

MEMBERS PRESENT: Chairman Stewart
Vice Chairman Sader
Mr. Thompson
Ms. Foley
Mr. Beyer
Mr. Price
Mr. Chaney
Mr. Malone
Mrs. Cafferata
Ms. Ham
Mr. Banner

MEMBERS ABSENT: None

GUESTS PRESENT: R. Bayer, Department of Prisons
Steve Robinson, Department of Prisons
Rick Pugh, Nevada State Medical Assoc.
Joe Midmore, Affil. Wedding Chapels
Charles Wolff, Jr., Department of Prisons
Brooke Nielsen, AG Criminal Division
Kevin Reeves, UNR Intern (Sader)
Colleen Dolan, UNR Intern (Stewart)

Chairman Stewart called the meeting to order at 8:06 a.m. and proceeded to the hearing of AB 86.

AB 86 Changes method of inflicting death penalty.

Charles Wolff, Director, Nevada Department of Prisons, stated the support of the Department of AB 86 in that infliction of a sentence of death be by the administration of a lethal injection. He indicated that they asked for no changes in the bill. He stated that passage of AB 86 would provide the Department with the authority to establish procedures in which to administer capital punishment by lethal injection in lieu of the gas chamber, presently in effect since 1924.

Mr. Stewart asked if there had been any problems with the gas chamber. Mr. Wolff indicated that the gas chamber is the most dangerous method of administering capital punishment due to the use of the chemicals involved. He further stated that it is expensive due to the training involved, staff time in the development and testing of the chamber, etc. It was his feeling that a lethal injection would remove the "circus atmosphere" and is a more humane method of administering this type of punishment.

To Chairman Stewart's question about the danger involved with the gas chamber, Mr. Wolff stated that the gas chamber is a pressurized vessel which must be tested to maintain the pressure. He indicated there cannot be any leaks which entails the testing of seals, gaskets, etc. In the event of a leak, it can be fatal to anyone in the area. On a question from Mr. Banner, Mr. Wolff indicated that the gas is gradually exhausted through an exhaust fan into the air after the procedure has been completed.

Mrs. Cafferata asked why "no person who has not been invited by the director may witness. . ." was being added to the language of the bill. Mr. Wolff indicated that was already a provision of the law and he had no knowledge of why that was being included in the bill. He stated it was a standard method of insuring that unauthorized individuals were not present at the execution.

To Mr. Sader's question about the cost of maintaining the gas chamber, Mr. Wolff estimated between \$16,000 and \$20,000 for the training, testing, supervision, overtime, etc. He stated that the only time the gas chamber is maintained is when it is to be used with periodic inspections.

Mr. Thompson asked what would be used for the lethal injection. Mr. Wolff responded by saying it would be some type of chemical that would be determined at such time as the bill is passed as well as the procedure to be used to administer the injection. He stated that the procedure would be made available to the committee at a future date, but that document would be considered confidential. On another question by Mr. Thompson, Mr. Wolff indicated that three people appointed by him would administer the injection. He stated that standard thinking was that a tube would be inserted into the vein with three individuals behind a screen each with an extension of the IV, two with salient solution and one with the chemical, who would release their respective clamps on instruction. He indicated that a definite procedure and chemical had not been arrived at yet, but would be determined by the best research and information available at the time the bill is passed. He stated that there are four states who currently have this type of legislation, but no one has actually developed or used their procedures at this time.

Miss Foley asked what type of restraints would be used on the prisoner at the time of the injection, to which Mr. Wolff responded he would be strapped into a chair and secured. He further indicated that it would only take a matter of moments for the injection and death to occur.

In response to Mr. Beyer's question, Mr. Wolff clarified his "circus atmosphere" comment by saying that it is almost ritualistic in taking the individual into the gas chamber and going through the procedures involved. He indicated that there is a reaction by the body when the gas is dropped into the acid beneath the chairs, whereas an injection would be a much simpler procedure which would alleviate agonizing moments by the prisoner. It was his feeling that the injection would be more formal, more humane and more economical.

Mr. Beyer asked about the possibility of the injection not being lethal in some cases, to which Mr. Wolff responded there was no possibility of that happening.

