

STATE OF NEW YORK

Interim Report

of the

STATE OF NEW YORK

Temporary Commission on Revision of the Penal Law and  
Criminal Code

Hearing held at Rochester, New York, on December 14, 1962,  
at the Court House.

PRESENT: Richard J. Bartlett, Chairman  
Richard D. Denzer, Counsel  
John J. Conway, Jr., Member

ABSENT: William Mahoney, Member

Reported by: Jack A. Cammilleri  
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Monroe County Court  
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Rochester 14, New York

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MR. BARTLETT: Good morning, ladies and gentlemen.

Because we have a large number of witnesses scheduled to be heard, we are going to commence the hearing now. I am Richard Bartlett, the Chairman. With me this morning are two other members of the Commission, your own District Attorney, John Conway, and our Counsel, Richard Denzer.

We are holding a hearing this morning on the question of Capital Punishment, whether in New York State it should be abolished, or extended, or limited. This is part of a program we have been engaging in for the past year and a half, about over-all revisions of the Penal Law and Criminal Code, and, of course, within that program is an analysis and evaluation of our present sentencing and punishment provisions of the law.

Capital Punishment probably is the most controversial aspect of that portion of our work. The State of New York, as most of you know, is the only jurisdiction left in the United States having a mandatory punishment for first degree common law murder.

Our first witness this morning will be  
Mr. Peter Plummer of the Rochester Humanist  
Association,

MR. PETER PLUMMER: Members of the Commission, ladies  
and gentlemen: I now read a resolution passed by  
the Rochester Humanists Association on April  
25th of this year:

WHEREAS: Respect for the value  
of every human life must be incorporated into our  
laws if it is to be observed by our people; and

WHEREAS: It has not been proved  
that fear of capital punishment is a deterrent to  
crime; and

WHEREAS: Modern justice should  
concern itself with rehabilitation, not retribution; and

WHEREAS: Human judgments are not  
infallible, and no penalty should be used which cannot  
be revoked in case of error; and

WHEREAS: Capital punishment  
has not always been used impartially among all  
economic and racial groups in America;

THEREFORE, BE IT RESOLVED:

That the Rochester Humanist Society urges its members and friends to exert all reasonable efforts towards the elimination of capital punishment; and

BE IT FURTHER RESOLVED: That copies of this resolution be sent to the Governor of the State of New York, to the Chairman of the Legislative Commission to review the State Penal Law and Criminal Code, and to the six Monroe County legislators.

Now, a few words of my own:

I am a Unitarian. A close friend of mine, a Catholic, also does not believe in Capital Punishment, for religious faith has little to do with this issue. I think equality has a great deal to do with it.

By killing a human being in the name of Justice, do we achieve anything other than a stale vengeance? Do we believe in brutality for vengeance sake? By killing a person in the name of justice, do we protect the people from tomorrow's criminals?

Who are these people who are electrocuted by the State ? Aren't they usually from the minority groups ? Aren't they usually poor and often alone in the world ? Aren't they usually without a proper education, a proper upbringing ? Justice, gentlemen, should wear a nobler garment.

Vengeance, retribution, capital punishment, these are to me archaic words.

You, the members of this commission, have a great decision to make whether the People of the State of New York shall contend with the old vengeful ways, or whether at long last we will take a step towards a more humane justice.

Thank you for this opportunity of letting me appear before you.

MR. BARTLETT:

Thank you, sir. Mr. Mac Adam.

MR. MAC ADAM:

Thank you, Mr. Bartlett. Mr. Conway,

Mr. Denzer, the Liberal Party of Monroe County urges that this commission on Revision of the Penal Law

recommend abolition of capital punishment.

Our reasons are as follow:

1. Capital Punishment does not deter the commission of any crime. All states which have abolished capital punishment have homicide rates below the national average. Of them, Michigan, which is most similar in distribution and character of rural and urban populations, has a lower homicide rate than New York. Seven of the nine states which have abolished capital punishment have lower homicide rates than New York. Only four states executed more people than New York in 1958. They all have higher homicide rates than New York. Whereas, in New York, kidnaping is also punished by death. Most kidnaping terminates in murder, either of the captive or of witnesses, presumably because the kidnapper feels that he has nothing more to lose. This is the reverse of deterrence. Capital punishment probably increases the number of murders by making the convictions more difficult and less certain. In a ten-year study in California :

it was discovered that murders were more prevalent on days on which persons were executed than on other days.

Homicides in Britain decreased nearly 10% during a moratorium on capital punishment and rose 25% when capital punishment was resumed. When picking pockets was punished by death in Britain in the eighteenth century, pickpockets were particularly active at public hangings of pickpockets.

(2) Capital punishment is the poor man's penalty .

Those who have plenty of money to pay for the more skillful lawyers to get stays and appeals stand a vastly better chance of escaping the electric chair.

Lewis E. Laws, former warden of Sing Sing, observed most of the 150 condemned whom he led to the chair, they were "poor and friendless". While murderers with money and influential friends, could afford expensive investigations and appeals, and escaped the chair.

(3) Capital punishment is contrary to concern for the individual, which is the unique feature of our nation and government. It is impossible to correct a mistake in capital punishment. No matter how complete and sincere the investigation and conduct of the trial, mistakes are possible. Maine and Rhode Island both abolished capital punishment after making such mistakes. New York has the chance to abolish it before it legally kills any innocent people. True concern for the individual would impel the State to attempt to rehabilitate every criminal, rather than to take revenge upon him. There is no rehabilitation, only defeat and failure in electrocuting a man.

(4) Many penologists have declared that the death penalty undermines the entire penal code. Dr. Sheldon Glueck, of Harvard University, states, that, "the presence of the death penalty as the keystone of our penal system be-devils the administration of criminal justice all the way down the line, and is a stumbling block in the path of general reform and of the treatment of crime and criminals".

For these reasons, and mothers, we shall not take time to recite, we recommend the abolition of the death penalty in any revision of the New York State Penal Law and Criminal Code.

Thank you.

MR. BARTLETT:

Thank you, Mr. Mac Adams. Reverend Robert C. Moulton.

REVEREND MOULTON:

Mr. Chairman, and members of the commission, I wish to identify myself as a Clergyman of the Protestant Episcopal Church; and a member of the Steering Committee of the Department of Christian Social Relations of the Rochester Area Council of Churches.

I wish to go on record as being opposed to capital punishment. I take this position primarily because of Christian convictions, but also because of the apparent weight of evidence produced by many of those people closest to the criminal scene; criminal attorneys, judges, wardens, psychiatrists, and governors. Arguments for

maintaining capital punishment seem to rest on two assumptions, both of which, it seems to me, are highly questionable:

1. Capital punishment has deterrent value;
2. The death penalty is carried out against every person who commits a capital offense.

I doubt if anyone can prove that the death penalty has a deterrent value. In states which have abolished the death penalty, people point with pride that their crime rate in areas where the death penalty was in effect previously, or is in effect in other states, is not above comparable locations elsewhere. Examples are Rhode Island (without the death penalty) compared with Massachusetts and Connecticut (with); Michigan (without) compared with Indiana and Ohio (with); and Wisconsin (without) compared with Iowa and Minnesota (with). It certainly cannot be proven to what extent any crime never was committed, simply because people do not report to the authorities the crimes they contemplated but did not carry out.

Dr. Robert Cooley Angell, Professor of Sociology at the University of Michigan and past president of the American Sociological Association and of the International Sociological Association, has written as follows: (Free Society and Moral Crisis, The University of Michigan Press, 1958, page 124):

"Modern societies, in their penal strategy, give relatively more weight to reformation than to deterrence. There are probably two reasons: First, deterrence has been tried and failed. Even very severe penalties do not seem to have had more deterrent effect. It is said that the London police never had more trouble with pickpockets than in the crowds that witnessed the hanging of pickpockets. Second, as life becomes more and more complex, the public knows less and less about what happens to apprehended violators. The extent of deterrence cannot be proportional to the severity of the penalty simply because most potential offenders do not learn what the sentence is.

In connection with both deterrence and reformation, social scientists generally believe that certainty of punishment is much more important than severity. Obviously, the criminal himself is not likely to be reformed if he is not caught; and others like him are much more impressed with a high ratio of conviction to crime than with an occasional though severe sentence." That the death penalty is not carried out against everyone who commits a capital crime is recognized as a fact by those closest to the situation. Not every murderer is apprehended; not everyone apprehended and convicted of similar capital crimes is sentenced to execution; (an example is that the law is prejudiced against the execution of females); and not everyone sentenced to be executed is executed because of the legal maneuvers available to some people. Warden Lewis E. Lawes, formerly at Sing Sing Prison, has said that approximately one person out of fifty convicted of murder is actually executed. We see, therefore, that the law is not applied equally to all those people in our society who are categorized as being people who have committed

a capital offense.

