

FEDERAL AND STATE AFFAIRS COMMITTEE

January 30, 1969

The meeting was called to order by the Chairman, who introduced Representative Francisco to discuss H.B. 1038. Mr. Francisco distributed material (see attached) to substantiate the need for the bill. He stated that the time has come when people no longer believe in the theory of "an eye for an eye, and a death for a death", but rather for rehabilitation and retraining.

Representative Moline was then introduced to further discuss the proposal. He too distributed material to the committee (see attached). He stated that in his opinion the execution of criminals by the states was a violation of the 8th and 14th Amendments of the U. S. Constitution. He states that if the Legislature doesn't act in controversial matters like this, that the Judiciary would take over and make the decision as they did with Apportionment and other questions. He stated that this is a question of such wide interest by the public that he felt it was the duty of the committee to pass this bill out so that it could have an airing on the floor of the House. Members of the committee questioned Mr. Moline extensively concerning various aspects of the bill; the Governor's attitude, which Mr. Moline explained is not receptive; the non-commutable, clemency, parole provision, which Mr. Moline explains is unchangeable unless additional evidence is uncovered, in which case the matter would be subject to review and change. He states that he believes capital punishment is not a deterrent to crime; that the psychiatric association and the states where it has been abolished tend to bear out this opinion. Mr. Unruh pointed out the case of the convict who had life sentence, but who had committed three murders since he has been incarcerated; that the judge simply gave him another life sentence each time, and that the non-commutable sentence would not insure rehabilitation or that the criminal would no longer be free to commit crimes. Mr. Moline was asked to cite some instances where a man was executed and later found to be innocent. He stated that there had been some instances but he could not cite them specifically. Mr. Buchele pointed out that with the appeal statutes, it was often as long as ten years before a sentenced man is executed and it would seem in that period of time, all available evidence would be uncovered.

The Chairman displayed a memo which was prepared as the result of a Legislative Council study, concerning certain archaic laws, and asked if the Committee would introduce the bill it proposed and have it referred back to the Committee. Upon motion by Mr. Mikesic and second by Mr. Winters, the motion carried to so introduce the bill and have it re-referred.

Meeting was adjourned.

A PASTOR considers CAPITAL PUNISHMENT

Ronald L. Bump, Pastor  
Augusta United Presbyterian Church

HB 1038  
1-30-69

(The General Assembly of the United Presbyterian Church in the USA  
has gone on record favoring abolition of capital punishment.)

Kansas abolished capital punishment in 1907, but re-instated it during the machine-gun rob era in 1935 (with such reluctance that the Legislature allowed only \$250 for construction of the gallows). A dozen attempts have been made since to abolish it again, and another is currently being made in Topeka by Reps Holins (D-Michigan) and Francisco (D-Mulvane) who propose instead a non-commutable life sentence for capital crimes such as treason, murder, or first degree kidnaping.

Such an attempt is praiseworthy. Penologists seem to be saying today that the capital punishment law is not a deterrent to crime, and statistics support their opinion. Kansas is among the minority of states in the country retaining the death penalty. And there may be inequity in the execution of capital punishment; the late Warden Lawes of Sing Sing, who escorted more men and women to the electric chair than any other warden in his time, indicated that by far most were poor and friendless.

Those who argue for the death penalty seem to do so on the basis of conjecture (who can tell how many crimes are not committed because of fear of the death penalty) or on the basis of sentiment (look at the victim's side of the matter). But then, too, the prospects of remedying the mistake of executing the wrong person are virtually nil. Even in older times, "eye for an eye and tooth for a tooth" retribution was reluctantly and cautiously enforced; a Sanhedrin that executed once in seven years would be known as "blood-thirsty", and would not do so unless the subject had been warned by two witnesses prior to his crime as to its seriousness and its punishment.

But abolition of the death penalty is a small matter in itself (fifteen have died in Kansas since 1935) unless it points the way to such needed prison reform, and a change in attitude regarding the prisoner both inside and outside the walls. Such reform would soon find us dealing with offenders on a correctional or treatment basis rather than merely administering punishment. It is altogether too easy for an individual to "serve his time" and be released from prison without the least understanding of why he did what he did. Such a person has simply been biding his time, and he will break society's laws again. He has not been helped; he has only been temporarily restricted.

To be successful, such a change in attitude within the prison system would have to be augmented by a change in society's attitude toward the "ex-con". Select prisons in our nation are experimenting today, aided by local businessmen, with a program whereby a prisoner is "released" to work on a job during the day and returns to the prison at night, hopefully for further help and treatment. Actually, the greatest deterrent to crime is a person's self-respect and

his good standing in the eyes of the community; such co-operative efforts, by enhancing both, are truly gauged to redeem the criminal, saying to him that he has not just a past, but more importantly, a future.

