr. Segal, I feel that under that decision any death penalty would be of doubtful validity. If it can be sustained, it would seem that the best chance would be a mandatory feature, but carefully limited and explicitly defined. History teaches us that the courts, when reviewing cases, always look at a case in which capital punishment is about to be imposed with a very meticulous point of view, and any error which would be considered harmless in a burglary case will assume constitutional and reversable error of proportions in a capital punishment case. I think that even with a mandatory feature and a limited bill there would still be a host of problems to handle on appeal; competency of counsel is only one of them. In a death case, certainly an appellate court is going to treat that with more consideration.

A second caution is misplaced reliance by some of the drafters of bills upon the word premeditation. I think the bill drafters, in using that word, apparently feel that it means some long, thought-out and planned killing. It does not. Not in the law of this State unless you completely redefine the law of premeditation. Deliberation and premeditation may be instantaneous if relying upon premeditation.

The third caution is, that a practical bill, one which would have some validity, will not uproot a substantial portion of the law of homicide. If we start out with an entirely new bill which has entirely new definitions, we'll throw out 100 years of court interpretations. That fear was expressed to me by a Chief Deputy District Attorney in the Clark County's District Attorney's Office. I think it is a valid fear.

I think that the last caution that I would suggest to this Committee is that when you are drafting a bill, think of all the possible circumstances under that bill under which a death penalty might be imposed. Because that brings us to the last aspect of any kind of death penalty bill. Is it one that does justice? Is it one that we think gives a just result in a particular set of circumstances?

If terms such as "all first degree murders shall be punishable by death" are used, I think that we have to be very careful to see exactly what that term means. I can think of a number of instances in this State where the persons who were originally convicted of a first degree murder charge are now leading productive lives. I think that any type of bill which would actually have a chance of being sustained would cover and take into account all of those features, therefore, I would conclude that the bill most likely to survive in this case would be one that is extremely limited in operation with very carefully defined terms. Be careful of terms that have settled meaning in criminal law - premeditation, for example.

William Neely - Student of UNR and Intern for Senator Dodge, spoke in opposition.

Mr. Neely distributed to each Senator and Assemblyman a packet of statistics and information on the effects of the death penalty as a deterrent.

He asked the Committee to consider three questions before making their decision. 1) Is it possible or feasible to enact a law which would withstand a constitutional challenge; 2) Is such a law socially desirable; 3) If it is socially desirable, what categories of crimes should the bill include?

On the constitutional question of equal application under the law, he asked how a judicial examination of the application of any law could be conducted without carrying out those sentences for a fairly long period of time.

On the second point of desirability, the question of whether the death penalty functions as a more effective deterrent than other punishments is much debated. In the statistical information provided there is no evidence to show that it functions as an effective deterrent. Psychologists have examined persons convicted of murder, and in no case did the murderer expect to be apprehended, which may be why it does not work as an effective deterrent.

He asked the Committee to also consider the rehabilitation of criminals, since surprisingly murderers have the highest rate of rehabilitation than any other criminals, and the social ills which accompany crime. The rate of homicides increases when there is much violent activity taking place in society, such as times of war. Also, there is always a chance that an innocent man might suffer this irrevocable penalty.

He felt a mandatory death penalty would lead to more acquittals and plea bargaining.

Historically, the remedy to mandatory sentencing that juries have used has been excercising its acquittal powers, often arbitrarily. The Supreme Court in eliminating arbitrary forms of discretion, such as racial and class, has also eliminated positive and socially desirable types. The result of this under mandatory sentencing might be an extreme rise in the number of executions, reversing a long standing trend of a gradual decrease in capital punishment. If one assumes that all who have been sent to prison under the criminal categories contained in some of the capital punishment bills introduced, in excess of over 100 people would have been executed in Nevada, according to statistics compiled by the Nevada State Prison.

If it is determined that capital punishment is constitutional and desirable, he suggested the statute be narrowly defined to include: only cases where there is no apparent possibility of rehabilitation; where the legislature is certain that no exceptions should ever be made to the imposition of death; and those circumstances where the State has no further sanctions at its disposal short of the death penalty.

The Rt. Reverend Wesley Frensdorff's statement in opposition to capital punishment is attached hereto as Exhibit D.

Ms. Emily Griel spoke in opposition to reinstatement of the death penalty.

I am opposed to capital punishment because it is not only a brutal thing, but a shirking of our responsibility in dealing with criminals. I agree with the testimony of Joe Neal.

I don't know if you are all familiar with what is being done in the way of labotamies which are being performed on criminals with the idea of dulling their emotions. Often they end up dulling everything and turning the prisoners into vegetables. This is a form of disposing of life in prisons just as the death penalty after a major crime.

It seemed a travesty to me that mentally criminal persons often have their sentences commuted and there is not much chance of rehabilitation in their cases, but a man who is conscience of what he is doing, more or less a normal criminal, is the one who is put to death.

Kansas is doing away with the prison concept, and releasing criminals on parole where they can become rehabilitated and integrated back into society. This is working quite well there and could be carried on in other States. That seems like the most humane and compassionate thing to do.

Mr. Mike Fondi spoke in opposition to reestablishment of capital punishment.

The Nevada District Attorney's Association's position is for reestablishment of capital punishment but we can't agree amongst ourselves what the specifics should encompass.

My personal feelings are that the death penalty does have merit but should be narrowly defined in order to give it any constitutional validity at all.

The proposal by Governor O'Callaghan raises some serious questions in my mind as to the enforcibility, particularly with reference to the authorization of punishment by death for killing a peace officer in the performance of his duties. If you refer to Chapter 269 of NRS and examine the definition of a peace officer, you find we have many police officers who work in undercover capacities. A person could kill a police officer without realizing that he is a police officer and would have to receive the death penalty which would probably be overturned by the courts on a constitutional basis.

There has not been one comment thus far made about the victims of the crime. I have the basic feeling that the punishment must fit the crime and in some cases death is the warranted punishment. I haven't quite made up my mind as to which cases should apply, but feel strongly that in the case of contract killings, and killing prison guards, this could be a deterrent.

Mr. Don Bell spoke in opposition to the death penalty.

The organization I represent is devoted to the control and prevention of crime and delinquence and is made up of ex-convicts.

I believe with all my heart that the premeditation of the State in matters of legalized murder or execution is against society's rules. The only person being deterred is the person being executed.

If the State intends to deal with people involved in criminal activities with vengeance, or intends not to reclaim or rehabilitate and replace in society people who have made errors in judgment, then it would be justified to kill them. But if there is any justification for a law at all, and we assume it should be as a parent guiding a child, forgiveness must go before punishment if punishment is to be effective.

Until I see a wealthy person executed under the death penalty, I will always be an abolitionist. Wealthy people don't even get life imprisonment.

Peace officers generally are always on duty, and a hoodlum with a badge is still a hoodlum. It's prima facie evidence to totalitarianism when we say if you have a badge, there is no retribution to anyone. I don't believe that there has never been a police officer in Nevada who committed a crime. If there has been, I think you ought to look closer at a law of this type.

Senator Raggio spoke in favor of retention of the death penalty in certain cases.

I feel I have some unique experience in this area because I have personally prosecuted nine cases which resulted in imposition of the death penalty. Only one of those sentences was carried out. I feel I am speaking for prosecutors all over the Nation when I way there is a need for the retention of the death penalty in certain cases.

There is a logical explanation for the decline of capital punishment in the country since 1959 and 1960. It began with the Supreme Court being allowed to review all State court convictions, which resulted in never-ending appeals.

I can quote three instances for those who say the death penalty is not a deterrent of persons who were arrested and confided in me that they would have committed murder but did not want to face the death penalty.

I don't think we could ever measure or establish the number of homicides that have not been committed because somebody feared the ultimate punishment. I can recall only one in-depth study which was made to determine whether or not there is any reduction of homicides in States where they do not have a death penalty. The results of that study showed that the number of these crimes is so small in relation to the number of all crimes that they could not draw a conclusion.

There are two other aspects of criminal punishment to consider besides rehabilitation: 1) Protection of society, and 2) deterrence and punishment, and they have a value.

There are those who feel that the law should take cause and symptoms into account when dealing with criminals. California has lead the Nation in pouring billions of dollars into meeting the causes of crime and providing rehabilitation and they are making very little progress in combating crime. I think we have to realize that there are those individuals who have really forfeited their right to live among society when the chance for response to rehabilitation is very small. The sentence of life without possibility of parole is a fallacy because it does not mean what it says, and is, therefore, no alternative to capital punishment.

I believe the Supreme Court opinion does allow us to set criteria for a mandatory death penalty. If that can be done, I would like to see the jury or the court have some discretion in this area.

Mr. Howard McKibbon spoke in favor of retention of the death penalty.

I think there are two basic questions which the Committee, and eventually the legislature, must decide: 1) whether or not a death penalty should be imposed at all, and 2) decide as a matter of conscience in what areas the death penalty should be made mandatory.