Despite all of the provisions of the law, no one can be absolutely sure that every person executed is, in fact, guilty of the crime he has been found guilty of committing. Enough innocent people have been discovered as a result of the guilty person confessing the crimes after execution has been carried out to make this possibility a horror to contemplate. We can say that the possibility for such a mistake is remote indeed, but, if that statistical remoteness hit your family or mine, I would guess we would be struck by it's reality. No one should be faced with that possibility.

At this point it is well to add that many of these people who are executed have not been in serious difficulty with the law before - many of them have committed crimes in the heat of passion. However, the habitual criminal against whom the general public seems to feel capital punishment is aimed, generally is unaffected by the extremity of the law.

However, my basic reasons for being opposed to capital punishment, having their roots in the Judaic - Christian tradition, are theological in nature. We can talk all we want to about the selectivity of the law - how many people executed come from the lower segments of society, as most people would classify society - but as a Christian person, I feel that the execution of one human being by another human being goes against Christian teachings. One of the Ten Commandments tells us that we should commit no murder. To me that commandment applies to the State just as much as it does to the individual. If we really believe God to be God, and if we really do put our trust in God, as the words on our money so conspicuously reminds us, then the matter of taking the life from a human being should be left in God's hands. This is not to say that criminals who threaten society or individuals should be allowed to remain in society; but this is to say that to remove a person from society either permanently, or until such time as he is able to live within the expectations of that society, is a far cry from blotting out the life of that person. We are

talking about executing human beings like ourselves - in fact, we are talking about some people who have backgrounds exactly like our own since people from all walks of life are caught up in situations which lead to crimes for which the death penalty may be invoked.

Some people who have little knowledge or understanding of the Bible or of its progression of thought over the thousands of years of its composition rather glibly quote it when the situation seems to demand the weight of biblical authority, And so it is that one argument often raised in defense of capital punishment is "an eye for an eye, and a tooth for a tooth" (Ex. 21:24; Lev. 24:20, Deut. 19:21; Mt. 5:38f). The implication is that if one person murders another, the murderer should automatically be put to death because of this biblical reference. However, the context out of which this biblical injunction came is one of the limitation rather than of demand. At the time in Hebrew history, when this statement was incorporated into Hebrew Law, the cruelties and injustices of their

neighboring countries far surpassed their own. This then was laid down as a limitation on the Hebrew nation rather than as a demand for punishment equal to the original crime. This in effect said, "You may have ONLY any eye for an eye, and NO MORE! This is as far as you may go. But this does NOT demand an eye for an eye, etc." This marked a great step forward in the history of man's relationship with man. Those people today, who would use this injunction to advocate capital punishment, would in fact return to the anti-Judaic and pre-Christian era.

For the Christian person, the most relevant argument against capital punishment is that of forgiveness and redemption of the individual. This core thought of Christianity demands that we must detest the crime a person commits, but as Christian people, we are bound to do all in our power to help and restore the criminal (as well as others) to healthy relationships in all areas of his life. We are hardly doing that when we encourage the various methods of taking that person's very life away from him. Forgiveness

is not a weak answer to capital punishment; rather, it is the strongest and most difficult, both for the criminal and for those members of society who have been attacked by the criminal. True forgiveness of the person while acknowledging the crime itself is the only Christian answer.

I conclude by quoting from two different sources. The first is again from Dr. Angell's book (Free Society and Moral Crisis, page 136:

"Experts in the fields of criminology and penology have offered many promising ideas, some of which have been validated by trial. The great shortcoming of the present situation is the unconcern of the public and its political representatives. So far, the problem has not entered the area of public discussion to the extent that makes possible the consensus which must precede positive action."

The second source is from a statement in 1930 by William Temple, Archbishop of Canterbury, speaking specifically to the subject of capital punishment:

"Let us, above all things, remember that in such a society as ours we must never think of the law and its penalties as being enacted by respectable people like ourselves for the government of other people, presumably less respectable, but that the law is a collective good resolution in which we all take part, and by which we all determine that the penalty attached by the law to any offense may be inflicted upon ourselves if we violate the law."

Thank you.

MR. DENZER:

Assume for the moment that if it were conclusively proven to you that the death penalty was a great deterrent to homicide crime in general, would that change your position ?

REVEREND MOULTON:

No, because I think my views are based more on theological grounds than they are more on the practical grounds.

MR. BARTLETT:

Thank you, Reverend. Rabbi Abraham J. Karp.

RABBI KARP:

Rabbi Abraham J. Karp, Temple

Beth El, Rochester, New York.

I have asked the privilege of making this statement because I am very much concerned about the kind of world I am bequeathing to my children and to their children. What concerns me most deeply is the legacy of attitudes, sentiments and passions which our generation is now fashioning for those who will come after us.

Some two centuries ago a group of remarkable men began to lay the ideological foundation for what was to become the most significant enterprise of nation building and society fashioning the world had ever known. As the base for such a government and such a society, they proclaimed certain inalienable rights - and chief among those was "life" - "life": Life was a gift granted by the creator - and a nation was created, a government was established, to assure to each child of God, that as one - no group of men - as government of men, could

take from the child what the Father had freely and lovingly granted. And it mattered not whether this child of the Creator called man was to the manor born, or to the barn; whether he was gifted with brilliance of mind and greatness of heart or dullness of, with and perverseness of sentiment. Life was his "inalienable right" from which no one could alienate him.

For almost two centuries now this experiment called America has been before the God of History. For eighteen decades we have been attempting to face up to the challenge and hope which the Declaration and Constitution declare. We are now faced, in this, our sovereign state, with a question which touches upon the very heart and core of that which they proclaimed. As heirs to their vision and hope, we must need ask, how "inalienable" is an "inalienable right" ?

If we do not now demonstrate through an enactment of legislature that life is an inalienable right, have we kept faith with our past ?

But in truth the Founding Fathers would have us face toward the future in concern, even as we consider the past is reverence.

What kind of society does the promise which is America demand of us ? What is our immediate duty in the matter of the base and cornerstone of the dream which became America - the first and prime "inalienable right" ? Certainly, a government whose primary interest is the punishment of the guilty is an affront to all human decency. Clearly, we ask of our government that it bend its energies to protect the innocent. Not some of the innocent, or even most of the innocent, but all of the innocent - every last man, no matter how base or despised, must be protected against the possibility of injustice or cruelty or vindictiveness. Indeed, his protection is the test of our seriousness and seal, of our honesty and integrity on this matter.

Protection of the innocent cannot be a sometime, a chancey thing. It is all - or it isn't.

Even if we should see good and sufficient reason for capital punishment, can we dare gamble with someone else's most sacred possession and inalienable right - his life ? Chance it against our fallibility - our cupidity - or vindictiveness. By what moral justification can we offer up a human sacrifice on the altar of judicial error ?

Are there weights and measures in the economy of human life ? Can even one life be the price of a legal system ? My faith teaches, "He who takes one life, it is as if he destroys the whole world". Can society which barter a human life for "peace and order", call itself a moral society ? We can wash our hands with self-righteous justification, even account our act of life-taking or public good - but what can we say to our Father over the lifeless body of his child, our brother ? I have found no answer, even as Cain had no answer. And my brother's blood weighs heavy upon me, for I am one of "The People of the State of New York" who acted the Cain to a hapless Abel. I do not want my sons to need face the same

anguish of soul.

But more:

Our Founding Fathers were not content that this should be another nation among the nations, our government another government among governments. We were to be example and challenge to the world - in concern and compassion. In exquisite concern for a man's God-given rights and outgoing compassion to the least among us - even those whom life's harshness had maimed or their own perverseness had defiled.

Our law's purpose, above the known and necessary - was to aim for uncharted adventure in the realm of responsibility for and to fellow-man. In the matter before us, does not the spirit, which motivated Pioneers and Patriots, challenge us to lift ourselves above fear, callousness and vindictiveness. In this world into which we have introduced the means of ultimate destruction - is it not our bound duty and manifest destiny to turn the world away from the brink, toward life?