Mr. Price indicated it was his feeling that being allowed to witness an execution would act as a deterrent against some of the crimes being committed. Mr. Wolff responded that was not the purpose of capital punishment, but that they were carrying out the order of the court to take a human life. It was his feeling that the method did not make any difference and did not see a great advantage to making it public.

Mr. Sader asked if the contemplated procedure would require a health care professional to administer the injection. Mr. Wolff stated he did not anticipate that need but would not preclude it. He indicated that he would utilize the type of individual which the law allowed him to use, such as a para-professional. He stated there would be a physician in attendance. Mr. Sader asked if the three individuals behind the screen who would release the clamps on their various solutions would have to be professionals to which Mr. Wolff responded no. Mr. Sader asked if Mr. Wolff felt there would be a problem in finding a technical person who would insert the IV. Mr. Wolff replied no.

In answer to Mr. Sader's question about the other types of capital punishment, Mr. Wolff stated hanging, firing squad, gas chambers and the most common being the electric chair.

Mr. Chaney asked how Mr. Wolff knew that it would only take a matter of moments for the injection to be effective if none of the other states had actually used that method. Mr. Wolff stated that the type of chemicals in question had been used in the past on humans and animals and the information he had received indicated that the effect took only a short time.

Mr. Chaney asked how access to the drugs used for this procedure would be controlled to insure that they did not fall into the hands of individuals who would use them illegally. Mr. Wolff indicated that they would only have access to enough of

the drug to perform the procedure and that any remaining substance would be destroyed. He stated that dangerous drugs and chemicals of that type were not maintained at an institution at any time anywhere. He further stated that the types of drugs or chemicals which would be used are already in use in other manners and available on the market through proper channels. To Mr. Chaney's question about who would mix the drugs used, Mr. Wolff responded that it would be done by qualified and competent professionals.

Chairman Stewart asked if obtaining these drugs would require a prescription to which Mr. Wolff replied it would. Mr. Stewart asked who would prescribe the drugs and if it wouldn't be against a doctor's oath to prescribe such a drug or chemical. Mr. Wolff stated that it could be something that a veterinarian uses or is used in some other practice. He didn't know exactly who would prescribe it, but that the chemical used and the source from which it would be obtained would be determined after the passage of the bill. Mr. Price pointed out that it would be necessary to include in other legislation being considered provisions for obtaining the drug.

Chairman Stewart pointed out to the committee members that a memorandum prepared by his intern had been passed out which included a copy of the Oklahoma statute dealing with a lethal injection. (EXHIBIT A)

Mr. Thompson brought notice to the fact that in July, 1980, the American Medical Association adopted a policy stating that a doctor cannot actively participate in an execution. He then asked if this would present a problem in getting professionals to even put the needle in the prisoner's arm. Mr. Wolff replied that the AMA's policy was one that not all professionals agree with. He further pointed out that not all medical people belong to the AMA. He reiterated that he did not anticipate a problem in getting people to assist in the procedure at the necessary time.

Mr. Malone suggested that the bill ought to include an alternative method in the event the lethal injection method was contested in the court systems as unconstitutional. Mr. Wolff indicated that to his knowledge the method of inflicting the death penalty had never been questioned in court and did not feel it necessary to include an alternative in the language of the bill.

Mr. Banner asked if the cost and safety was a question as was whether or not it was humane, why wasn't a firing squad used. Mr. Wolff indicated that Utah is the only state that uses that method. Mr. Banner stated it would eliminate the argument about

doctors, cost, safety, drugs, etc. Mr. Wolff did not feel that was a real problem.

Mr. Stewart brought attention to the Oklahoma statute which noted the classes of drugs to be used, indicating that one put the individual to sleep and then the lethal dosage was administered. Steve Robinson, Department of Prisons, clarified that most of the drugs that have been proceduralized in the other states are administered with a combination of the relaxant and the lethal drug usually causes death by asphyxiation. Mr. Stewart went on to note that the articles provided by his intern indicated that the drugs used worked in a matter of seconds. He indicated that he felt the class of drugs should be specified in the bill as Oklahoma had done.