If you decide to impose a death penalty, and I think one is justified, you should make the language very restrictive and clearly define the areas where it is to be imposed.

I don't think any discretion should be left to the prosecutor. It would make it much easier for a prosecutor from the standpoint of preparing the case and initially charging the individual.

A professor once gave a seminar to peace officers in Douglas County and had presented a tape recording which was prepared over a seven year period. In this tape, one individual who was involved in a bank robbery where hostages had been taken revealed that he had not shot the hostages because he feared the death penalty.

Those persons listed below had attended the meeting and requested to go on record as opposed to the reinstatement of any death penalty but did not wish to testify.

Ona H. Schmidt
William H. Schmidt
Cynthia Bay
Grace Bordewich

Meeting adjourned at 11:00 a.m.

Respectfully submitted,

Eileen Wynkoop
Secretary

APPROVED:

Melvin D. Close, Jr.
Chairman

EXHIBIT A

STATEMENT TO

JOINT LEGISLATIVE JUDICIARY COMMITTEE

ON

CAPITAL PUNISHMENT

By Grant Sawyer on February 15, 1973

Mr. Chairman, Members of the Committee:

May I express my appreciation for the opportunity to appear before this distinguished Joint Committee on a question of such vital importance to the citizens of the state of Nevada. Although I am personally opposed and have been publically opposed to capital punishment per se for a long period of time, on moral, social, religious and legal grounds, I am not unaware of the fact that public support for capital punishment is currently at its highest point in nearly two decades. Influential public spokesmen such as President Nixon, Attorney General Kleindienst, California Governor Ronald Reagan, Philadelphia Mayor Frank Rizzo, and others all have openly endorsed capital punishment. Opinion polls show a loss of approximately 15% since 1966 among those declaring opposition to the death penalty. I am equally sure that the great majority of people in the state of Nevada, and I would guess in the Nevada State Legislature, support capital punishment at least to some degree.

I do not intend here to elaborate on my reasons for opposing capital punishment in any form. All of those reasons have been reiterated time and time again over a number of years last past. Rather, I would

like to discuss with you what I view to be the law on the matter in light of the 1971 United States Supreme Court decision in the case of Furman v. Georgia and two related cases.

In its final action of the 1971 term, the United States Supreme Court announced its decision in these cases. Directly at issue was whether the death penalty for felony murder and for rape, when imposed by a jury having discretion to mete out either death or imprisonment, was permissible under the U. S. Constitution. At stake at that time were the lives of more than 600 persons under death sentence in 32 states. On June 29, 1971, the Court declared that "the imposition and carrying out of the death penalty . . . constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments." (Furman v. Georgia, 408 U.S. 238) The Court at that time summarily reversed death sentences in some 120 other cases from 26 states encompassing a broad range of statutes, crimes and fact situations. As a result of the decision in Furman, by the end of 1972, nearly two dozen states had overturned their death penalty statutes and ordered resentencing of persons awaiting execution.

In the immediate aftermath of the Court's decision, much was made of the narrowness of the victory and the lack of firm consensus among the five-man majority on the Court. In my view, there were several major points of agreement:

*The majority agreed that the death penalty is a cruel and unusual punishment because it is imposed infrequently and under no clear standards.

*The majority agreed that the purpose of the death penalty, whether it be retribution or deterrence, cannot be achieved when it is so rarely and unpredictably used.

*The majority agreed that one purpose of the Eighth and Fourteenth Amendments is to bar legislatures from imposing punishments like the death penalty which, because of the way they are administered, serve no valid social purpose.

*All the Court, with the exception of Justice Rehnquist, indicated personal opposition to capital punishment.

*All the Court, excepting Justice Rehnquist, indicated substantial belief that capital sentencing is arbitrary and is not uniquely effective in deterring crime.

Nevertheless, Furman left several crucial questions about the death penalty undecided. Therefore, some believe that "correctly" framed death penalty statutes may be found acceptable by the Supreme Court. Three kinds of statutes are therefore being proposed in various states throughout the country: those that spell out explicit

standards the jury must follow in choosing between death and imprisonment; those that allow the jury to impose the death penalty at its discretion but only for a crime well defined by a narrowly-drawn statute; and statutes making the death penalty mandatory for certain crimes.

It would appear to me that the possibility of drawing up statutes containing suitable standards to guide juries or redrafting capital statutes sufficiently narrow is remote. These issues were canvassed in some detail by the United States Supreme Court during the 1970 term in the case of McGautha v. California, 402 U.S. 183, 1971. The language used by Justice Harlan in the McGautha case and Chief Justice Berger in his dissent from the majority in the Furman case indicates to me that the problems in framing acceptable statutes in the first two instances are substantial, perhaps insurmountable.

Furman did not, however, explicitly establish the unconstitutionality of any of the many mandatory death penalty statutes in force around the nation. Hence, in Delaware, for example, the State Supreme Court last November, instead of nullifying Delaware's capital statute in response to the mandate of the U. S. Supreme Court in Furman, chose to retain the death penalty and did so by eliminating the provision for the jury's sentencing discretion.

It is my own view that by taking the discretion as to punishment away from juries, the U. S. Supreme Court will not now give that same discretion to the prosecutor's office. I do not believe that the U. S. Supreme Court will give prosecutors the right to decide whether to indict for a capital crime or for a lesser offense in order to reduce the risk of the jury's refusal to convict. Nevertheless, in reviewing the various proposed pieces of legislation on this subject now before the Nevada State Legislature, it appears to me that the legislation least likely to be overturned is that legislation proposed by the Governor in his Message to the Legislature on January 18, 1973. Governor O'Callaghan proposed at that time the imposition of the death penalty for the following:

*Anyone who kills a peace officer while that officer is acting in the line of duty;

*Any inmate of the Nevada State Prison who kills a member of the prison staff.

It seems to me that in his proposal the Governor very clearly attempted to meet, if it is possible to do so, the guidelines of the Furman case by suggesting only two specific fact patterns that allow for no other alternative than the death penalty. This proposal distinguishes between the killing of a peace officer or a prison-staff member and other persons in the general public.

I would, therefore, urge that if it is the consensus of opinion in this 57th Session of the Nevada State Legislature to enact a statute imposing capital punishment under the present posture of the law, that those proposals made by the Governor be adopted.

Thank you.

EXHIBIT B

REMARKS GIVEN TO THE JUDICIARY COMMITTEE BY SENATOR JOE NEAL ON

February 15, 1973

Mr. Chairman: I thank you for the opportunity to appear before you this morning and express my views on the capital punishment bills that are presently before this committee.

The capital punishment bills that you are presently considering, I assume, were generated because the U. S. Supreme Court has ruled that the death sentence is cruel and unusual punishment; thus, in violation of the constitution.

I think a proper reading of the decision upon which this judgment was reached would, no doubt, enable this committee to come to the conclusion that capital punishment, as it has been exercized in this society, is forever banned.

The Supreme Court attacked capital punishment with a two-edged sword---the equal protection and due process clause of the Fourteenth Amendment and the Eighth Amendment which encompass the cruel and unusual punishment provision.

A proper reading of the Furman vs. Georgia case would, no doubt, reveal to you gentlemen that capital punishment was ruled to be in violation of the "cruel and unusual punishment clause" of the Eighth Amendment and administered in such a way as to be in violation of the "equal protection and due process clause" of the Fourteenth Amendment to the constitution.

The question then comes to mind, how can the legislature draw a statute on this matter to cure the defects of the Fourteenth Amendment and, at the same time, not be in violation of the Eighth Amendment of the U. S. Constitution? It is my opinion, Mr. Chairman, that you cannot.

Our amendments to the U. S. Constitution have an equality of force. Your statutes cannot be constitutional under one amendment and yet be in violation of another, if it is going to conform to the constitutionality of our constitution as a whole. Therefore, Mr. Chairman, the proper issue that should be before this committee is not whether capital punishment would act as a deterrent against skyjacking, killing of a prison guard, killing of a policeman in the line of duty, or rape, but whether or not it is more of a deterrent than life imprisonment. Of course, the bills before you are not geared to dealing with this proposition.

The proscription against capital punishment is absolute. It does not permit us to engage in any punishment that may have the slightest possibility of violating this proscription.

The Weems case was the first time the court invalidated a penalty prescribed by a legislature for a particular offense. The court made it clear beyond any resonable doubt, that excessive punishment was as objectionable as those that were inherently cruel.

Capital punishment is both excessive and inherently cruel because you and I, as legislators, cannot be sure that capital punishment will not befall the innocent. It does not allow for rectification of a failure.

Because capital punishment is so final in its imposition, by what theory, or principle, or foundation can this punishment rest? There is no rational foundation on which this punishment can rest. Thirty years of study in this area have proven that capital punishment is not a deterrent. The State of Wisconsin has ample proof of this fact. Wisconsin abolished capital punishment in 1853 and it has not been reinstituted. The State of Wisconsin has long recognized that capital punishment is an affront to the basic standards of decency of contemporary society.

