

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING HELD

174

28th DAY OF FEBRUARY, 1973

The meeting was called to order at 9:15 a.m. Senator Close in the Chair.

PRESENT: Senator Foley
Senator Bryan
Senator Dodge
Senator Swobe
Senator Hecht
Senator Wilson

Mr. Robert List, Attorney General
Mr. Chuck Thompson, Assistant District Attorney - Las Vegas
Mr. A.A. Campos, Parole and Probation
Mr. Carroll Nevin, Crime Commission

EXCUSED: Senator Swobe

Mr. Carroll Nevin - In the 10 year period of 1962 to 1972, 834 peace officers have been killed in the line of duty. A large percentage of those were responding to crimes such as burglary, robbery, etc; 92 died from ambush or were openly assassinated. I am here to support two bills which were introduced. The first is A.B. 248, which provides a mandatory death penalty for the murder of a peace officer or police officer by adding a new section to NRS. S.B. 223 would provide that any person lawfully imprisoned in Nevada State Prison who murders a warden or deputy warden, would be subject to the mandatory death penalty.

Life termers in prison, over which the correctional staff has no control, have no deterrent for killing the warden or deputy unless he realizes that he would lose his most precious possession - his own life.

The attitude that criminals have to the death penalty was dramatized in a hold-up of a New York Bank. After holding 8 hostages for many hours, the criminal told a reporter that if the police had stormed the bank he would have killed all the hostages and the supreme court would have let him get away with it because they couldn't put him in the electric chair. I strongly feel that if a criminal has reason to believe that he is going to be executed, he will stop and think before he murders someone.

Senator Dodge asked Mr. Nevin if he felt the mandatory death pen-

alty should be extended to any other crimes. Mr. Nevin replied that he had been asked to present these two bills by the Governor. He felt that the Governor had only recommended these two areas because, following the supreme court decision, if the Legislature moves slowly in restoring and particularizing these areas, we would be in a better position than if we brought in a whole list of other crimes which caused the supreme court decision in the first place.

Chairman Close asked Mr. Nevin if he intended to define peace officer for the purpose of this bill. Mr. Nevin replied that he had intended to cover the peace officers included in the early retirement act who are actually in the field working on a day-to-day basis with the criminal element.

Attorney General Bob List - A.B. 265 represents a consensus of law enforcement officials in Nevada. In cases where law enforcement agencies have submitted their own bills, most have agreed that A.B. 265 should supercede any bills introduced previously. This bill contains some 10 specific instances for which the death penalty would apply, but is restricted to only those instances where death occurs. This bill also contains a preamble clause with legislative findings, which could be significant and extremely helpful were the constitutionality attacked.

The 10 specific instances include:

- 1) Killing a peace officer as defined in 169.125. This would include firemen and would apply were the peace officer murdered when acting in his official capacity or by reason of an act performed in his official capacity.

Senator Wilson asked if this provision considers whether or not the defendant knows that he is killing a peace officer. Mr. List replied that in the hearings, research and debate it was an ultimate conclusion that application of the death penalty for killing a peach officer without knowledge of his position would be sustained because of the public interest.

Senators Wilson and Dodge questioned whether murder applicable to the death penalty was defined and if it considered premeditation. NRS 200.010 defines murder and classifies it into degrees; murder in the first degree being premeditated and all others being murder in the second degree. Mr. List agreed that premeditation should be included.

Senator Bryan was interested in why district court judges were included in death penalty murder without the requirement for scienter, and felt that there would be a better chance of meeting

the constitutional test if there were a requirement that the person who murdered had knowledge that the person were a peace officer or judge. Mr. List replied that 95 per cent of the time the defendant knew exactly who his victim was, but to make this an express element of proof the prosecution has to establish something which is not known in the law today and would be extremely difficult to sustain.

Senator Foley suggested that the bill be drafted to take care of the contract killing situation and killings where it is known to be "in cold blood" rather than trying to enumerate particular people and putting them in separate categories. This way protection would be extended not only to police officers, but to all citizens alike.

Mr. List replied that to include all first degree murder would make the application of the death penalty too broad. He knew of no other way to apply it than to pick out specific types of crimes.