Mr. Beyer agreed with Mr. Malone's previous thoughts on having an alternative method of inflicting the death penalty and asked if there would be any benefit to allowing a prisoner his choice. Mr. Wolff felt it should be the court's option.

To Mrs. Cafferata's question of whether he would object to the firing squad, Mr. Wolff indicated he would because he felt a lethal injection was the best and most humane manner to administer capital punishment. He responded to another question by Mrs. Cafferata by saying he felt the electric chair was another violent method of execution.

Mrs. Cafferata asked why the number of witnesses to the execution was limited. Mr. Wolff stated that the number is not limited but that a minimum of six witnesses are required by law. He further indicated that witnesses have to be selected and are not present by choice.

Bob Lippold, Carson City Correctional Consultant, testified in favor of AB 86. Mr. Lippold stated that he was present at the execution of Jesse Bishop and was Superintendent of the Nevada State Prison at that time. He stressed that what had the most impact on him was the extraordinary amount of danger present in the use of lethal gas. He stated that preparation relating to the use of the gas chamber involves a number of risks which need to be alleviated in light of the exposure of the witnesses.

Mr. Lippold stated that the less specific the language of the bill is in terms of administering a lethal injection provides the Director with the kind of freedom that he must have to work out the procedure used. He felt that if the Legislature were to tie in a great many specifics, it would possibly create some

of the problems to which Mr. Malone alluded, in that some of the procedures would then become a question. He stated that he felt a doctor should not be specified as the one required to administer the injection so that the bill becomes enabling legislation, allowing the Director to have some flexibility in arriving at the procedures to be followed.

Richard Pugh, Executive Director, Nevada State Medical Association, read a statement which reflected the position of the American Medical Association and the Nevada State Medical Association on AB 86 (attached as EXHIBIT B).

Mr. Malone asked if the insertion of the IV into the felon's arm and having nothing further to do with the procedure would constitute participation in the execution on the part of a physician. Mr. Pugh felt that the act of setting an individual up for the injection would be setting the stage for the harm to be done to that individual, whereas pronouncing a person dead was in no way participation.

Mr. Sader asked if the Medical Associations were opposed to the bill as it stood with no language requiring the participation of a physician in the execution. Mr. Pugh stated they were not. He felt their position was that if capital punishment is a state law, then do it in the most humane way and exclude the physician from it.

Mr. Stewart asked if Mr. Pugh was a medical person with knowledge of the drugs in questions. Mr. Pugh stated he was not.

Chairman Stewart called a recess at 9:02 a.m. and reconvened the meeting at 9:15 a.m. He next asked for testimony on AB 87.

AB 87 Increases penalties for certain false imprisonment and batteries; prohibits sexual conduct between prisoners and employees of the department of prisons.

Director Wolff, Department of Prisons, spoke in support of AB 87 and stated that the increase in penalties found on page 2, lines 1 and 2 and 34 and 35, were necessary based on the nature of the crime and the circumstances. He felt one year was not sufficient.

Mr. Malone asked if there were already penalties assessed for these crimes already. Mr. Wolff stated there were not penalties in law against these, but that they were procedural penalties within the Department of Prisons. He indicated they were being requested because they were not already on the books.

Mr. Sader asked what disciplinary procedures existed within the Department to handle the problem of an employee engaging in sexual conduct with a prisoner. Mr. Wolff indicated that, depending upon the burden of proof and the seriousness of the act, the punishment ranged from a reprimand, to a transfer, to a termination of employment. Mr. Sader asked why this section was needed, to which Mr. Wolff responded that there were no penalties assessed by statute at the present time and the Department felt it should have the availability of law for possible prosecution.

Mr. Sader asked what disciplinary procedures were available against prisoners. Mr. Wolff stated that the most rigid punishment was 15 days in punitive segregation. On a further question by Mr. Sader, Mr. Wolff indicated it was felt the passage of this bill would be a deterrent to the problem.

Mr. Malone asked what difference an extra year would make to someone serving a 20 year sentence. Mr. Wolff indicated that the major concern was with the employees.

Mr. Price asked for a clarification of the meaning where the term "masturbation" was used. Mr. Stewart indicated it had to be a combination of a prisoner and an employee engaging in these acts. Mr. Price pointed out that the language of the bill specified "unclothed" and questioned whether it would present a problem in the event of stimulation through the clothing. It was indicated that was a question of language to be taken up later.