The studies conducted over a thirty year period have clearly indicated that capital punishment is an extreme and mindless act of savagry, practiced upon an outcast few. The poor and the black have been mostly its victims. Since 1930 there have been 3,859 executions for all crimes--54.6 percent of those executed were black. At the time the Supreme Court made its ruling there were 600 prisoners on death row--343 were black. Nevada has had twenty-nine executions since 1930. All of those who were executed were poor and lacked political pull or prestige. Not a single rich man has ever been executed. Indeed, some authors have written on the subject that it is easier for a rich man to get into the Kingdom of Heaven than it is for him to be put into the death chamber.

I assume at this point, Mr. Chairman, that some of you on this committee are thinking that a mandatory sentence of death will cure this inequality. But, will it?

Assuming that you did enact the death penalty for skyjacking, is it not true that a jury will have to rule upon whether or not the facts are that of skyjacking, and by doing such would they not be defining a crime that is punishable by death? The answer, I think, is yes. But connected with this is that the discretion of a jury, as prescribed in Furman vs. Georgia, is not completely eliminated.

I do not think we have arrived at the point in our society, or this state, where we are willing to trust our criminal trials to a computer. After all, there is a proscription in the constitution that allows for a jury trial.

Before I conclude, Mr. Chairman, allow me to address myself to the proposition which many are proposing that there be a death penalty for killing a prison guard and a policeman in the line of duty. Since the 1800's to the present, there has been only one guard killed at the Nevada State Prison. This happened in 1954 during an attempted prison break. There have been seven policemen killed in the past 25 years.

In view of these facts, one is prone to ask why the alarm?

The decisive argument against capital punishment which I wish to leave with you is a humane argument. Society ought not to kill. There is enough killing, in just wars, in self defense, to protect the innocent in an emergency, which cannot be helped, and enough killing in error.

But society should not kill by deliberate choice. It brutalizes us, not to speak of what it does to the agent we employ to do our killing.

Diocese of Reno
515 COURT STREET
RENO, NEVADA

PHONE (702)
329-9274

OFFICE OF THE BISHOP

PLEASE ADDRESS YOUR REPLY TO:
OFFICE OF THE BISHOP
P. O. BOX 1211
RENO, NEVADA 89504

EXHIBIT C

February 15th
Nineteen
Seventy Three

STATEMENT OF BISHOP JOSEPH GREEN, ROMAN CATHOLIC BISHOP OF RENO

In its official teaching the Catholic Church has not taken a position relative to the retention or abolition of capital punishment. The Catholic Bishops of the United States have the question under study at the present time. Hence, the following statement is made as a personal declaration and not in my capacity as the Roman Catholic Bishop of Reno.

Whether it reflects the position of the majority of the Catholics of the Church in Nevada I cannot say. I am certain, however, it reflects the attitudes of many and, in a way, expresses the mind of the Church because of the position we have taken officially in so many instances involving the preservation of human life.

There is in our society an experience of and an understandable exasperation with violent crime. Sky jackings, the murder of peace officers and robbery victims, as well as the rising incidents of rape and other violent crimes come to mind immediately as frequent occurrences.

Society's need to defend itself from such wanton acts and to uphold the value of human life have prompted numerous individuals and groups to advocate re-introduction of capital punishment on a basis that would meet the standards of constitutionality determined by the United States Supreme Court. No responsible citizen can ignore these grave social problems. What is at issue is the most adequate, equitable and effective manner in which to deal with them.

The argument most frequently advanced by proponents of capital punishment is the deterrent factor. Various studies carried out in the past and recently give no certain conclusions on this score. In a sense all punishment is meant to involve a deterrant factor, and thus, tp provide some measure of protection for society.

I would urge that we consider alternatives to capital punishment; alternatives that would express society's outrage and reaction to violent crime and provide protection from repeated criminal acts.

Such alternatives do exist in the form of extended and even life-long imprisonment of criminals, but these sanctions must be imposed with no discrimination between the rich and the poor, with no distinction between whether the person convicted of crime belongs to the majority or the minority of our citizenry.

Is not the fear that the perpetrators of the most heinous crimes will soon again be free to walk the streets what prompts many, almost in despair of any other solution, to advocate capital punishment?

We do not fault the argument that the punishment must be just and fit the crime, nor do we minimize society's legitimate need to be protected from criminal acts. What concerns us, however, is to see the issue of capital punishment considered in isolation from the question of reform of our judicial and penal systems, in isolation from the climate of violence glamorized in film and the media, and in isolation from the social conditions which breed crime and violence.

Our society is desperately in need of an affirmation of the value and dignity of human life. It was for this reason that the National Conference of Catholic Bishops inaugurated last year a comprehensive program under the title of Respect for Life Week. We have only slowly and painfully come to see that the issue of life's value and dignity is on a moral continuum. We must not only oppose the killing of the innocent - whether through a war or an abortion - but we must also show our respect for life through many other avenues; to name a few, in struggling against poverty, injustice, racism, hunger, social oppression, the use of drugs, etc.

But while striving to enhance the value of life, let us not advocate recourse to the taking of life, even that of a criminal. Not only is our humanity at issue here. Our belief that God alone gives and sustains life suggests that He alone properly takes it. This is, unfortunately, not a conclusion that has become general or compelling to all. But it is one which should give us pause.

In sum, I am suggesting that in a society in which violence and killing is too easily resorted to as means to criminal ends, the state and public authorities should be wary of sanctioning the use of violence and killing to achieve society's ends. We must provide for the public safety, but not at the sacrifice of the values we seek to protect.

These are my personal judgments on the difficult and complex issue of capital punishment.

However, sensitive to the existing attitudes of many people, if the members of the Legislature judge that they must reflect the opinions and wishes of their constituency on this question, I judge

they would be wise to be most restrictive in this matter as Governor O'Callaghan was in his State of the State Message.

If the Legislature acts within these parameters, perhaps eventually we will reach the day when a total and acknowledged recognition of the dignity and value of every human life despite its weaknesses and failures will rule out capital punishment and substitute more humane and reasonable punishment for serious crimes against society.

Above all else we must never forget that what is at issue here is the dignity, worth and potential of every human person.

This statement was presented to the Judiciary Committee of the Nevada State Senate on February 15, 1973

EXHIBIT D

the Episcopal Church in Nevada

The Rt. Reverend
Wesley Frensdorff
Bishop of Nevada

February 15, 1973

STATEMENT TO

THE JOINT LEGISLATIVE JUDICIARY COMMITTEE

ON

CAPITAL PUNISHMENT

BY

THE RT. REV. WESLEY FRENSDORFF, BISHOP OF NEVADA

It goes without saying that we are all deeply alarmed by and concerned with the incidence of violent crime in our society. The victimization of innocent persons, causing untold suffering, as well as the social cancer represented by such crime, demand not only our attention, but also the best of our intellectual, spiritual and financial resources.

We would all have to agree, however, that the causes which bring about this condition are complex, and that therefore it is unlikely that we will find simple solutions. There are still many people who feel-perhaps because of the frustration

Post Office Box 6357 • 2390 West Seventh Street • Reno, Nevada 89503 • Telephone (702) 747-4949

resulting from this complexity, that the threat of Capital Punishment, and its certain execution, will contribute to the solution of the cancer of crime, and, at the same time, serve as a means-if only symbolically and emotionally-of rectifying the injustices brought upon the victims. At the same time the society would, with certainty, be protected from repeated occurrances of a violent nature by the same person.

I appear before you to oppose Capital Punishment on several grounds, moral, as well as practical.

The Judeo-Christian tradition places high value-if not ultimate value-on the sanctity of human life, and prohibits the taking of such life as an ultimate principle. I grant that Jews and Christians alike have, through their histories, interpreted this principle differently, and that differences still exist among committed and sensitive Christians and Jews. However, increasingly during the past 30 years, Christian and Jewish bodies have recognized the inconsistency, in our day, of Capital Punishment with our basic moral principles. I attach, for your information, a number of resolutions to this effect passed by:

The Episcopal Church in the USA

The Episcopal Province of the Pacific

The United Methodist Church

The United Presbyterian Church

More of such statements could be added but they are readily available. However, I would also call your attention to the statement submitted to you by The Most Rev. Joseph Green, Roman Catholic Bishop of the State of Nevada, in which he sets forth a similar position.

Secondly, I would ask you to permit me to suggest a word about the matter of deterrance. Having studied this issue in considerable detail during the past 10 years, I am quite aware that it is very difficult to convince anyone-oppositely inclined- that the threat of the death sentence has not proved to be an effective deterrant. Yet, my studies lead me to that very conclusion. I am quite prepared to set forth my reasons for this conclusion, but do not want to impose in your time with this at this moment.