Ours is a long and hard task which calls upon the fullest expenditure of heart and mind. The implant in the heart of man in this world which we have brought to the brink, a reverence and a passion for life. We cannot state our commitment to this reverence and passion any more forcefully than to declare, through legislative enactment, that the taking of human life is any circumstance, for whatever reason, wherever and by whomever is the ultimate crime in our society.

As the first act toward the training of our hearts and minds towards reverence and passion for life, I call upon the legislature of my state to take itself out of the business of life-taking - wholly and resolutely. To say, in effect, that to take human life is so monstrous a matter that no temptation and no provocation justifies it.

How shall we impress this upon the rash and the irresponsible, and the cruel, if we, the good, the law-abiding, the compassionate, lend our

hand to turn on the killing current ?

It will be an act of heroic compassion to renounce this ultimate weapon which we now brandish against the lawless who endanger our society. But heroism is the price that life demands - and the reverence for life asks for heroic compassion.

What is the law breaker, the criminal, but an errant, sinful, unfortunate child of God who needs chastisement and correction. We justifiably suspend his right to liberty and the pursuit of happiness. Suspended, it can be restored. Can we take life, which we have not given, and which we cannot restore ? Here, this, we must leave to Him who gave life. It is His alone and we dare not trespass upon it in love for Him and for ourselves.

For, in truth, if God, in His wisdom, suffers his errant child on this good earth which he created, can we do less in this all too-imperfect world which we have fashioned ?

MR. DENZER: You stated, under no circumstances or factors ever justify the taking of a human life by the State. Let me ask you the same question I asked the last witness. Assume that you were utterly and equally convinced that the death penalty was a great deterrent to homicide and crime, would that change your position ?

RABBI KARP: It would not change my position because then I would be buying safety for myself at the expense of the individual, what I consider a very basic theological and moral good, namely, the preservation of a human life at all costs.

MR. DENZER: It wouldn't be buying safety for yourself so much as innocent people in general. Wouldn't you be sacrificing the life of a number of innocent people to save the life of guilty people ?

RABBI KARP: That is a calculated risk. I don't know if it is calculated. It's a risk any way, and I cannot - for two reasons I would not ask that any life be taken to preserve, I shouldn't say preserve; in other words not to endanger the life of another. I think this is

more basic than that. I have come to become convinced that what we need more than anything else in this world, and this by the way comes almost in a practical way, gentlemen, what we need in this world of ours and our society is an absolute passion for the preservation of a life. I think we need this more in our generation than ever before because the danger upon us is even greater.

May I just same one more sentence?

There are certain things that, after a while, because of society's general feeling, is an absolute abhorrence to at least the feeling of abhorrence towards it, and there has to be generated in the heart and soul of man an absolute abhorrence for the taking of a human life. We have to live by certain absolutes, and there are many things we cannot agree on, and one thing I ask that we agree upon - to take human life is evil.

MR. DENZER:

Again, I understand your position, but let's take a very hypothetical situation and maybe it may be hard to talk on this basis, but supposing the death penalty would assure the saving of three lives

for every one, just putting it on a mathematical basis, wouldn't that overcome your feeling towards immorality, not overcome the basic immorality; would the situation change your mind ?

RABBI KARP:

I say it is very difficult to use figures and numbers in the economy of a life. May I just state this; here is a moral problem that I always throw out to people who I discuss morality with, it is one - suppose it were given to you to assure eternal peace to all of humanity and the price you had to pay for it was the life of a little child. What would you do ? I would not buy peace for all of humanity eternally with the life of a child, or the life of somebody who has grown in years, but still a child at heart.

MR. BARTLETT:

Rabbi, do you recognize the rights of the State to stage war to take lives ?

RABBI KARP:

I waiver between pascism and lack of pascism. I do not deny the person of the right of self-protection, and it gets to the point of absolute conviction that this is self-protection. Somebody

brandishes a gun against me and I have the opportunity to pull a trigger. I cannot deny society the right to self-protection; and I ask, what is the price that one pays for it ?

Thank you very much.

MR. BARTLETT:

Reverend Hilton Hedrick.

REVEREND HEDRICK:

Gentlemen, I ask the privilege of presenting this statement on behalf of the Rochester Presbytery representing sixty-seven (67) churches. This statement was adopted by the Presbytery at its regular meeting.

A statement to be presented at a hearing of the State of New York Temporary Commission on Revision of the Penal Law and Criminal Code at Rochester, New York, by Action of the Presbytery of Rochester, November 27.

The Presbytery of Rochester affirms the action of the 171st General Assembly of the United Presbyterian Church in declaring its opposition to capital punishment, and urges the members of

constituent churches to work for the abolition of the death penalty in the State of New York.

Knowing that studies have shown that the retention or abolition of the death penalty has no observable effect on homicide rates, that justice sometimes 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 believe that capital punishment cannot be condoned by an interpretation of the Bible based upon the revelation of God's love in Jesus Christ, and that, as Christians, we must seek the redemption of evildoers and not their death, and that the use of the death penalty tends to brutalize the society that condones it. The Presbytery of Rochester declares its opposition to capital punishment.

MR. BARTLETT:

Thank you very much. Dr. Gordon.

DR. GORDON:

Like the controversy over faith and works in the Bible determinations of the purposes of law seem equally contentious; for the more intensely

people feel about a legal issue, the more ardently they point to heaven and say, "My interpretation of the law is written there". And this is a persuasive argument. As one point on which the greatest jurists agree, is that the laws by which men live can and should be the 'embodiment of essential and unchanging justice' (Corwin, p. vii), which, if taken seriously, would put a commission for the revision of the law out of business. But taken seriously in only one way, I believe that justice must be unchanging, not in the sense of the laws never changing, but in the sense of their always preserving the necessity of just dealings between men. It is from this point of view that I approach the question of capital punishment.

There is perhaps more theory and dogma with regard to capital punishment than any other element of law, and there is perhaps more uncertainty. An extraordinarily uneven pattern exists throughout this country and world. Members of the Commission must be quite familiar with the statistics which demonstrate this. In some places capital punishment

has fallen into disuse, in others it has been abolished and then revived, or, it remains law but is applied only every now and then, as currently in Melbourne, Australia (Christian Century, December 12, 1962). Robert Peter Tait was sentenced to death by hanging for the brutal murder of the aged mother of a minister in August, 1961. The angry controversy, which followed, arose mainly from the fact that the last hanging in Victoria was eleven years ago. All death penalties imposed since then had been commuted. Large numbers of prominent people joined many thousands of citizens in urging the government not to resume the practice of putting a murderer to death. The government refused to listen until, and I quote from the news report, "On November 5, Premier Bolte issued an official statement in which he peevishly complained that the government had been forced to commute the sentence. He declared that the legal system had been exploited by various devices in an attempt to prevent the carrying out of the sentence imposed by the Court." Such an instance is only the

most recent of many which have occurred in the English speaking world alone. It is because of this that, if a satisfactory resolution is to be found between various theories of law and various feelings of society, if there is, and I quote, "In the permanent element of human nature itself a durable justice which transcends expedience" (Corwin, p. 11), which is what I suggested we could find, we must hew closely to the comment made by Aristotle a long time ago, that law is reason without passion, and this is a maxim we should wear upon our foreheads whenever we discuss the question of capital punishment.

The extreme confusion and passion which exists, arises, I believe, from two strongly conflicting notions of what is just. It is felt on the one hand that the law should be equal to the offense, and this, I gather, is the attitude of the governor of Victoria; that serious wrongdoing should be treated with serious sanctions, and that the most serious wrongdoing, murder, should be punished

with the most serious punishment, death. But conflicting with this is strong belief in the unique character of life, and the terrible responsibility which society accepts when it deprives a person of life, even one who has taken the life of another. And, any one of us can privately, very privately, reflect that were we in a similar case, we, too, would plead for similarly undeserved mercy.

In international dealings such mercy is not only unknown, it has become the course of wisdom. The mass murder of Jews did not necessitate the mass murder of Germans. Nor did the murder of Europeans and United Nations personnel in the Congo, imply, as a legal or even moral consequence, that there should be put to death an equal number of Congolese. Despite the Nuremberg trials the conviction is in international affairs that there has been destruction. Let us now reconstruct. There has been violence. Let us now have peace. And contemporary observers are generally agreed that such policies, as compared, for example,

with Versailles, were and are successful not only for those immediately concerned but for the world. So, I suggest that the same policy of stopping short of final punishment for ultimate guilt could be applied to the individual in the case of punishment for a capital offense. The illustration, it seems, is a fruitful one because the German nation, without a doubt, committed some of the most barbarities in world history. Yet, there is now a creative development in West Germany of enormous proportions. And, however, it may disturb us economically, it is vastly superior to a decimated or broken country which, if it did no harm, would place its share of world responsibility upon the shoulders of other countries.