Abolition of the death penalty in Kansas at this time may prove to be highly suggestive of more enlightened reforms that must soon come in our state's penal system. And, as always, legislators welcome letters expressing constituent opinion.

MEMORANDUM

Research Department, Kansas Legislative Council      January 28, 1969

RE: Capital Punishment

Capital punishment is authorized in the following numbers of states for various offenses, according to State Government News in October, 1968.

Murder	38 States
Kidnapping	31 States
Treason	20 States
Train Robbery	17 States
Rape	16 States
Armed Robbery or Burglary	7 States

Capital punishment is authorized in the following states which once abolished it, and then reenacted capital punishment laws.

	<u>Abolished</u>	<u>Reestablished</u>
Colorado	1897	1901
Arizona	1916	1918
Delaware	1958	1961
KANSAS	1887	1935
South Dakota	1915	1939
Tennessee	1915	1919
Washington	1913	1919
Missouri	1917	1919

The following states have abolished the death penalty: Michigan, Maine, Minnesota, North Dakota, Rhode Island and Wisconsin prior to 1916. Since 1957, Alaska, Hawaii, Oregon, Iowa, and West Virginia abolished capital punishment. A bill passed in Indiana in 1965 was vetoed by the governor.

Since 1935 when Kansas reenacted capital punishment, 15 prisoners convicted of murder have been executed by the State of Kansas. Four of these were in 1965 (Richard Eugene Hickock, Perry Edward Smith, James D. Latham, and George R. York). Two prisoners are now confined on death row at the penitentiary sentenced to be executed, William F. Zimmer, Shawnee County, and Kenneth L. Kilpatrick, Reno County.

The federal government also has executed a number of prisoners at the U.S. Penitentiary and the Disciplinary Barracks at Fort Leavenworth, as shown by the attached list.

Reports of prisoners executed since 1960 in the United States include:<sup>1</sup>

1960	56
1961	42
1962	47
1963	21
1964	15
1965	7 (Kansas 4, Missouri 1, Alabama, Wyoming)
1966	1 (Oklahoma)
1967	2 (Colorado, California)
1968	

For your general information, we have enclosed the following materials:

1. A copy of the recent United States Supreme Court case which held, in effect, that persons who have conscientious scruples against the death penalty cannot be automatically kept off juries that can sentence a defendant to death;
2. an article from U.S. News and World Report commenting on the above case;
3. an article from The New Republic entitled "Death Penalty Litigation"; and
4. an article from Science News stating the position of psychiatrists in regard to capital punishment.

---

<sup>1</sup> National Prisoner Statistics, No. 42, June 1968. Executions 1930 to 1967, U.S. Bureau of Prisons.

## An End to All Death Sentences?

WASHINGTON—Most of the 485 prisoners under sentence of death in U. S. prisons, it is now indicated, have had a new avenue of appeal opened to them by a decision of the U. S. Supreme Court.

In a case brought before the Court from Illinois, a five-Justice majority ruled on June 3 that the death sentence cannot be imposed by a jury from which persons who oppose capital punishment have been automatically excluded.

Said Justice Potter Stewart, speaking for the majority:

"No defendant can constitutionally be put to death at the hands of a tribunal so selected....

"Whatever else might be said of capital punishment, it is at least clear that its imposition by a hanging jury cannot be squared with the Constitution. The State of Illinois has stacked the deck against the petitioner. To execute this death sentence would deprive him of his life without due process of law."

**Jurymen excluded.** The case was that of William C. Witherspoon, sentenced to death in 1960 for murder. At his trial, the Court noted, 39 prospective jurors were excluded "without any effort to find out whether their scruples would invariably compel them to vote against capital punishment."

The Illinois law provided for challenges of any juror "who shall . . . state that he has conscientious scruples against capital punishment, or that he is opposed to the same." Most other States have similar provisions.

The Supreme Court decision left Witherspoon's conviction standing, but ordered him resentenced.

Many legal authorities saw the ruling as a long step toward abolition of the death sentence. In Texas, Attorney General Crawford Martin said:

"The ruling effectively does away with the death penalty in all States. It would be a very, very remote case where anyone would get death."

**Dissent by Black.** In a sharp dissent from the majority opinion, Justice Hugo L. Black said:

"If this Court is to hold capital punishment unconstitutional, I think it should do so forthrightly, not by making it impossible for States to get juries that will enforce the death penalty. . . . I believe that the Court's decision today goes a long way in destroying the concept of an impartial jury as we have known it."

Justices John M. Harlan and Byron R. White joined in the dissent. Justice William O. Douglas filed a separate opinion, not classified as a dissent.