Moreover, it does appear to me important to ask you to consider an attendant factor in the present proposals. In the attempt to

fit the application of Capital Punishment within the new limits set forth by the Supreme Court, we might well discover that the result achieved is quite contrary to the result intended. Juries, having no alternatives in setting penalties, might well tend to lean toward acquittal if some question of quilt, intent, or aggrevation exists, rather than impose the ultimate and irreversable penalty. Extended legal appeals will also be the inevitable result. All of this being the possible case, the last state of the situation might be much worse than the first.

I see no good reason, therefore, for the re-instatement of the death sentence on both moral and pragmatic grounds. However, if the Legislature feels compelled to move in this direction, it is my hope that serious consideration be given to the more limited proposals-such as the recommendation of Governor O'Callahan-with application only in extremely well defined, and extremely critical situations.

Furthermore, may I urge you also to give full attention and consideration to this problem of crime on the basis of causes rather than symptoms or results. We must direct our full attention, and energies to the social and personal dislocations which

produce crime-such as poverty, racial and other injustice, family deterioration, as well as all of the strains and psycho-social illnesses which are produced by our highly competitive, and rapidly changing technological society. Happily there is considerable concern in this area, as well as with the challenge of rehabilitation. While past results have not always been encouraging, there is evidence that increased effort and experimentation can bring better results than previously realized.

Finally, I conclude with a brief quotation, from the Gospel of St. Luke:

> Jesus said to his disciples:
> Be compassionate as your Father is compassionate.
> Pass no judgement, and you will not be judged; Do not condemn, and you will not be condemned; Forgive and you will be forgiven.
> Luke: 6:36-37

THE PROTESTANT EPISCOPAL CHURCH IN THE UNITED STATES OF AMERICA

59th. General Convention, Florida, Oct. 1958

CAPITAL PUNISHMENT

INASMUCH, as the individual life is of infinite worth in the sight of Almighty God; and

WHEREAS, the taking of this 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.

SYNOD OF THE PROVINCE OF THE PACIFIC - EPISCOPAL CHURCH

The 41st. Session of the Synod Province of the Pacific, which is the Eight Province of the Protestant Episcopal Church, and embraces the Diocese and Missionary Districts in the States of Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah and Washington, and the Philippine Islands, meeting in Los Angeles, California, May 2-5 1960, adopted the following resolution:

WHEREAS; the death penalty demonstrably fails to deter Crime, to rehabilitate the criminal, or to protect society, and

WHEREAS; the taking of life by the State fails to take into account the Christian doctrine of redemption, and

WHEREAS; the Synod of the Province of the Pacific, meeting at Phoenix, Arizona, expresses its opposition to the death penalty,

NOW, THEREFORE, BE IT RESOLVED; that this Forty-first Synod of the Province of the Pacific reiterates the stand taken by it previously and the stand of the convention of the Protestant Episcopal Church in the United States of America in 1958 and calls upon the legislators of our several states to abolish the death penalty and to enact legislation aimed at the rehabilitation of the offender.

GENERAL CONFERENCE OF THE METHODIST CHURCH

Denver, Colorado, May 6, 1960

STATEMENT ON CAPITAL PUNISHMENT

The social creed of the Methodist Church declares "We stand for the application of the redemptive principle to the treatment of offenders against the law, to reform of penal and correctional methods and to criminal court procedure. For this reason we deplore the use of capital punishment." We urge all Methodists to extend their influence toward the termination of capital punishment.

Appropriate punishment is justifiable and necessary, and can be a beneficial aspect of human relations. We believe that the death penalty is neither a morally justifiable nor socially effective form of punishment.

UNITED PRESBYTERIAN CHURCH OF THE

UNITED STATES OF AMERICA

General Assembly, May 1959

CAPITAL PUNISHMENT

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

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

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

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

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

DEATH PENALTY BILLS

	Contract Killing	Murder (1st)	2nd Murder Conviction	Death in Escape	Murder Preventing Arrest	Kidnapping (SBH)	Murder under life sent.	Rape (SBH)	Treason	Multiple Murder
AB 133		X		X		X		X	X	
AB 143		X		X						
AB 145		X		X		X				
AB 147		X		X		X		X	X	
AB 265	X		X	X	X		X			X
SB 117		X		X		X			X	
SB 132*	(see below)									
SB 223										

	Homicide (in commission of other crimes)	Use of Explosives (death occurring) XXXXXXXXXX	Air Piracy (SBH)	Causing Execution (perjury)	Killing prison staff	Killing peace officer (on duty)	Killing fireman (on duty)	Killing Gov., Lt. Gov, Judges	Use of Explosive (SBH or Death)
AB 133			X						X
AB 143									
AB 145		X	X	X	X				
AB 147		X			X	X	X		
AB 265	X	X	X**			X	X	X	
SB 117		X	X		X	X			
SB 132*	(see below)								
SB 223					X				

*Includes trains, buses; death must occur

Under SB 132, a separate penalty hearing would be required for those convicted of capital offenses.
apital offenses are Murder (1st), Use of Explosives where death occurs, Death occurring during
rison escape, and Adults causing death of user by distribution of a controlled substance.
eath is required if jury finds: 1) offense committed by one under sentence of imprisonment, 2) by
ne with a previous felony conviction, 3) by one committing robbery, rape, arson, burglary, kidnapping
r air piracy, 4) by one avoiding arrest or escaping, 5) pecuniary gain, 6) caused

Table I: Compares Homicide Rates and Numbers of Executions in States with and without Death Penalty

The figures below are from CRIME IN THE UNITED STATES, UNIFORM CRIME REPORTS—1969, (August 13, 1970), U.S. Dept. of Justice, and NATIONAL PRISONER STATISTICS BULLETIN NUMBER 45, AUGUST 1969, CAPITAL PUNISHMENT. (Available from CALM.)

The 50 states are listed in order of homicide rates per 100,000 population, for 1969 (Column A). Also listed, (Column B) is the number of executions each state has carried out during the period 1930-1969.

Thus, for example, Georgia, which had the third highest homicide rate in 1969 (11.9 murders per 100,000 population), has executed the most people (366). Abolition States are italicized. ——— and starred.

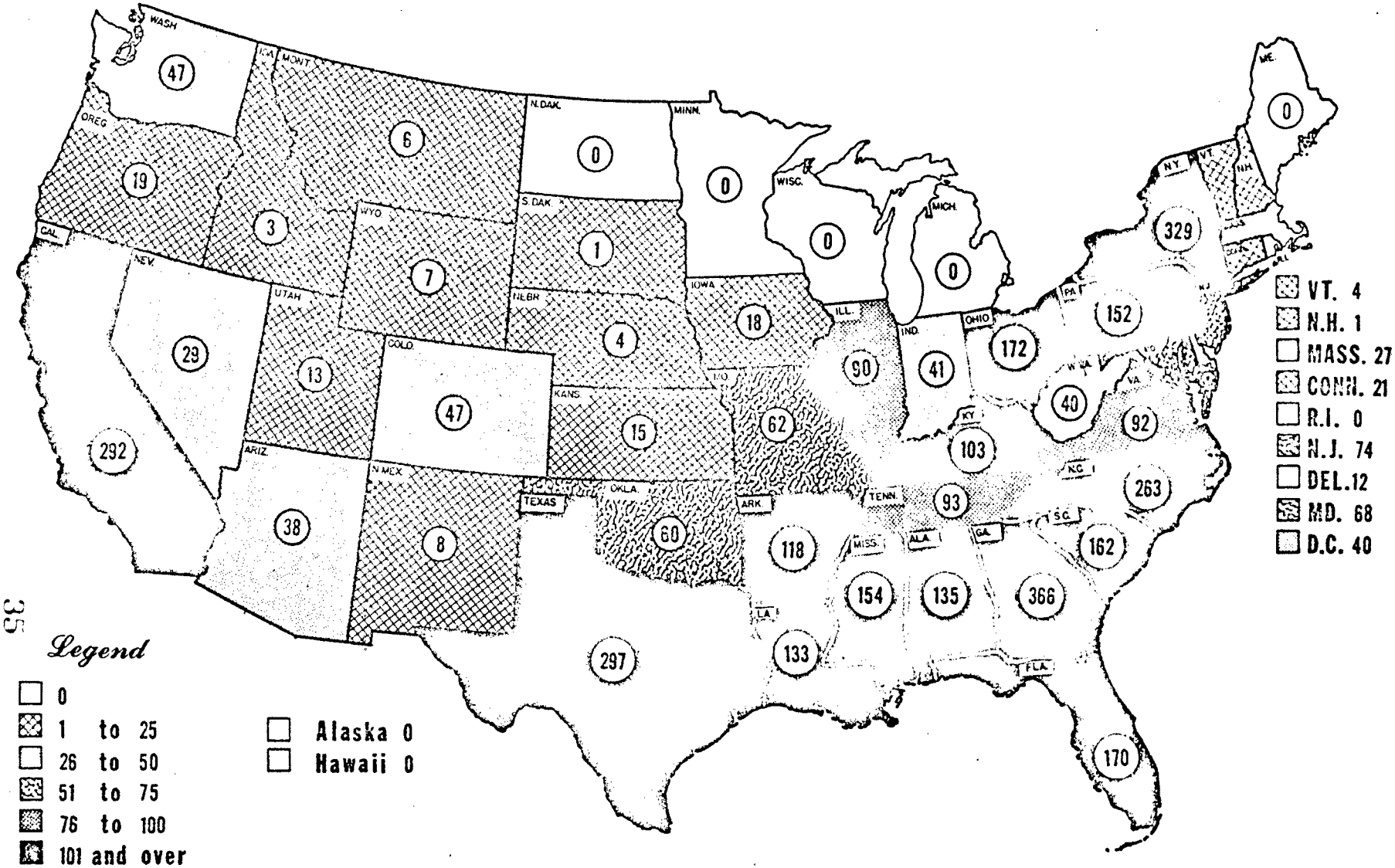
STATE	A	B
ALABAMA	13.7	135
SOUTH CAROLINA	12.5	162
GEORGIA	11.9	366
TEXAS	11.3	297
FLORIDA	11.3	170
NORTH CAROLINA	10.7	263
* *ALASKA*	10.6	0
KENTUCKY	10.4	103
MISSOURI	10.4	62
WYOMING	10.3	7
ARKANSAS	9.9	118
TENNESSEE	9.6	93
LOUISIANA	9.5	133
MARYLAND	9.3	68
NEVADA	9.0	29
ILLINOIS	8.6	90
* *MICHIGAN*	8.3	0
MISSISSIPPI	8.1	154
DELAWARE	7.2	12
NEW YORK	7.2	329
CALIFORNIA	7.1	292
OHIO	6.4	172
NEW MEXICO	6.1	8
ARIZONA	6.0	38
VIRGINIA	5.9	92
OKLAHOMA	5.8	60
WEST VIRGINIA	5.6	40
COLORADO	5.3	47
NEW JERSEY	5.2	74
INDIANA	4.9	41
PENNSYLVANIA	4.1	152
OREGON	4.0	19
MONTANA	3.6	6
WASHINGTON	3.6	47
KANSAS	3.5	15
MASSACHUSETTS	3.5	27
* *HAWAII*	3.4	0
* *RHODE ISLAND*	3.1	0
CONNECTICUT	2.9	21
NEBRASKA	2.5	4
NEW HAMPSHIRE	2.5	1
UTAH	2.5	13
VERMONT	2.5	4
* *WISCONSIN*	2.1	0
SOUTH DAKOTA	2.0	1
IDAHO	1.9	3
* *MINNESOTA*	1.9	0
* *MAINE*	1.6	0
IOWA	1.4	18
* *NORTH DAKOTA*	0.2	0