Mr. List went on to enumerate the other provisions of the bill. The skyjacking provision is not limited to commercial aircraft. It covers all aircraft hijackings because of the inherent danger of the act in view of the passengers involved. A person previously convicted of murder in any degree, if ever convicted of murder again, will suffer the death penalty. A murder committed by a person under sentence of life imprisonment would be included in the death penalty. This would act as a deterrent to protect inmates in prisons.

Killing more than one person as a result of a common plan, scheme, or design. This type of murder is so heinous as to require the death penalty.

Killing in perpetration of rape or sexual molestation of children under 14 if death results.

Killing to avoid arrest by a peace officer or to escape from custody. This provision would also protect the bystander if he were killed.

Mr. List noted that Nevada has a unique pressure valve in the Board of Pardons, consisting of the Governor, Attorney General, and Supreme Court Justices, who may commute a sentence, reduce a sentence, or grant absolute pardon.

Senator Wilson made the observation that if discretion is eliminated for equal protection in the first instance, why wouldn't the Pardon Board's discretion be equally violative in commuting sentences.

Mr. Chuck Thompson stated that Mr. List had covered the position of the Clark County District Attorneys' Office in supporting A.B. 265.

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There are 2 or 3 points which he emphasized as being closer to the experiences in Clark County. They are killing of peace officers, killing by use of explosives, killing for hire, and rape deaths.

Mr. A.A. Campos stated that experience has not shown that the death penalty is a deterrent or is not a deterrent. In Georgia they have executed 363 people in the last 43 years, while in Michigan they have executed no one. Yet in Georgia the murder rate continues to be higher than in Michigan.

Mr. Campos agreed with all the categories listed in A.B. 265. He felt there was no urgency in commencing the executions, the guidelines should be established to withstand the constitutional test of the supreme court decision. Once guidelines are established, the Legislature can add the appropriate categories to the law.

He felt another area of discretion that should be considered is the use of discretion by the defendant and the district attorney in terms of the plea the defendant will accept and what he will plead guilty to. For example, in cases of contract killings, the defendant could plead guilty to a lesser offense in consideration for turning States' evidence. The way the bills submitted thus far are worded, the provisions do not allow any leeway for the defendant to plead guilty to a lesser crime.

Mr. Ed Pough distributed a letter written by the Warden of the Nevada State Prison which is attached to these minutes.

The only other request he asked of the Committee is to amend S.B. 223 to include all prison employees rather than just the uniformed staff. All of the staff goes into the prison in cases of rebellion or escape.

Chairman Close excused the witnesses and thanked them for their testimony.

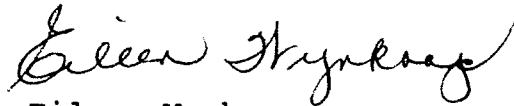
S.B. 202 - Includes pawn shops, secondhand merchandise stores and employees of either within definition of "wrongful possessor" for purposes of restoration of stolen property to owner.

Senator Wilson informed the Committee that the District Attorneys' Office had requested this bill, but has since agreed that it would cause more problems than it would solve.

Senator Swobe moved to indefinitely postpone action on this bill. Seconded by Senator Wilson. Motion carried.

The meeting adjourned at 11:00 a.m.

Respectfully submitted,



Eileen Wynkoop
Secretary

APPROVED:



Melvin D. Close, Jr., Chairman



Attachment

NEVADA STATE PRISON
P.O. Box 607
CARSON CITY, NEVADA 89701

MEMORANDUM

TO: MEMBERS OF THE SENATE JUDICIARY COMMITTEE

FROM: Carl G. Hocker, Warden

SUBJECT: CAPITAL PUNISHMENT LEGISLATION DATE: 2/28/73

The recent upswing in violence in prisons indicates that return to the death penalty for certain classes of crimes is mandatory. Specifically, it is requested that you favorably consider a bill which would include the murder of a Prison staff member by an inmate as mandatorily punishable by death.

An attempt will be made to provide you as comprehensive nationwide figures as possible. However, information from the California Department of Corrections indicates that since the effective moratorium on the death penalty in 1965 there has been a rapid and persistent rise in the number of prison staff murdered by inmates. During 1970 and 1971 there were 12 such murders; in the five years previous there were only 2 murders. This was in California alone.

I am sure we are all aware of the nationwide scene and the current attitude that these violent prisoners have about having nothing else to lose. I urgently solicit and appreciate your support for this legislation.

Carl Hocker
CARL G. HOCKER, Warden

CGH:kd