Brooke Nielsen, Deputy Attorney General, Criminal Division, spoke in favor of AB 87. She indicated that this bill criminalized both the act of prisoner and the employee. She stated that making these acts unlawful makes them misdemeanors by another provision of NRS. She expressed the concern of her office over the lack of the term "voluntary". She pointed out that as the bill now reads, an involuntary sexual act would be unlawful. It was her suggestion that the word "voluntary" be put in Section 1.

For further clarification of the question on the use of the term "masturbation", Ms. Nielsen indicated that the definition according to the dictionary did not limit it to self and that as written in AB 87 it would involve the participation of two persons.

Ms. Nielsen stated that Sections 2 and 3 of AB 87 were written in view of the hostage situations occurring not only in the prisons, but also in the county jails. She indicated that the

language as written limited the hostage situation to a prisoner in a penal institution and should be revised to include those prisoners in county jails. She suggested an amendment to that language which read ". . . by a prisoner in lawful custody or confinement." She felt that language would clearly include prisoners in county jails.

To Mr. Wolff's prior comments about the penalties to be assessed, Ms. Nielsen indicated it was the feeling of her office that the penalties as written are not appropriate to the crimes committed. She referred to the language in Section 3(b) where it required that a prisoner, in the hostage situation, with or without a deadly weapon would receive a potential sentence of 1 to 6 years. She stated that a distinction should be drawn between the use of a deadly weapon and an act committed without a deadly weapon and that the penalty should be appropriate for a crime committed with a deadly weapon. The suggestion of her office was 2 to 20 years, however there would be no objection if the committee wanted to make it 5 to 10 years or some other length of time as long as a distinction was drawn between the use of a deadly weapon and an act committed without a deadly weapon. The suggestion for an act done without a deadly weapon was a term of 1 to 6 years.

Ms. Nielsen indicated that the same comments applied to Section 3 involving battery. She stated that the intent of this section was to punish prisoners for committing batteries on various categories of people. She suggested that line 29 of page 2 be changed to read ". . . by a prisoner in lawful custody or confinement. . .", thereby including prisoners in county jails as well as in the prison system. With reference to the language in (e)(1), she suggested a change in the language indicating "employees of the department" to include employees of the county jails. She did not have a specific suggestion for the most accurate wording. She noted that once again the penalty provision should be geared to whether the battery is committed with a deadly weapon or without a deadly weapon and suggested the same provisions as before.

With reference to the wording in (e)(3), stating ". . . a contractor working in an institution. . .", Ms. Nielsen suggested an amendment reading ". . . a contractor or his employee. . .".

Mr. Sader suggested an amendment to the wording that made it an unlawful act for a prisoner to attack certain individuals by specifying non-prisoners to encompass other people not included such as visitors to the prison, etc. Ms. Nielsen had no argument with that and stated that the intent of the language was to impress upon the prisoners that they were not to consider assaulting employees of the prison who were exposed to them on a daily basis.

Mr. Malone asked if the penalties imposed by this bill followed with the penalties in other statutes suggested for specific crimes. Ms. Nielsen noted a problem with the term "kidnap", stating that one of the requirements of kidnapping is showing movement of the hostage. She drew attention to the situation in a prison where a hostage is not moved at all but held in a chair or in a cell, etc. It was felt that this type of false imprisonment should be a felony as kidnapping is and that it is not a felony under current law. She indicated this was the reason for the suggested increased penalties. Ms. Nielsen also pointed out that there are several acts which are crimes for prisoners and not crimes for other individuals such as possession of a deadly weapon.

Since there was no further testimony on AB 87, Chairman Stewart referred the bill to a sub-committee consisting of Mr. Beyer, Mr. Malone and Mrs. Cafferata to review the suggested amendments.

On a motion by Mr. Banner to adjourn, seconded and unanimously carried, the meeting was adjourned at 9:40 a.m.

Respectfully submitted,



Jor Jan M. Martin
Committee Stenographer

DEATH BY LETHAL INJECTION

Currently, four states have laws providing for execution of condemned prisoners by lethal injection: Idaho, New Mexico, Oklahoma and Texas.