The question of responsibility raises what is to me a very important matter. The recognition of mutual responsibilities between individuals and groups is, in effect, the substance of law, whether such recognition is developed from experience, or obtained from a higher source. Law

is required to act where mutual responsibilities are neglected.

It is because of this that many of those who favor the retention of capital punishment suspect that if we abolish it, we are letting the murderer off, that we are releasing him from the responsibility of his crime. If this were true, it would be a very powerful argument in favor of capital punishment, but it is not true. In fact, what is true is just the reverse.

Taking the widest possible view, it can be argued that at any time injury is done to a member of the human family that injury is felt, directly or indirectly, by all the members of that family. They are all responsible for the process, not only of punishing, but of healing and reconstructing. But involved in the human family is the person who committed the crime. To put him to death is to absolve him forever from all responsibility of helping to repair the damage he had done. Rather than 'letting

him off' when his life is spared, he is 'let off' entirely by putting him to death, and that portion of the responsibility which should be his must fall upon those who remain, and thus, society is injured twice, once by the crime, and a second time by destroying the criminal, and so adding his burden of responsibility to that which society already bears.

It seems to me that this is an aspect of the subject which has not received adequate attention, although on the international level, it has been accepted as sound good sense.

It is the point I wish to commend to this Commission. I believe that it offers a way of law that combines in the act of justice, both reason and mercy. It is justice directed toward an end, but not a limited end. We forget sometimes that the greater part of justice, which stands for us as what is right and good, has its roots in human failing. It is, therefore, not incompatible, but wholly consistent with the essential character of law that good should be the consequence of evil. But where

such arguments are neglected in favor of theories of punishment which have at the best, limited and confused support, it is like pulling down the shade in the face of a problem without any adequate justification that such action will keep the problem away. It is rather an admission, a grave and terrible one, that there is an area of human activity in which the law is powerless to help.

Quotations from: Corwin, Edward S., The "Higher Law" Background of American Constitutional Law. Great Seal Books, 1955, Cornell University Press.

MR. BARTLETT: Dr. Gordon, have you given any thought on what you feel a satisfactory substitute might be for capital punishment in the way of a suitable deterrent ?

DR. GORDON: Natural life sentence should be the alternative. I think it should be the alternative. On the other hand, as I tried to explain in my comments here, I feel that the approach to the question of

in  
punishment should be with the concern as to/what  
way can the criminal best acquit himself of the  
responsibility that he shares towards society. Now,  
this may well be life imprisonment.

MR. BARTLETT:                    Depending on the individual ?

DR. GORDON:                    It would depend on the individual,  
I feel that simply putting a man to death is not, as  
far as I can see, the most satisfactory answer.

MR. BARTLETT:                    In terms of paying the price ?

DR. GORDON:                    Yes, exactly. As I was saying,  
this seems to me like letting him off completely.

MR. DENZER:                    How can he acquit himself by serving  
the life term ?

DR. GORDON:                    I didn't want to get into that, but I  
feel this gets us in the problem of in what way we  
can endeavor to make a punishment constructive  
matter rather than a purely destructive.

MR. BARTLETT:                    Thank you, Doctor. Mr. Gene Gilmore.

MR. GLIMORE:

My name is Gene Gilmore, 940

Lancaster Avenue, Syracuse, New York, Chairman of  
the Syracuse Chapter of New York Committee to  
Abolish Capital Punishment.

In 1960 a man walked out of the  
Michigan State Penitentiary a free man. A year  
before he had been sentenced to life imprisonment  
for the murder of his wife.

A Detroit Free Press reporter had  
looked into the case. Newspaper articles, resulting  
from his investigation, proved to the courts and the  
governor that the man was innocent. His wife had  
committed suicide.

If Michigan had been a capital  
punishment state, the man could have been executed  
for a crime that was not committed. And there  
would have been no chance to correct the mistake.

This was not the only such case to  
occur in Michigan. In 1957 Governor G. Mennen

Williams wrote that in the first eight years he was in office, he knew of three murder convictions that were clearly in error. All three were pardoned.

But all three could have been put to death if the crimes had occurred in a state with capital punishment.

Williams wrote at the time: "It seems to me intolerable that a civilized state, founded on the belief of human dignity, should risk such a tragic misuse of its authority."

Some may state that these four cases are so unique that they may be disregarded. The facts show otherwise.

Professor Edwin M. Borchard has written a book on case studies of 65 murder convictions. He called his book "Convicting The Innocent". He found that in eight of the sixty-five cases no crime was committed. The convictions rested on perjury or circumstantial evidence. They were later found to

have been without foundation. In six of the cases the person alleged to have been murdered turned up hale and hearty some time after the supposed murderer had entered upon his sentence in the penitentiary. In several of the cases, the convicted prisoner, later proved innocent, was saved from hanging or electrocution by a hairbreadth . . . How many wrongfully convicted persons have been actually executed ? It is impossible to say."

David Dressler, former executive director of the New York State Parole Board, reported in a study that fifteen men, who later were proved innocent, were put to death after conviction in one twenty-five year period in New Jersey. Three of four persons executed in a sample year in California were wrongfully convicted, Dressler reported. His findings are available in a book called "Conscience of the Court" by Edward Sefton Porter and published by Prentice Hall.

This commission already has heard a defender of the death penalty contribute to my argument. Raymond Baratta, District Attorney of Dutchess County, testified at your Albany hearing that jurors are reluctant to convict in kidnapping and murder cases when they know the death penalty would be mandatory. It seems safe to assume that part of their reluctance is based on a fear that they may commit an error. And, in capital punishment, there is no margin for error.

Considerable evidence has been presented here to show that innocent people occasionally are put to death. The late Judge Jerome Frank once wrote: "No one knows how many innocent men, erroneously convicted of murder, have been put to death by American governments. For once a convicted man is dead, all interest in vindicating him usually evaporates."

I urge you to recommend to the New York Legislature the abolition of the death penalty.

MR. BARTLETT: We were just asking each other the same thing; whether we knew of any in New York. Do you know of any ? I'm not suggesting this weakens your argument.

MR. GILMORE: No, I do not have any evidence of New York.

MR. DENZER: When you say these things were proved, were they proved in subsequent proceedings in court, or was it just a magazine article, or a newspaper article written by someone pointing out his opinion that the man was innocent instead of guilty ? Do you know the sources, I mean. I just question your word "prove" ?

MR. GILMORE: I'm quoting, Mr. Denzer, and I assume because he was a former Director of the New York State Parole Board.

MR. BARTLETT: These are New Jersey examples. Thank you, sir. Do I understand, Mr. Gilmore, that you also appear here for Reverend Wright ?

MR. GILMORE: I was to read his testimony. Mr, Denzer wrote me and said I was permitted to do so. Would you like me to do that now ?

MR. BARTLETT: Yes, you may as well.

MR. GILMORE: You will pardon me for using this in the first person as though I was Reverend Wright.

My name is the Reverend Donald G. Wright, Ph. D., D. D., Minister of the University Methodist Church, 1085 East Genesee Street, Syracuse 10, New York.

In 1937, when I was a student in Edinburgh, Scotland, I became assistant Chaplain of the Saughton Prison there. Later, in 1938, I assisted the Reverend Howard Kellett at the Suffolk County House of Correction on Deer Island in Boston Harbor, Massachusetts. When Mr. Kellett became Chaplain of the Massachusetts State Prison at Charleston in 1940, he asked me to go with him as his assistant. In all of these years my work at the prisons was

part-time, as I was serving Methodist Churches in their vicinity. This statement is prepared on the basis of my own personal experience, research done, and in the light of my own Christian conscience about the practice of capital punishment. In the light of what I know, and the best that I believe. I am against "taking life by statute". My reasons follows:

1. To the best of my knowledge, no evidence has been produced that shows that capital punishment is a genuine deterrent to crime.

2. An execution makes any miscarriage of justice irretrievable.

3. Capital punishment is usually inflicted on the socially and economically disadvantaged. It is the bitter truth that those who have the means and social position to have adequate legal counsel are very infrequently executed.

4. It demeans our concept of the worth of human life, which is both a religious conviction and a part of our American ideal.