(Continued)

All 50 states are listed

CHART 1 - EXECUTIONS 1930 — 1967

Prisoners Executed Under Civil Authority In The United States, By State



NOTE: Excludes 33 Federal executions carried out in the United States during the period covered. Source: Table 3

BRIEF SYNOPSIS OF OPINIONS OF JUSTICES IN
FURMAN v. GEORGIA (Death Penalty Case)

Five Concurring Opinions:

Brennan: Any form of capital punishment violates 8th Amendment.
Four principles applied in determination:

1. Punishment must not be degrading to dignity of human beings.
2. Must not be arbitrarily applied.
3. Must not be unacceptable to contemporary society.
4. There must not exist "a significantly less severe punishment adequate to achieve the purpose for which the punishment is inflicted."

Marshall: Any form of capital punishment violates Constitution.
The historical thrust of diminishing use of capital punishment demonstrates both changing community standards and arbitrariness of application.

Douglas: Condemned discretionary capital sentencing.
Implied that mandatory sentences would be susceptible to challenge on grounds of arbitrariness of application.

White: Discretionary sentencing Unconstitutional.
Left open the question of mandatory sentencing in "more narrowly defined categories of murder or for rape. . ."

Stewart: Discretionary sentencing Unconstitutional.
Did not address mandatory sentencing since not relevant to case at hand.

Four Dissenting Opinions:

Blackmun: Felt determination of "cruel and unusual" should be left to legislative decision. Personally opposed to capital punishment.

Rehnquist (~~joined by Burger and Powell~~): Argues for judicial self-restraint in ruling on legislative acts.

Powell: Argues for judicial self-restraint and wisdom of discretionary sentencing.

Burger: Believes that majority mis-interpreted "cruel and unusual" aspects of Eighth Amendment.

Table 1. - PRISONERS EXECUTED UNDER CIVIL AUTHORITY IN THE UNITED STATES BY RACE, OFFENSE AND YEAR: 1930-1967

(For years 1930-1959 excludes Alaska and Hawaii except for three Federal executions in Alaska: 1939, 1948, 1950)

Year	All offenses				Murder				Rape				Other offenses[a]		
	Total	White	Negro	Other	Total	White	Negro	Other	Total	White	Negro	Other	Total	White	Negro
All years[b]	3,859	1,751	2,066	42	3,334	1,664	1,630	40	455	48	405	2	70	39	31
Percent	100.0	45.4	53.5	1.1	100.0	49.9	48.9	1.2	100.0	10.6	89.0	0.4	100.0	55.7	44.3
1967	2	1	1	-	2	1	1	-	-	-	-	-	-	-	-
1966	1	1	-	-	1	1	-	-	-	-	-	-	-	-	-
1965	7	6	1	-	7	6	1	-	-	-	-	-	-	-	-
1964	15	8	7	-	9	5	4	-	6	3	3	-	-	-	-
1963	21	13	8	-	18	12	6	-	2	-	2	-	1	1	-
1962	47	28	19	-	41	26	15	-	4	2	2	-	2	-	2
1961	42	20	22	-	33	18	15	-	8	1	7	-	1	1	-
1960	56	21	35	-	44	18	26	-	8	-	8	-	4	3	1
1959	49	16	33	-	41	15	26	-	8	1	7	-	-	-	-
1958	49	20	28	1	41	20	20	1	7	-	7	-	1	-	1
1957	65	34	31	-	54	32	22	-	10	2	8	-	1	-	1
1956	65	21	43	1	52	20	31	1	12	-	12	-	1	1	-
1955	76	44	32	-	65	41	24	-	7	1	6	-	4	2	2
1954	81	38	42	1	71	37	33	1	9	1	8	-	1	-	1
1953	62	30	31	1	51	25	25	1	7	1	6	-	4	4	-
1952	83	36	47	-	71	35	36	-	12	1	11	-	-	-	-
1951	105	57	47	1	87	55	31	1	17	2	15	-	1	-	1
1950	82	40	42	-	68	36	32	-	13	4	9	-	1	-	1
1949	119	50	67	2	107	49	56	2	10	-	10	-	2	1	1
1948	119	35	82	2	95	32	61	2	22	1	21	-	2	2	-
1947	153	42	111	-	129	40	89	-	23	2	21	-	1	-	1
1946	131	46	84	1	107	45	61	1	22	-	22	-	2	1	1
1945	117	41	75	1	90	37	52	1	26	4	22	-	1	-	1
1944	120	47	70	3	96	45	48	3	24	2	22	-	-	-	-
1943	131	54	74	3	118	54	63	1	13	-	11	2	-	-	-
1942	147	67	80	-	115	57	58	-	25	4	21	-	7	6	1
1941	123	59	63	1	102	55	46	1	20	4	16	-	1	-	1
1940	124	49	75	-	105	44	61	-	15	2	13	-	4	3	1
1939	160	80	77	3	145	79	63	3	12	-	12	-	3	1	2
1938[b]	190	96	92	2	154	89	63	2	25	1	24	-	11	6	5
1937	147	69	74	4	133	67	62	4	13	2	11	-	1	-	1
1936	195	92	101	2	181	86	93	2	10	2	8	-	4	4	-
1935	199	119	77	3	184	115	66	3	13	2	11	-	2	2	-
1934	168	65	102	1	154	64	89	1	14	1	13	-	-	-	-
1933	160	77	81	2	151	75	74	2	7	1	6	-	2	1	1
1932	140	62	75	3	128	62	63	3	10	-	10	-	2	-	2
1931	153	77	72	4	137	76	57	4	15	1	14	-	1	-	1
1930	155	90	65	-	147	90	57	-	6	-	6	-	2	-	2

(a) Includes 23 armed robbery, 20 kidnapping, 11 burglary, 6 sabotage, 6 aggravated assault, and 2 espionage.
(b) Figures revised to reflect one white Federal bank robber who was erroneously carried in previous bulletins as a murderer.