PROCEDURE

- 1) The prisoner is strapped to a stretcher and administered an IV of a neutral solution--usually a saline solution. A screen or curtain would be set up so that the prisoner would not see the person(s) administering the injection(s), which would be made into the IV tubing.^A
- 2) Idaho and Oklahoma provide for multiple injections, two containing harmless solution, one lethal, in order that no one would know who killed the prisoner.^A
- 3) Although existing laws do not name the drugs to be used, the one mentioned is sodium thiopental, a fast-acting barbiturate. This would put the prisoner to sleep almost instantly. Then a lethal dose of either tubocurarine, succinylcholine chloride or potassium chloride,^C curare-like drugs, would be administered, paralyzing the nerves and muscles and stopping the heart in moments.^A

PROS

- 1) Provides a more dignified death for the prisoner.^A
- 2) Provides a quick, painless death.^A
- 3) Lower cost than the gas chamber or electrocution.^A
- 4) Eliminates the possibility that the execution can be depicted by the press in gruesome terms. Vivid descriptions of death in the gas chamber arouse public sympathy for the prisoner and opposition to the death penalty.^B
- 5) Because lethal injections are generally viewed as more humane--i.e., painless--it might be possible to sway more jurors to vote the death penalty.^A

CONS

- 1) Some people feel that the gruesome aspects of the execution could be deterrents to the crime, and argue against making the death so "easy."^B

PROBLEMS

A problem arises in the participation of a physician in the execution by lethal injection. In July, 1980, the American Medical Association, meeting in Chicago, adopted a policy stating that a physician cannot

participate actively in an execution by injection. They recommended limiting the physician's participation to pronouncement of death. Someone, then, who is not bound by the medical code of ethics, must be trained to make the IV injection. However, it is possible that a problem could arise in the administration of the IV which would require a physician's intervention, i.e., a collapsed vein or the inability to locate a vein.

There is also the problem of how the drugs used would be obtained, since they would require a doctor's prescription.^A

Lettered References

- A. The New York Times
- B. The Tallahassee, Florida Democrat
- C. The Oklahoma City Oklahoman

CRIMINAL PROCEDURE 22 § 1014

the prison is situated whose duty is to immediately file with the district court a petition stating such allegation. A hearing must be conducted by a judge of that district court to determine the validity of the allegation. Enforcement of the judgment is suspended upon the filing of the petition, pending the outcome of the hearing.

Upon filing of the petition a judge of the district court shall appoint a physician licensed under the laws of the State of Oklahoma to conduct a medical examination for pregnancy of the female prisoner. Such examination shall be conducted within thirty (30) days prior to the hearing. The report of the examining physician shall be submitted to the court as evidence. The court may also hear any other evidence that may be presented. The court shall make a written finding to be filed with the court clerk as a part of the permanent record.

Amended by Laws 1973, c. 101, § 1, emerg. eff. May 2, 1973.

§ 1014. Manner of inflicting punishment of death

A. The punishment of death must be inflicted by continuous, intravenous administration of a lethal quantity of an ultrashort-acting barbiturate in combination with a chemical paralytic agent until death is pronounced by a licensed physician according to accepted standards of medical practice.

B. If the execution of the sentence of death as provided in subsection A of this section is held unconstitutional by an appellate court of competent jurisdiction, then the sentence of death shall be carried out by electrocution.

C. If the execution of the sentence of death as provided in subsections A and B of this section is held unconstitutional by an appellate court of competent jurisdiction, then the sentence of death shall be carried out by firing squad.

Amended by Laws 1977, c. 41, § 1.

Section 2 of Laws 1977, c. 41, provides for severability of provisions of act. Law Review Commentaries Annual Survey of Oklahoma Law: Criminal Law and procedure—Death penalty: Constitutionality. Norman A. Lofgren. 2 Okl. City U.L.Rev. 201 (1977).

is available and by appropriating \$14,000 under same statute for purpose of building a lethal gas execution chamber and allowing two and one-half years for expenditure of such money, did not intend to abolish the death penalty; rather, punishment of death must be inflicted by electrocution until such time as a lethal gas execution chamber is available. (Per Bussey, P. J., with two Judges specially concurring.) Garcia v. State, Okl.Cr., 501 P.2d 1123 (1973).