The greatest Jewish philosopher of our time said to the President of Israel that, "when society executed a man, it kills part of itself". To make the taking of human life a legal procedure is to undermine efforts we have to establish humane and intelligent treatment of that person convicted of breaking the law. In this regard, it has been shown that those who have been convicted of capital offenses are among the most likely prospects for rehabilitation.

From personal experience I can recall the day of an execution in the State Prison in Massachusetts. Its effect upon a prison population is sickening, demoralizing and utterly destructive to the morale of prisoners and guards alike.

From 1945 to 1956 I was a resident of the State of Rhode Island, where the death penalty was revoked in 1852. Valid statistics show that this state is among the three lowest in the percentage of homicides in the United States, which would indicate that while the causes of capital crimes are complex,

capital punishment does not appear to be an effective deterrent.

My own church denomination, the Methodist church, has gone on record in the matter of capital punishment as follows, in a statement adopted at the General Conference, the Church's highest legislative tribunal in Denver, Colorado, May 6, 1960. Here is an excerpt from that statement:

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 capital punishment." We urge all Methodists to extend their influence toward the termination of capital punishment.

May I, therefore, add my voice to the many who view capital punishment as outworn, uncivilized and fruitless way of protecting society. I would pray that in the attempt to establish a just and effective penal code, and to establish an increasingly civilized society, your commission will recommend the elimination of the death penalty in New York State.

Respectfully submitted, signed:

Donald G. Wright.

MR. BARTLETT: We convey our thanks to Dr. Wright.

MR. GILMORE: I will thank you for him.

MR. BARTLETT: Dr. Bruno Schutkeker.

DR. SCHUTKEKER: Good morning, gentlemen. I am Bruno G. Schutkeker, M. D., and Psychiatrist from Buffalo. I'm Assistant Clinical Professor of Psychiatry at the State University of New York at Buffalo; Chief of Neuropsychiatry at the Veterans Administration Hospital at Buffalo; I'm Chairman of the Committee on Lectures of the Western New York District Branch of the American Psychiatry Association, although today I am speaking as an individual.

I am here today to speak in behalf of the abolition of the death penalty. I would like to thank your honorable body for making this time available.

In the last generation, I believe,

there has been a marked revision of the concepts of morality and judgment. These changes are part of an ongoing process of incorporating newer knowledge obtained from the fields of law, psychiatry, sociology, religion, and many others. We have moved away from the death penalty for many kinds of crimes. We have moved away from torture and incarceration in dungeons. We have moved toward more humane forms of killing, and toward confinement in modern and more civilized prisons.

Our newer body of knowledge now dictates that we all become even more civilized and move the rest of the way to abolition of the death penalty, and to confinement of murderers, in hospitals where they can be given therapy, rehabilitated and released whenever this is possible without danger to society.

The death penalty has been under attack for centuries. So much has been said over the years that there is very little new to bring to your

attention. However, I hope I can cover today a few points that will be worthy of scrutiny.

On December 5, 1962, my office had an interview with Mr. Joseph Carroll, the Commissioner of Jurors for Erie County. Part of Section 377 (8) of the New York State Code of Criminal Procedures states:

"If the crime charged be punishable with death, the entertaining of such conscientious opinions as would preclude (the juror) finding the defendant guilty, in which case he shall neither be permitted nor compelled to serve as a juror."

Each prospective juror is required to fill out a card and return it to Mr. Carroll's office. Question #19 reads:

"Do you believe in the death penalty for crimes punishable by death ?"

Mr. Carroll, of course, could not give us any valid figures on the ratio of "yes" and "no" answers, although he was willing to hazard a guess that it would turn out to be half and half. However, in counting through the 42 cards which had

arrived in that morning's mail, he found that 23 had answered "yes"; the other 19 answered "no", or were undecided, which puts them in the "no" group, or had left the question blank. I venture to guess that many more move over into the "no" group when being questioned at the time of a selection of a jury.

It would be interesting, I feel, to find out exactly what answer a large number of people would give to this question. In my experience, those who are opposed to the death penalty always assume that only a handful of others share their convictions.

I have a suggestion to offer the Commission. At your request, Mr. Carroll would be willing to keep a running tabulation starting on January 2, 1963, and continuing until the summer. This would be a very inexpensive way of finding the answer. About 25,000 cards would pass through his office during that period. It is his feeling and mine that this survey would produce statistically valid figures. The New York County and Kings County Commissioners

of Jurors have officers where the routines are automated, and I can only assume that they follow the same procedure as in Erie County. If you gentlemen agree with me that this could provide some relevant data, these offices could run jury cards through their machines and give an answer for their counties in a much shorter time. As far as I know, a study of this nature has never been made.

Continuing with the topic of juries, I would like to comment on something I never knew until this interview I have mentioned. Upon questioning other people, I have found many who shared my ignorance. The wording of the statute I have quoted, although found in the section on trial juries, is apparently the basis for the practice of barring from Grand Jury duty all of us who are opposed to the death penalty. I think this is shocking. Many of us are thoughtful, well-educated, and eminently suited in every other way to perform this kind of jury duty, just as we can sit on trial juries for other than

capital crimes ? But the public and the courts are deprived of our services. We are deprived of the privilege of participating fully in the administration of justice in our state. Of course, I must admit I use the word "we" advisedly. Although physicians are supposed to have to claim their exemption from jury duty, in practice I have never heard of one receiving notice to report. Certainly, I have never been called. It would almost seem that our exemptions are being claimed for us.

I do not know in detail what has been said before this Commission at its other hearings on the question of the death penalty. Our press coverage in Buffalo has been most cursory. However, it was reported in the press that Judge Samuel Leibowitz urged the retention of the death penalty - stating that advocates of its elimination could produce no figures to override his opinion that it is a deterrent. My feeling is that the burden of proof is on those who favor retention of such a horrifying procedure as coldblooded judicial murder.

Can he prove that the death penalty results in fewer capital crimes ? I say he cannot provide figures showing that judicial murder is a deterrent.

From all I have been able to learn on the subject, jurisdictions which have abolished the death penalty for the crime of murder, have found that abolition does not lead to more murders.

I would like to recommend to this honorable body, and especially to Judge Liebowitz, a work entitled "THE DEATH PENALTY" by Thorsten Sellin, published as a tentative draft in 1959 by the American Law Institute. This is certainly one of the most comprehensive works in this field I have ever read. The statistical data which have been gathered seem to be unimpeachable.

I certainly cannot condense this book here, but I would like to point out that New York does not show up very well. In the period from 1930 to 1957 there were 3,096 executions in the United States, and 309 were performed by New York. As of that

date, we led Georgia which at one time held the dubious honor of first place. One of the most important groups of Mr. Sellin's statistical tables is the one comparing crude homicide rates in states where execution and without, grouped by using figures from contiguous states with common social organization, composition of population, economic and social conditions, etc. The result of this is to reveal that there is practically no statistical difference.

Using available historical and modern studies, statistical, legal, and psychiatric, it becomes apparent that there can be no justification for the policy of judicial murder.

Turning from that field to my own, I would like to state that my psychiatric experience has taught me that the act of murder is a very complex phenomenon, made up of a number of factors, not only psychological, but physiological, biochemical, physical, and sociological. I have long felt (and my experience has strengthened my conviction) that a

murder, if not overtly psychotic, is at least temporarily so, or is so emotionally ill that given certain circumstances with trigger off his compulsive and impulsive act, he will not have the slightest awareness of the possibility or even the likelihood of punishment, even the death penalty.

As increasing number of studies in both England <sup>and</sup> the United States tend to support this conclusion, Dr. Bernard Glueck, Jr., a highly respected authority in this field, has said:

"It is my personal opinion, based on the examination of men in the death house at Sing Sing, that no person in our society is in a normal state of mind when he commits murder."

I believe that a stable, normal person does not commit murder because he has had the opportunity or good fortune to grow up in an environment which has made it possible for him to develop moral values and fairly healthy controls from childhood on. Legal sanctions only tend to reinforce this building of character, and are only secondary in the

vast majority of people. I see murder as the sum total of an endless variety of negative forces extending far back into the past of any given individual.

Every murderer I have ever examined psychiatrically has had in his background the severest kind of psychopathology, such as impulsivity, enormous hostility, thought disorders, and poor judgment, which all are products of deprivation and other negative influences in his environment. The crime of murder simply cannot be taken completely out of the context of the individual's life experience if it is to be properly evaluated and understood.