Table III - WORLD TREND TOWARD ABOLITION OF CAPITAL PUNISHMENT

Countries

Argentina 1922
Australia
  New South Wales* 1955
  Queensland 1922
Austria 1945
Belgium** 1867
Bolivia 1961
Brazil 1889
Colombia 1910
Costa Rica 1882
Denmark* 1930
Dominican Republic* 1924
Ecuador 1897
Finland* 1949
German Federal Republic 1949
Great Britain 1965
Greenland 1930
Honduras 1894
Iceland* 1940
India
  Nepal 1931
  Travencore 1944
Israel* 1951
Italy 1948
Liechtenstein** 1798
Luxenbourg** 1822
Mexico *** 1931
Netherlands 1870
Netherlands Antilles 1957
New Zealand 1961
Nicaragua 1892
Norway**** 1905
Panama 1915
Portugal 1867
Puerto Rico 1929
Republic of San Marino 1865
Rumania* 1865
Sweden 1921
Switzerland* 1937
Turkey 1950
Uruguay 1907
Vatican City State
Venezuela 1863

* * * * * * *

Table IV - Dates and States of Abolition in United States

Alaska 1957
Hawaii 1957
Iowa 1965
Maine 1887
Michigan 1847
Minnesota 1911
New York* 1965
North Dakota* 1915
Oregon 1964
Rhode Island* 1852
Vermont* 1965
West Virginia 1965
Wisconsin 1853
New Mexico, 1969

✿ ✿ ✿ ✿ ✿ ✿ ✿

* Death penalty retained only for certain exceptional crimes, such as treason, piracy, war crimes, killing of policemen.
** Death penalty abolished by custom, but not by law.
*** Death penalty abolished in Federal Territory and in 25 of 29 states.
**** Death penalty reinstated briefly after World War II for war crimes.

Table 2. - PRISONERS EXECUTED UNDER CIVIL AUTHORITY IN THE UNITED STATES, BY STATE AND YEAR: 1930-1967

Region and State	Total	1967	1966	1965	1964	1963	1962	1961	1960	1955-1959	1950-1954	1945-1949	1940-1944	1935-1939	1930-1934
United States	3,859	2	1	7	15	21	47	42	56	304	413	639	645	891	776
FEDERAL[a]	33	-	-	-	-	1	-	-	-	3	6	6	7	9	1
TOTAL STATE	3,826	2	1	7	15	20	47	42	56	301	407	633	638	882	775
NORTHEAST	608	-	-	-	-	3	4	3	7	51	56	74	110	145	155
Maine[b]	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
New Hampshire	1	-	-	-	-	-	-	-	-	-	-	-	-	1	-
Vermont	4	-	-	-	-	-	-	-	-	-	2	1	-	-	1
Massachusetts	27	-	-	-	-	-	-	-	-	-	-	3	6	11	7
Rhode Island	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Connecticut	21	-	-	-	-	-	-	-	1	5	-	5	5	3	2
New York	329	-	-	-	-	2	-	2	6	25	27	36	78	73	80
New Jersey	74	-	-	-	-	1	2	-	-	9	8	8	6	16	24
Pennsylvania	152	-	-	-	-	-	2	1	-	12	19	21	15	41	41
NORTH CENTRAL	403	-	-	5	2	3	7	2	2	16	42	64	42	113	105
Ohio	172	-	-	-	-	2	2	1	2	12	20	36	15	39	43
Indiana	41	-	-	-	-	-	-	1	-	-	2	5	2	20	11
Illinois	90	-	-	-	-	-	2	-	-	1	8	5	13	27	34
Michigan[b]	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
Wisconsin[b]	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
Minnesota[b]	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
Iowa[b]	18	XX	XX	-	-	-	2	-	-	-	1	4	3	7	1
Missouri	62	-	-	1	2	1	-	-	-	2	5	9	6	20	16
North Dakota	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
South Dakota[b]	1	-	-	-	-	-	-	-	-	-	-	1	-	XX	XX
Nebraska	4	-	-	-	-	-	-	-	-	1	1	2	-	-	-
Kansas[b]	15	-	-	4	-	-	1	-	-	-	5	2	3	-	XX

Region and State	Total	1967	1966	1965	1964	1963	1962	1961	1960	1955-1959	1950-1954	1945-1949	1940-1944	1935-1939	1930-1934
SOUTH	2,306	-	1	1	12	10	22	26	32	183	244	419	413	524	419
Delaware[b]	12	-	-	-	-	-	-	-	XX	-	-	2	2	6	2
Maryland	68	-	-	-	-	-	-	1	-	4	2	19	26	10	6
Dist. of Columbia	40	-	-	-	-	-	-	-	-	1	3	13	3	5	15
Virginia	92	-	-	-	-	-	1	4	1	8	15	22	13	20	8
West Virginia[b]	40	XX	XX	-	-	-	-	-	-	4	5	9	2	10	10
North Carolina	263	-	-	-	-	-	-	1	-	5	14	62	50	80	51
South Carolina	162	-	-	-	-	-	2	5	1	10	16	29	32	30	37
Georgia	366	-	-	-	2	2	1	3	6	34	51	72	58	73	64
Florida	170	-	-	-	2	1	5	2	2	27	22	27	38	29	15
Kentucky	103	-	-	-	-	-	1	-	-	8	8	15	19	34	18
Tennessee	93	-	-	-	-	-	-	-	1	7	1	18	19	31	16
Alabama	135	-	-	1	1	-	1	1	1	6	14	21	29	41	19
Mississippi	154	-	-	-	1	2	1	5	1	21	15	26	34	22	26
Arkansas	118	-	-	-	1	-	-	-	8	7	11	18	20	33	20
Louisiana	133	-	-	-	-	-	-	1	-	13	14	23	24	19	39
Oklahoma	60	-	1	-	-	1	1	-	3	3	4	7	6	9	25
Texas	297	-	-	-	5	4	9	3	8	25	49	36	38	72	48
WEST	509	2	-	1	1	4	14	11	15	51	65	76	73	100	96
Montana	6	-	-	-	-	-	-	-	-	-	-	-	1	4	1
Idaho	3	-	-	-	-	-	-	-	-	1	2	-	-	-	-
Wyoming	7	-	-	1	-	-	-	-	-	-	-	-	2	1	3
Colorado	47	1	-	-	1	-	2	1	1	2	1	7	6	9	16
New Mexico	8	-	-	-	-	-	-	-	1	1	2	2	-	-	2
Arizona	38	-	-	-	-	2	-	1	1	6	2	3	6	10	7
Utah	13	-	-	-	-	-	-	-	1	4	2	1	3	2	-
Nevada	29	-	-	-	-	-	-	1	1	-	9	5	5	3	5
Washington	47	-	-	-	-	1	-	-	1	2	4	7	9	13	10
Oregon[b]	19	XX	XX	XX	-	-	1	-	-	-	4	6	6	1	1
California	292	1	-	-	-	1	11	8	9	35	39	45	35	57	51
Alaska[c]	XX	XX	XX	XX	XX	XX	XX	XX	XX	...	...	...	...	...	...
Hawaii[c]	XX	XX	XX	XX	XX	XX	XX	XX	XX	...	...	...	...	...	...

(a) See Table 14 for the States and years in which the 33 Federal executions occurred.
(b) Death penalty is illegal as indicated (XX) (see Table 16).
(c) Alaska and Hawaii, when territories, abolished capital punishment in 1957. As States, Alaska and Hawaii are included in series beginning January 1, 1960.

Table 3. - PRISONERS EXECUTED UNDER CIVIL AUTHORITY IN THE UNITED STATES, BY OFFENSE, RACE, AND STATE: 1930-1967

(For years 1930-1959, excludes Alaska and Hawaii except for three Federal executions in Alaska; one each in 1939, 1948 and 1950)

Region and State	All offenses				Murder				Rape				Other offenses							
													Total			Armed robbery		Kidnapping	Other[a]	
	Total	White	Negro	Other	Total	White	Negro	Other	Total	White	Negro	Other	Total	White	Negro	White	Negro	White	White	Negro
United States[b]	3,859	1,751	2,066	42	3,334	1,664	1,630	40	455	48	405	2	70	39	31	6	19	20	13	12
Percent	100.0	...	...	...	86.4	...	...	...	11.8	...	...	...	1.8	...	...	...	...	...	...	...
FEDERAL[b]	33	28	3	2	15	10	3	2	2	2	-	-	16	16	-	2	-	6	8	-
TOTAL STATE	3,826	1,723	2,063	40	3,319	1,654	1,627	38	453	46	405	2	54	23	31	4	19	14	5	12
NORTHEAST	608	424	177	7	606	422	177	7	-	-	-	-	2	2	-	-	-	2	-	-
Maine[c]	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
New Hampshire	1	1	-	-	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Vermont	4	4	-	-	4	4	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Massachusetts	27	25	2	-	27	25	2	-	-	-	-	-	-	-	-	-	-	-	-	-
Rhode Island	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Connecticut	21	18	3	-	21	18	3	-	-	-	-	-	-	-	-	-	-	-	-	-
New York	329	234	90	5	327	232	90	5	-	-	-	-	2	2	-	-	-	2	-	-
New Jersey	74	47	25	2	74	47	25	2	-	-	-	-	-	-	-	-	-	-	-	-
Pennsylvania	152	95	57	-	152	95	57	-	-	-	-	-	-	-	-	-	-	-	-	-
NORTH CENTRAL	403	257	144	2	393	254	137	2	10	3	7	-	-	-	-	-	-	-	-	-
Ohio	172	104	67	1	172	104	67	1	-	-	-	-	-	-	-	-	-	-	-	-
Indiana	41	31	10	-	41	31	10	-	-	-	-	-	-	-	-	-	-	-	-	-
Illinois	90	59	31	-	90	59	31	-	-	-	-	-	-	-	-	-	-	-	-	-
Michigan[c]	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
Wisconsin[c]	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
Minnesota[c]	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
Iowa[d]	18	18	-	-	18	18	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Missouri	62	29	33	-	52	26	26	-	10	3	7	-	-	-	-	-	-	-	-	-
North Dakota	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
South Dakota[d]	1	1	-	-	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Nebraska	4	3	-	1	4	3	-	1	-	-	-	-	-	-	-	-	-	-	-	-
Kansas[d]	15	12	3	-	15	12	3	-	-	-	-	-	-	-	-	-	-	-	-	-