4. Writ of prohibition

Court of Criminal Appeals took notice that there had been filed in Supreme Court application for that court to assume original jurisdiction in action having for its purpose obtaining of writ of prohibition against warden's inflicting death sentence by means of electrocution. Ex parte Williams, Okl.Cr., 341 P.2d 652, certiorari denied 30 S.Ct. 597, 361 U.S. 968, 4 L.Ed.2d 547.

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2. Construction and application Legislature, by enacting this section specifying that punishment of death be inflicted by administration of a lethal gas and providing that such punishment be inflicted by electrocution until such time as a lethal gas execution chamber

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February 10, 1981

TO: Assembly Judiciary Committee
FROM: Richard G. Pugh, CAE
SUBJ: Testimony -- A.B. 86

Testimony of the Nevada State Medical Association and the AMA regarding A.B. 86, a bill calling for imposition of the death penalty by lethal injection as opposed to lethal gas:

The following report represents the official position of the American Medical Association and the Nevada State Medical Association as of December 7, 1980 regarding lethal injection as a means of execution.

Since the start of 1980, the AMA has received a variety of inquiries from individual physicians and medical societies on physician involvement with capital punishment. Four states have recently passed legislation authorizing capital punishment by intravenous injection of lethal substances. No executions have, in fact, been performed under such statutes. None of the statutes requires a physician to inject the toxic substance.

Debate over capital punishment has occurred for centuries and remains a volatile social, political and legal issue in our own time. The rightness or wrongness of capital punishment is a personal moral decision that each individual in our society must personally resolve. The concern of organized medicine is limited to a question of professional responsibility and decision-making viz., active participation by physicians in capital punishment.

Those arguing in favor of capital punishment by drug injection assert that it is more humane and less painful than other methods. Historical examples, such as the development of the guillotine by two French physicians or a 19th century American physicians' study favoring electrocution or drug overdose to hanging, are typically cited as examples of medical involvement with recommendations for more humane methods of execution. Those favoring death by injection also assert that it is less likely to be subject to social or legal objection and that it will be less expensive than other methods. If medical technicians are used, physicians need not be actively involved in administering the drug or participating in the execution.

Those arguing against this method of execution assert that it manipulates the profession into a position condoning capital punishment, even though physicians are trained to save life, not take it. Physicians are not trained to administer drug overdoses, nor is this typically contemplated within the practice of medicine. If medical technicians are used, a physician may still be involved with prescribing the drug or supervising the injection. Finally, contrary argument goes, physician participation projects a poor public image.

The AMA imagines that all of the above, pro and con, may be true. The factor that predominates, however, is that professional standards in medicine always rest on the most fundamental of concepts, "primum non nocere," above all do no harm. It is harmful to take a life. Regardless of one's personal moral decision on capital punishment, professional decisions are always tempered by this concern. Knowledge of or capabilities in pharmacology, toxicology, catheterization, or injection do not require the services of a physician in this setting. Whatever conclusions on methods of capital punishment that society may have reached through its elected representatives in the legislature, the active participation by physicians in executions is not required.

As a final point, those opposing death by injection have claimed that a physician should not even be available to certify the death of the executed individual. In the rare instances when capital punishment occurs in this country by other methods, a physician could and would presumably be available to declare that the individual was dead. This determination has not traditionally been considered to constitute professional sanction (or disapproval) of capital punishment. A pronouncement of death is, rather, legally required by a designated class of individuals (typically physicians) under state law so that public records may certify to the fact of death. This is true in all instances of death, not just death by execution. Certification of death by a physician is not a part of the act of execution and is not, therefore, improper.

CONCLUSION

The AMA and the Nevada State Medical Association acknowledge the following:

1. An individual's opinion on capital punishment is the personal moral decision of the individual.
2. A physician, as a member of a profession dedicated to preserving life when there is hope of doing so, should not be a participant in a legally authorized execution.
3. A physician may make a determination or certification of death as currently provided by law in any situation.