Many investigators have alluded attention to the truism that given the proper set of circumstances, each one of us is capable of homicide. However, it has also been pointed out that the mechanisms of denial and repression are so strong within us that we literally turn black into white. We learn how to sublimate this latent "killer instinct" and to convert it into its opposite

component. We can then deplore in others conduct which we ourselves have contemplated or may even have been guilty of. Our desire then is not to punish ourselves, but to punish others who have transgressed because we see ourselves mirrored in them.

However, we can be (and we usually are) totally unaware that we are seeing ourselves mirrored by them, and are punishing the image of ourselves. The psychiatrist may refer to this outward demeanor of morality, civilization and obedience to the commandments as reaction formation, or turning primitive, destructive, or impulsive drives into their exact opposite. We can more readily punish others for doing what we have wanted to do ourselves, but this insight we cannot accept or acknowledge. We must deceive ourselves and prove to ourselves and to society that we bear no resemblance to the accused. In fact, we display righteous indignation over his conduct.

When such people, as I have described, sit on juries, they usually are totally unconscious of their identification with an involvement with the accused and fail to reflect that, "There but for the grace of God go I."

It will be a long time before most people in our society understand that not only criminals but everyone is at times motivated by irrational and emotional drives. Our thinking is colored by hostility, fear, prejudice, dogma, preconceptions, assumptions, and opinions which are often characterized by distortions of the truth.

In any discussion of capital punishment the possibility of innocence of the accused cannot be ignored. There is abundant evidence indicating that this has happened. In fact, it is claimed that Maine and Rhode Island abolished capital punishment for this reason.

An overwhelming amount of circumstantial evidence and a too speedy trial can stampede

a jury into a hasty conviction. An inexperienced, poorly prepared, reluctant, or indifferent defense counsel, who is perhaps serving without compensation, may not adequately defend an innocent man. It has been charged that suppression of evidence by an unscrupulous or ambitious district attorney has sent innocent men to their deaths. An angry and aroused community from which a highly prejudiced jury was selected has also been known impulsively to condemn an innocent person. Extreme bias or cruelty in judges is also not unknown. And finally, a governor seeking re-election might allow a death sentence to stand when extenuating circumstances and even his own conscience tells him to commute a sentence.

How can we allow a community or persons in the community to assume this terrible responsibility in the heat of anger or for other negative reasons ?

As a psychiatrist, I am just as concerned about the whole community as any other member of it. Many people have the mistaken opinion that psychiatrist want to "free the criminals". Nothing could be further from our minds. I want society to help its aberrant members, I want society to have the compassion to at least try. I want society to expend its energy and substance in devising ways and means to prevent crime, not on orgies of hate and revenge.

I believe in a constructive attitude toward crime and murderers. I have devoted my professional life to the rehabilitation of the mentally ill, to fostering in my community the understanding that is needed to prevent and treat mental illness. When society commits murder, it brutalizes all of us and degrades the human spirit. I consider this kind of murder to be more reprehensible than the crime of the accused, since it is coldly premeditated and committed by the very people who profess to be rational human beings.

I am unalterably opposed to the death penalty, but as a resident of this state, I find myself a party to it. I may not serve on a Grand Jury, but my taxes help pay the stipends of grand juries which return indictments for first degree murder with the death as the penalty. My taxes help pay for the electric current which is used to carry out this penalty. My taxes help pay the salary of the executioner. Nobody knows who must pull the switch. My whole philosophy that life is sacred is negated by a law that perhaps half the people do not believe in. And of the other half, how many would be willing to participate in or even witness the act they are willing to underwrite ?

What I want is to see my tax dollars spent on doing something for people, not to people. I would like to be as proud of my state in the field of penology as I have always been proud of it in the field of mental health where it has been the leader in this country.

MR. BARTLETT: Doctor, are you suggesting the institution of a hospital system for our whole penal structure ?

DR. SCHUTKEKER: Yes, sir.

MR. BARTLETT: Do you intend this Doctor, in a situation of premeditated murder, obviously for gain ?

DR. SCHUTKEKER: No, there is such a thing as premeditation. I think I'm talking about the majority of homicides.

MR. BARTLETT: On your point of assigned counsel serving without compensation, this is not the case in New York, as you know.

DR. SCHUTKEKER: Yes.

MR. BARTLETT: The state provides compensation for defense attorneys in capital cases.

DR. SCHUTKEKER: I think I understand that. Thank you.

MR. BARTLETT: Just one question on the very last

point that you made. You suggested earlier in your presentation an institution for hospital treatment for an incarceration of prison. Are you suggesting that for our penal system ?

DR. SCHUTKEKER: Yes, sir. We would have to have prisons for some time to come, but there would have to be an ongoing move on the way of punishment and therapy. It's the building of new institutions or relying on existing prisons and turning those into hospitals and staffing them for the psychiatrists and psychologists and social workers and therapists, and get away from the warden and the guard system. Thank you.

MR. BARTLETT: Thank you, Doctor. Reverend Kendall.

REV. KENDELL: I am the Pastor of the North Presbyterian Church in North Tonawanda, New York. I am here as the Chairman of the Committee on Social Education and Action for the Synod of New York of the United Presbyterian Church in the United States of America.

In J<sup>U</sup>ne, 1959, the Synod of New York of the United Presbyterian Church in the United States of America received and adopted the following report from its Committee on Social Education and Action :

"We recognize the right and the duty of society to defend itself against criminals; and we recognize the spirit of Jesus Christ, revealed in the Scriptures, as regulative for conduct in all matters. We sense society's collective involvement in the forces which often drive people to crime, and we believe that the Christian's attitude toward an offender of the law should be redemptive in the administration of Justice.

"We would remind the Synod of the following considerations :

- "1. In the exercise of its responsibility to safeguard the welfare of society, the State has recourse to alternatives other than punishment by death.
- "2. Execution terminates the possibility for a redemptive approach to the offender.
- "3. All human judgment is subject to error, and execution eliminates any possibility of correcting a miscarriage of justice.
- "4. Extensive studies by responsible groups both here and abroad have failed to yield any evidence that

capital punishment is more effective than other forms of punishment as a deterrent of the crime of murder.

"We recommend, therefore, that the Synod of New York record opposition to capital punishment and call upon the Legislature to abolish this form of punishment in the State of New York."

I realize that church bodies are often considered to be sentimental and unrealistic in their approach to problems of crime and legal justice. I would like to assure you that this report was prepared after careful study by people who do understand that the State has a right and a duty to protect its citizens against criminal offenders. I would also like to show how the conclusions and recommendations of the Synod are supported by facts.

Beginning in 1948 Britain's Royal Commission on Capital Punishment engaged in a five-year study of the use and effectiveness of the death penalty. Evidence was gathered from many countries, including our own. Among the witnesses heard by the Commission, there were hundreds who

argued that capital punishment is uniquely effective as a deterrent. Many insisted that this conviction was based on personal experience and observation. However, not a single witness even attempted to use statistical evidence to show how the murder rate in a particular place would appear to have been affected by the abolition or introduction of capital punishment.

After assembling all the available facts concerning the experience of areas that have abolished, as well as those that retain the death penalty, the Royal Commission announced this conclusion:

"There is no clear evidence in any of the figures we have examined that the abolition of capital punishment has led to an increase in the homicide rate or that its re-introduction has led to a fall . . . Whether the death penalty is used or not, and whether executions are frequent or not, both death penalty states and abolition states show rates which suggest that these rates are conditioned by other factors than the death penalty."

The conclusions of the Royal Commission are fully supported by the most recent facts that are available concerning the homicide rate in various parts of the United States.

During 1961 executions were carried out in 18 states. In 12 of those states the murder rate was above the national average; in 5, the rate was more than twice the national average.

The death penalty has been abolished in Maine, Rhode Island, Michigan, Wisconsin, Minnesota, North Dakota, Alaska and Hawaii. In all of the abolition states except Alaska the murder rate is below, and in most cases very substantially below, the national average.

In the nation, as a whole, the murder rate for 1961 was down 6% from 1960, while the number of executions declined to a record low of 42. In examining the records of individual states it is impossible to discern any correlation between the use of the death penalty and changes in the murder rate.

Among 18 states where executions were carried out in 1961, 12 showed a decrease in the murder rate.

Among the 32 states where there were no executions in 1961, 18 reported a drop in the murder rate.

These facts are a sampling of the kind of evidence that led us to the conclusion that the death penalty is no more effective than other forms of punishment as a deterrent to the crime of murder.

The Synod of New York has called upon the Legislature to abolish capital punishment. But what we are really asking for is recognition of the fact that the death penalty has already been abolished as a significant factor in the administration of legal justice.