Region and State	All offenses				Murder				Rape				Other offenses							
													Total			Armed robbery		Kidnaping	Other offenses[a]	
	Total	White	Negro	Other	Total	White	Negro	Other	Total	White	Negro	Other	Total	White	Negro	White	Negro	White	White	Negro
SOUTH	2,306	637	1,659	10	1,824	585	1,231	8	443	43	398	2	39	9	30	4	19	5	-	11
Delaware[d]	12	5	7	-	8	4	4	-	4	1	3	-	-	-	-	-	-	-	-	-
Maryland	68	13	55	-	44	7	37	-	24	6	18	-	-	-	-	-	-	-	-	-
Dist. of Columbia	40	3	37	-	37	3	34	-	3	-	3	-	-	-	-	-	-	-	-	-
Virginia	92	17	75	-	71	17	54	-	21	-	21	-	-	-	-	-	-	-	-	-
West Virginia[d]	40	31	9	-	36	28	8	-	1	-	1	-	-	-	-	-	-	-	-	-
North Carolina	263	59	199	5	207	55	149	3	47	4	41	2	9	3	9	-	-	3	-	9
South Carolina	162	35	127	-	120	30	90	-	42	5	37	-	-	-	-	-	-	-	-	-
Georgia	366	68	298	-	299	65	234	-	61	3	58	-	6	-	6	-	6	-	-	-
Florida	170	57	113	-	133	55	78	-	36	1	35	-	1	1	-	-	-	1	-	-
Kentucky	103	51	52	-	88	47	41	-	10	1	9	-	5	3	2	3	2	-	-	-
Tennessee	93	27	66	-	66	22	44	-	27	5	22	-	-	-	-	-	-	-	-	-
Alabama	135	28	107	-	106	26	80	-	22	2	20	-	7	-	7	-	5	-	-	2
Mississippi	154	30	124	-	130	30	100	-	21	-	21	-	3	-	3	-	3	-	-	-
Arkansas	118	27	90	1	99	25	73	1	19	2	17	-	-	-	-	-	-	-	-	-
Louisiana	133	30	103	-	116	30	86	-	17	-	17	-	-	-	-	-	-	-	-	-
Oklahoma	60	42	15	3	54	40	11	3	4	-	4	-	2	2	-	1	-	1	-	-
Texas	297	114	182	1	210	101	108	1	84	13	71	-	3	-	3	-	3	-	-	-
WEST	509	405	83	21	496	393	82	21	-	-	-	-	13	12	1	-	-	7	5	1
Montana	6	4	2	-	6	4	2	-	-	-	-	-	-	-	-	-	-	-	-	-
Idaho	3	3	-	-	3	3	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Wyoming	7	6	1	-	7	6	1	-	-	-	-	-	-	-	-	-	-	-	-	-
Colorado	47	41	5	1	47	41	5	1	-	-	-	-	-	-	-	-	-	-	-	-
New Mexico	8	6	2	-	8	6	2	-	-	-	-	-	-	-	-	-	-	-	-	-
Arizona	38	28	10	-	38	28	10	-	-	-	-	-	-	-	-	-	-	-	-	-
Utah	13	13	-	-	13	13	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Nevada	29	27	2	-	29	27	2	-	-	-	-	-	-	-	-	-	-	-	-	-
Washington	47	40	5	2	46	39	5	2	-	-	-	-	1	1	-	-	-	1	-	-
Oregon[d]	19	16	3	-	19	16	3	-	-	-	-	-	-	-	-	-	-	-	-	-
California	292	221	53	18	280	210	52	18	-	-	-	-	12	11	1	-	-	6	5	1
Alaska[e]	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
Hawaii[e]	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX

(a) In this category, the 8 Federal executions were for sabotage (6) and espionage (2). The 9 executions in North Carolina and the 2 in Alabama were for burglary. In California, the 6 executions were for aggravated assault committed by prisoners under a Life sentence.
(b) Figures revised to reflect one white Federal bank robber, who was erroneously carried in previous bulletins as a murderer.
(c) Death penalty abolished by law during entire period covered by this table.
(d) See Table 16 for periods during which death penalty was in effect.
(e) Alaska and Hawaii, when territories, abolished capital punishment in 1957. As States, Alaska and Hawaii are included in this series beginning Jan. 1, 1960.

Table 13. - WOMEN EXECUTED UNDER CIVIL AUTHORITY IN THE UNITED STATES, BY YEAR, OFFENSE, RACE AND STATE: 1930-1967

Year	Total	Offense		Race		State in which executed
		Murder	Other[a]	White	Negro	
All years ...	32	30	2	20	12	...
1962	1	1	-	1	-	California
1957	1	1	-	1	-	Alabama
1955	1	1	-	1	-	California
1954	2	2	-	1	1	Ohio
1953	3	1	2	3	-	Alabama, Federal (Missouri and New York)
1951	1	1	-	1	-	New York
1947	2	2	-	1	1	California; S. Carolina
1946	1	1	-	-	1	Pennsylvania
1945	1	1	-	-	1	Georgia
1944	3	3	-	-	3	Mississippi, New York, N. Carolina
1943	3	3	-	1	2	S. Carolina; Mississippi, N. Carolina
1942	1	1	-	1	-	Louisiana
1941	1	1	-	1	-	California
1938	2	2	-	2	-	Illinois, Ohio
1937	1	1	-	-	1	Mississippi
1936	1	1	-	1	-	New York
1935	3	3	-	2	1	Delaware, New York; Louisiana
1934	1	1	-	1	-	New York
1931	1	1	-	1	-	Pennsylvania
1930	2	2	-	1	1	Arizona, Alabama

(a) Includes one kidnapper and one espionage case (both Federal).

Table 14. - FEDERAL EXECUTIONS IN THE UNITED STATES, BY YEAR, OFFENSE, RACE AND STATE: 1930-1967

Year	Total	Offense			Race			State in which executed (d)
		Murder	Kidnapping(a)	Other (b)	White (c)	Negro	American Indian	
All years ..	33	15	6	12	28	3	2	...
1963	1	-	1	-	1	-	-	Iowa
1957	2	-	-	2	2	-	-	Georgia
1956	1	-	1	-	1	-	-	Missouri
1954	1	1	-	-	1	-	-	New York
1953	4	-	2	2	4	-	-	Missouri(2),New York(2)
1950	1	1	-	-	-	1	-	Alaska
1948	5	5	-	-	3	2	-	California(3),Alaska(1),Florida(1)
1945	1	1	-	-	1	-	-	Wyoming
1943	1	1	-	-	1	-	-	Tennessee
1942	6	-	-	6	6	-	-	Dist. of Columbia
1939	1	1	-	-	-	-	1	Alaska
1938	5	2	1	2	5	-	-	Kansas(2),Illinois(1),Indiana(1),Michigan(1)
1936	3	2	1	-	2	-	1	Indiana(1),Arizona(1),Oklahoma(1)
1930	1	1	-	-	1	-	-	Kansas

(a) Under the Federal Kidnapping statute, the death penalty may be imposed if the victim is not released unharmed. In all of the cases in this table but the one in 1936, the victim was killed by the kidnapper.

(b) Includes 2 cases of rape on a Federal reservation (1957), 2 cases of espionage (1953), 6 cases of sabotage (1942), and 2 cases of bank robbery, with homicide (1938).

(c) Includes one Mexican (California, 1948).

(d) Prior to June 19, 1937, Federal law required that all Federal executions be carried out by hanging. From that date on, executions ordered by the Federal courts are carried out in accordance with the method used by the State in which the sentence is imposed. If the laws of that State prohibit capital punishment, the Federal court designates another State in which the sentence is to be carried out.