In the United States during 1961, a criminal homicide was committed almost nine thousand times. During that same year there were 42 executions. In the State of New York there were six hundred cases of criminal homicide and two

executions. There is no place in the United States where the death penalty is the ordinary punishment for murder. It is a special penalty that is imposed only in rare and isolated cases.

One of these days we will come to the end of a year when there will have been 10,000 murders and 10 executions in the United States. If present trends continue, it is entirely possible that some of us will live through a year when a nation of two hundred million people will have singled out one man to die at the hands of the state. Then it will be plain, as it ought to be now, that in our continued use of the death penalty, we are guilty of the most arrogant kind of presumption.

When we are dealing with hundreds of men who have wilfully committed the same outward act, and take it upon ourselves to designate the one offender who deserves to die, we have forgotten that we are men and not gods.

The death penalty has got to go because when men profess to live under God, they must be willing to renounce the use of a penalty that requires them to make the kind of judgment that can only be made by God himself.

MR. DENZER: You are aware also that certain states have abolished capital punishment and then restored it, the latest, I believe, was Delaware.

REV. KENDELL: Yes, sir.

MR. DENZER: They restored capital punishment when its murder rate declined the previous. Do you attach any significance to the fact they did restore capital punishment there ?

REV. KENDELL: Yes, there are a number of states , of course, that had abolished capital punishment and then restored it. Usually that occurs at a time of a particular abhorrant crime, and I would say that it represents the response of a public which is under what I consider being some misapprehension, making

judgments based on wrong information, really, but this certainly is their emotional response. Thank you.

MR. BARTLETT:

Thank you very much, sir. Dr. Halpern.

DR. HALPERN:

Dr. Abraham Halpern, I'm a physician.

I'm also a Commissioner of Mental Health for Onondaga County.

Gregory Zilboorg, the renowned medical historian and forensic psychiatrist, has written that there is a great deal of psychological tension and emotional power behind the tradition belief in the efficacy of penological deterrants, and, therefore, more than mere argumentation is required to settle the question. And, indeed, as one studies the data present for and against capital punishment, one is left without really convincing evidence for either position. For example, those in favor of capital punishment point out that after the death penalty was re-introduced in Sweden in 1902, the homicide rate dropped 10% in

next twenty-year period. The abolitionists argue, however, that when Sweden abolished capital punishment in 1922, its homicide rate dropped. Those opposing capital punishment also speak of the year, 1948, when England suspended the death penalty for seven months. It was found that murders averaged about eleven a month during that period. While in December, after capital punishment had been resumed, the number of murders leaped to twenty-five. Those presenting the case for capital punishment are quick to point out, however, that England with capital punishment, has cut her murder rate below that of other countries where it has been abolished or not rigidly enforced.

MR. BARTLETT:

There may be other reasons, isn't

that so ?

DR. HALPERN :

Yes, sir, and I'm leading up to that

point that this implies.

In our own country we find that the states having no capital punishment boast lower

homicide rates than comparable states retaining the death penalty. Wisconsin, which abolished capital punishment in 1854, consistently shows one of the lowest homicide rates in the nation. Michigan, which ended executions in 1847, has a far higher rate, but one still lower than that of the comparable adjacent state of Illinois. Minnesota wiped out the death penalty in 1911 and has remained among the nation's best behaved as you know, and North Dakota, which voided capital punishment in 1915, rates far better than its nearly identical neighbors, South Dakota and Nebraska.

On the other hand, the death penalty advocates point out that the abolition of capital punishment has in some cases been followed by an increase in murder. For example, the rate of 6.5 homicides per 100,000 population in the state of Washington in 1913 increased to 10 per 100,000 in 1914 after capital punishment was done away with. Vermont with four or five murders a year under capital punishment jumped to twenty murders in 1912

after it had for all practical purposes been abolished. They also argue that when the death sentence is restored, a drop in the homicide rate follows, and they cite as an example Seattle's homicide rate which fell from 12.9 per 100,000 without capital punishment to 5 per 100,000 just after its restoration. And so, the battle rages, and the only definite conclusion that one can come to when looking at the statistical picture is that the many variables involved make the study of capital punishment as a deterrent a most difficult matter indeed.

When we examine the question of whether capital punishment can entice an individual to commit murder, a more definite picture emerges. There is evidence that the existence of the death penalty has been directly connected with murders committed by a number of disordered individuals. During the past decade we have often been treated to the fantastic spectacle of the innocent voluntarily confessing to murder, putting their own lives in

jeopardy for a moment in the spotlight. The Black Dahlia murders in California, to cite a well-known example, produced a swarming legion eager to confess to hideous crimes with which they could have had no possible connection.

My own interest in this question was sparked by the observation of some pathological behavior during my four years of experience at a state hospital. On several occasions I had to deal with patients who repeatedly sought punishment. I would like to cite one pertinent case. A fifty-year-old female patient, who had been an accomplished musician some twenty years earlier, constantly demanded to be placed in seclusion; and when asked why, insisted that she needed to be punished. At first she would deliberately remove all her clothes in the day-room, and this was sufficient result in her goal being achieved. Later, as seclusion became less popular as a method of dealing with disturbed patients, and she found that this behavior did not succeed (in getting her placed in seclusion), she would strike attendants or nurses

or doctors in order to coerce these people to punish her. I felt that if this latter behavior were to become ineffective, she would likely commit more and more serious offenses in her search for punishment.

MR. BARTLETT: Do you have a psychiatric specialty now, Doctor ?

DR. HALPERN: It is the sub-specialty of medicine called psychiatry.

I would like to cite another case to illustrate the inter-relationship between actual criminal acts and the desire for punishment in some disordered individuals. This case is described in the American Journal of Psychiatry, October, 1961, in an article entitled "Psychiatry and Law: Use and Abuse of Psychiatry in a Murder Case", by Frederick Wiseman, Lecturer in Law, Boston University Law School, Boston, Massachusetts.

On April 20, 1927 at 1:15 P. M., Jim Cooper, a twenty-three year old airplane mechanic, from Roxbury, Massachusetts, walked

into the hallway of an apartment house in Brookline. His former fiancée, Connie Gilman, lived in the second floor apartment with her parents. Cooper stopped in the hall and released the safety latch of the Belgium automatic .38 in his pocket, climbed the stairs and rang the Gilman's bell. He took the gun out as Connie opened the door. She saw him waiting in the hallway with the gun in his right hand. Their eyes met. Cooper said to himself, "Jim, shoot, shoot." He couldn't pull the trigger. Connie slammed the door. Cooper shut his eyes and shot and shot, nine times. Connie died instantly. He ran out of the house, and after telling a policeman four times that he had committed murder, he finally convinced the officer to take him to the Brookline police station. Later, when asked by a detective whether he fired with intent to kill, Cooper said, "I fired to blow her head off. How many times do you want me to tell you?" At another time he said, "After it happened, I didn't even seem to realize what it was -- it didn't seem

real. I never saw her actually get shot. I never saw the bullet enter her body; I said, 'This didn't really happen.' But I know it did. I thought, Jim, you must have killed her. I didn't know, but I thought I must have. It just seemed to me that all my life I was bound to end up in the chair. If that was the way it was, that was the way it would be."

MR. BARTLETT: This was under the McNaughton rule ?

DR. HALPERN: Yes.

MR. BARTLETT: The defense doctors did not believe Tom to be psychotic in their terms or insane by the McNaughton Rules ?

DR. HALPERN: They didn't believe him to be psychotic in their terms.

MR. BARTLETT: I thought I might solve your terms.

MR. DENZER: Isn't his more of an argument to revise the McNaughton rule ?

DR. HALPERN: If you want to take out an argument to change the McNaughton rule, nothing would make

me happier, but I'm talking about capital punishment at this point.