Table 16. - ABOLITION OF THE DEATH PENALTY IN THE UNITED STATES: 1846-1967

(States are listed according to year most recent action was taken)

State	Year of partial abolition	Year of complete abolition	Year of restoration	Year of reabolition
New York	1965[a]	-	-	-
Vermont	1965[b]	-	-	-
West Virginia	-	1965	-	-
Iowa	-	1872	1878	1965
Oregon	-	1914	1920	1964
Michigan	1847[c]	1963	-	-
Delaware	-	1958	1961	-
Alaska	-	1957	-	-
Hawaii	-	1957	-	-
South Dakota	-	1915	1939	-
Kansas	-	1907	1935	-
Missouri	-	1917	1919	-
Tennessee	1915[d]	-	1919	-
Washington	-	1913	1919	-
Arizona	1916[e]	-	1918	-
North Dakota	1915[f]	-	-	-
Minnesota	-	1911	-	-
Colorado	-	1897	1901	-
Maine	-	1876	1883	1887
Wisconsin	-	1853	-	-
Rhode Island	1852[g]	-	-	-

(a) Death penalty retained for persons found guilty of killing a peace officer who is acting in line of duty, and for prisoners under a Life sentence who murder a guard or inmate while in confinement or while escaping from confinement.

(b) Death penalty retained for persons convicted of first-degree murder who commit a second "unrelated" murder, and for the first-degree murder of any law enforcement officer or prison employee who is in the performance of the duties of his office.

(c) Death penalty retained for treason. Partial abolition was voted in 1846, but was not put into effect until 1847.

(d) Death penalty retained for rape.

(e) Death penalty retained for treason.

(f) Death penalty retained for treason, and for first-degree murder committed by a prisoner who is serving a Life sentence for first-degree murder.

(g) Death penalty retained for persons convicted of committing murder while serving a Life sentence for any offense.

Source: Information in the files of the National Prisoner Statistics program.

National Bureau of Prisons Statistics

A number of facts become clear from a close examination of the recently released 1968 statistics. Among the most interesting are these:

1. 49% (235) of all condemned men are on death rows in the South.

2. 52% (250) of all death row inmates are Black.

3. Once again, in 1968, *the states which had the five highest murder rates in the nation were all states which use the death penalty.* Furthermore, these states have carried out an average of 226 executions *each* since 1930. Finally, the 1,130 executions which these five states have carried out represent 29% of the 3,859 executions in the U.S. since 1930.

4. On the other hand, the states with the five lowest murder rates in the nation, in 1968, *were all states which do not exact the death penalty.* If it were the case, as proponents of the death penalty contend, that the death penalty exercises a unique effect as a deterrent to murder – that is, that the existence and use of the death penalty, rather than such factors as poverty, poor race relations, bad housing, drugs, etc., effect the murder rate – the statistics below would be impossible to explain.

The first figure is the rate of murder, per 100,000 population. The second figure is the number of executions carried out between 1930 and 1968.

continued

continued

State	Murder Rate	Executions
– HIGHEST MURDER RATES –		
Georgia	13.9	366
S. Carolina	13.6	162
Florida	11.9	170
Alabama	11.8	135
Texas	10.6	297
– LOWEST MURDER RATES –		
Minnesota	2.2	0
Wisconsin	2.2	0
Iowa	1.7	18
N. Hampshire	1.4	1
N. Dakota	1.1	0

(Note: The five states listed above are all abolition states, except New Hampshire, where the only execution was in 1939!)

SB. 239

88 Nev., Advance Opinion 28

10

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFRED JOSEPH COLLINS, APPELLANT, *v.* WARDEN, NEVADA STATE PRISON, RESPONDENT.

No. 6483

February 23, 1972

Appeal from order denying post-conviction petition for habeas relief, Second Judicial District Court, Washoe County; Grant L. Bowen, Judge.

Affirmed.

H. Dale Murphy, Washoe County Public Defender, for Appellant.

Robert List, Attorney General, of Carson City; *Robert Rose,* District Attorney, and *Kathleen M. Wall,* Deputy District Attorney, Washoe County, for Respondent.

OPINION

By the Court, GUNDERSON, J.:

April 22, 1968, appellant withdrew his prior "not guilty" plea, and plead guilty to an information charging robbery. April 23, he withdrew his "not guilty" plea and plead guilty to an information concerning a later incident, charging attempted robbery and assault with a deadly weapon. Simultaneously the State, obviously as the result of plea bargaining, moved for dismissal of habitual criminal charges alleging prior felonies in enhancement of penalty. The court dismissed the habitual charges, and subsequently imposed "consecutive" sentences of 10, 3 and 6 years on the principal charges, expressing belief and intent that appellant would be allowed to earn early parole consideration.[1] Counsel for the State at no time suggested that the court misunderstood the effect contemplated by dismissal of the "habitual" charges. Prison

[1]When sentencing appellant, Judge Craven stated: "Now, the sentences I intend to impose will be consecutive; but, as a practical matter, it isn't going to make any difference because it is going to be entirely up to the parole board. . . ." While a psychiatric evaluation tendered as part of the pre-sentence report suggested appellant be allowed to earn early parole consideration, Judge Craven clearly chose to impose consecutive rather than concurrent sentences, to vest the parole board with maximum future control.

authorities thereafter advised appellant that he is ineligible for parole; he then sought post-conviction relief, which a different judge of the district court denied; hence, this appeal.

1. Appellant contends he is entitled to plead anew, simply because the court accepted his pleas without requisite inquiry to establish them intelligent and voluntary. Boykin v. Alabama, 395 U.S. 238 (1969); Higby v. Sheriff, 86 Nev. 774, 476 P.2d 959 (1970). This contention has no merit, for appellant's pleas were accepted before the U.S. Supreme Court announced the doctrine of *Boykin,* which in our view is not retroactive. Mathis v. Warden, 86 Nev. 439, 471 P.2d 233 (1970); Anushevitz v. Warden, 86 Nev. 191, 467 P.2d 115 (1970).

2. Appellant further seeks the right to re-plead, or to be resentenced, because the sentencing judge supposedly was unaware that under NRS 176.035 an inmate serving the first of two or more consecutive sentences cannot be paroled from it to begin serving a subsequent sentence.[2] In support of the premise that NRS 176.035 precludes such paroles, appellant cites an opinion of our Attorney General (Op. Att'y Gen. No. 578, 1969); however, we believe Judge Craven, rather than the Attorney General's deputy, has correctly construed NRS 176.035(2), which merely recites rules to determine the intent of the sentencing judge, and does not limit his power or that of the parole board.

[2]*"NRS 176.035 Conviction of two or more offenses; concurrent and consecutive sentences.*

"1. Whenever a person shall be convicted of two or more offenses, and sentence has been pronounced for one offense, the court in imposing any subsequent sentence may, in its discretion, provide that the sentences subsequently pronounced shall run either concurrently or consecutively with the sentence first imposed.

"2. If the court shall make no order with reference thereto, all sentences shall run concurrently; but whenever a person under sentence of imprisonment shall commit another crime and be sentenced to another term of imprisonment, such latter term shall not begin until the expiration of all prior terms."

Our former Attorney General's interpretation of this statute, discussed herein, has led to bizarre results. For example, one convicted of a misdemeanor in prison necessarily suffers, not merely the usual penalties for that crime, but the loss of all parole possibilities on his original sentence, i.e. an indiscriminate additional sanction fortuitously dependent upon the length of his original sentence and the time his second sentence is imposed. To avoid such purely arbitrary results, which our prison authorities find inimical to their prospects for control and rehabilitation of prisoners, our trial judges have sometimes felt constrained to grant probation for offenses committed while in prison. As the instant case illustrates, the Attorney General's view would also tend to deter judges from imposing consecutive sentences in cases like the instant one, a result hardly consistent with allowing the parole board maximum control over criminal offenders.

3. Appellant further seeks the right to re-plead, or to be resentenced, because the court assertedly was unaware NRS 213.110 precludes parole to persons who have "previously been more than three times convicted of a felony and served a term in a penal institution." Again, we disagree with appellant's premise. By the express terms of NRS 213.110, only paroles outside the prison's buildings and enclosures are precluded to persons stigmatized by that statute. The sentencing judge apparently recognized that appellant might properly be paroled from one sentence to another, so long as he remained within the prison, and his advice to petitioner in this regard was correct.[3]

We affirm the order denying appellant post-conviction relief, with the expectation that appellant will be allowed parole consideration in conformity with law, as the sentencing court apparently contemplated.[4]

ZENOFF, C. J., and BATJER, MOWBRAY, and THOMPSON, JJ., concur.

[3]Petitioner may, of course, challenge the constitutional validity of his prior convictions as suggested in Eisentrager v. State Bd. Parole, 85 Nev. 672, 462 P.2d 40 (1969), and thereby seek eligibility for outside parole.

[4]In its Answering Brief, the State says it "would concur" in our resolving this case by assuming the sentencing judge was ignorant of NRS 213.110, and adjusting appellant's sentences to run concurrently. Respect for the sentencing court, and for its determination that consecutive sentences will best enable the parole board to protect the public, impels us to decide the court correctly interpreted the intended effect of the dismissals sought by the State.

SPO, CARSON CITY, NEVADA, 1972