The psychiatrists for the prosecution found the defendant to be perfectly sane at the time of the crime, and they agreed that he had no mental illness. They testified that in their opinion, the defendant knew the difference between right and wrong. The defense psychiatrists concurred in this, but also were convinced that he had been suffering from a personality disorder. They felt his behavior showed that he had had a low tolerance to frustration and an inability to deny immediate gratification of his needs. This behavior had at times been anti-social in nature, and the patient had felt little conscious remorse or guilt about his actions, especially the recent murder of his girlfriend. However, there was evidence that since age nine, he had been subject to a pathological drive to be punished for the accidental death of his father for which he had unconsciously and sometimes consciously felt responsible. If the defendant had been brought to a

psychiatrist at any time since age twelve, the defense psychiatrist stated, it would have been evident that he definitely was in need of psychiatric help. The defendant's history provided some understanding of the emotional problems that led to the murder. Cooper's father died when the boy was nine. Mr. Cooper slipped on the ice chasing his son, insisting that he wear a warm cap on his way to Hebrew school. Cooper felt he had killed his father. Afterwards, there were many self defeating and destructive acts connected in one way or another with these feelings. As a twelve-year old, he swallowed iodine rather than go to Hebrew school. At fifteen he was badly bruised when he insisted on fighting five boys who attacked him swinging garrison belt buckles. Also, at fifteen, A BB pellet pierced his right eye when he and another boy were playing with a gun. In the Air Force a buddy saw him with a pistol pointed at his head, and talked him out of a suicide attempt. In Boston, on leave from the Air Force, he fought with another of Connie's suitors

and spent two weeks in a hospital with a broken nose. As an Air Force mechanic, Cooper felt guilty about the death of two pilots despite the fact that an Air Force investigation determined that their death was due to pilot error rather than mechanical defect.

Although they did not believe that Cooper was psychotic, both defense psychiatrists were convinced that Cooper was badly in need of psychiatric treatment, and that the murder was a violent expression of his illness. The defense counsel had to proceed with the trial knowing his client to be a very sick young man but aware that under the existing legal standards Cooper's behavior, the murder, of course, aside, was probably not sufficiently bizarre to qualify him for a McNaughton acquittal.

When the Judge concluded his charge, Cooper made a statement to the Court and Jury saying, "It is my opinion that any decision other than guilty

of murder in the First Degree, with no recommendation for leniency, is a miscarriage of justice."

The Jury found Cooper guilty of murder in the first degree, and did not recommend leniency. The Judge was obliged to sentence him to be electrocuted. After listening to the sentence, Cooper said, "Thank you." This is not an unusual expression on the part of a defendant after the death sentence is pronounced. I hope you haven't heard this story ?

MR. BARTLETT: I doubt if we have.

MR. DENZER: Doctor, may I interrupt you for just a minute ? Of course, you are prepared to present cases as supporting a possible theory; at least that capital punishment is an incentive rather than a deterrent to homicides ?

DR. HALPERN: Exactly.

MR. BARTLETT: And you mention the incident that

at the time of sentence the defendant said, "thank you", and so forth. Do you regard that as a very unusual instance, or is it a very common one ?

DR. HALPERN:

No, sir, this is a very unusual case.

You see, we are executing so few people these days that every case looms up in importance because of this.

MR. DENZER:

It occurs to me for every defendant

who gives the thank you to the judge, there are probably hundreds who fight like tigers to avoid the death penalty, that is, in New York. Where your felony murderer, where the jury has a right to recommend life imprisonment, most of them fight very hard for that recommendation. Wouldn't that be an argument on the other side ?

DR. HALPERN:

No, just as in the case of when error

is committed, these are very very few indeed. In the same sense that this type of case is cited for you as an example why capital punishment should be abolished, so, I would cite, perhaps, more direct instances than

those who are hanged out of error, and this is the main purpose of my presentation.

After the conviction was affirmed by the Massachusetts Supreme Court, the defense counsel, family and public petitioned the Governor to commute Cooper's sentence. Cooper, aware of the appeals on his behalf, wrote the Governor, "Now, I do not ask for death in the form of punishment, but as mercy. Mere mercy in the guise of relief from a life which is no longer honorable or desirable. My wish is that you can put aside your moral regrets and do your duty, even as I have done mine." In another letter to the Governor he wrote, "If I could but feel that I honestly regretted my actions, I would welcome the prospect of imprisonment and rehabilitation. However, while I do not lack the qualities of pity or compassion, I do not feel one iota of remorse for the crime which I have committed. It is not the enormity of the crime itself, but the ease with which I justify it to myself that precludes the possibility of my ever returning to society again. Under these

conditions, execution is the only logical conclusion.

At the Governor's request the commissioner of mental health started a study of the case to determine if Cooper was too sick to be executed. Five psychiatrists and one psychologist were involved in this post-trial study of Cooper. Cooper was seen often by one or another of this group in the following six months. After receipt of the final report, the commissioner of mental health and the commissioner of correction both recommended commutation of sentence to life imprisonment. When Cooper was told the Governor was about to approve their recommendation, he hanged himself with his sweater in his prison cell.

An even more striking example of the search for the death penalty is found in Henry Maudsley's "Responsibility in Mental Disease," published in 1874. He discusses the case of Burton, who was "tried at the Maadstone Lent Assizes in 1863, for murder. It was very simple and very

shocking. The prisoner was a youth of eighteen years of age. His mother had been twice in a lunatic asylum, having been despondent, and having attempted suicide. His brother was of weak intellect, silly and peculiar. He himself was of low mental organization, and the person to whom he was apprenticed and others gave evidence that he was always very strange, and not like other boys. He had a very vacant look, and, when told to do anything, would often run about looking up to the sky as if he were a maniac; so, that the indentures were cancelled. The prisoner said he had felt 'an impulse to kill someone'; that he sharpened his knife for the purpose and went out to find someone whom he might kill; that he followed a boy, who was the first person he saw, to a convenient place; that he knocked him down, stuck him in the neck and throat, knelt upon his belly, grasped him by the neck, and squeezed until the blood came from his nose and mouth, and then trampled upon his face and neck until he was dead. He then washed his hands, and went quietly to a job

which he had obtained. He knew the boy whom he had murdered, and had no ill feeling against him, 'only I had made up my mind to murder somebody'; he did it because he wished to be hanged. His counsel argued that this vehement desire to be hanged was the strongest proof of insanity; the counsel for the prosecution, on the other hand, urged that the fact of his having done murder in order to be hanged, showed clearly that he knew quite well the consequences of his act, and was, therefore, criminally responsible. He was found guilty; and Mr. Justice Wightmen, in passing sentence, informed him that he had been 'found guilty of a more barbarous and inhuman murder than any which had come under my cognizance during a judicial experience of upwards of twenty years. It is stated', the Judge went on to say, 'that you labored under a morbid desire to die by the hands of justice, and that for this purpose you committed the murder. This morbid desire to part with your own life can hardly be called a delusion; and, indeed, the consciousness on your part

that you could effect your purpose by designedly depriving another of life, shows that you are perfectly able to understand the nature and consequences of the act which you were committing, and that you knew it was a crime for which by law the penalty was capital punishment. This man, in truth, a further, and I may say a deeper aggravation of the crime," When sentence of death had been passed, the prisoner, who during the trial had been the least concerned person in court, said with a smile, "Thank you, my Lord," and went down from the dock, followed by an audible murmur, and almost a cry of horror from a densely crowded audience. He was, in due course executed; the terrible example having been thought necessary in order to deter others from murder out of a morbid desire to indulge in the gratification of being hanged."

Maudsley then remarks, "If the example of Burton's execution was to have a deterrent effect, this effect ought to have been specially exerted upon those who were in a similar

state of mind and troubled with similar morbid desires; and, yet, it is plain on such persons it would have had a directly opposite effect, it would have stimulated them to do murder, by strengthening the insane motive which instigated it. . the desire to be hanged. "

These two briefly summarized cases are examples of how the death penalty can provoke disturbed individuals who seek maximum punishment, to commit murder.

Thus, I conclude that while capital punishment may or may not effectively meet the penological aim of deterrence, it nevertheless does seem to induce the perpetration of murder in certain disordered individuals who for complicated psychological reasons seek death, and for whom suicide is not sufficiently punitive.

And one of the reasons why I think this is not as rare as you implied, sir, is that I found there is one study which throws so legally light on this subject, although I'm not prone to use statistics,

and so forth of research studies of this whole business.

There is a study done by a Dr. William F. Graves in California, when he studied homicides and executions in three California counties over a ten-year period, and he found that the number of the murders was high to a statistically significant degree for every day on which an execution took place, and this makes you wonder, but what the act of the execution does psychologically for people who might have a desire to end up the same way.

MR. BARTLETT: Doctor, in your experiences, how prevalent is the death wish generally among people with psychiatric disorders ?

DR. HALPERN: In my experience it is pretty prevalent. It certainly is a very prominent symptom in people who have suicidal tendencies and are severely depressed, and it's also prevalent to a noticeable degree as to the case I cited, as to people

who do things who know they will get punished, and I think you will find this in many many minor type of offenses.

Thank you.

MR. BARTLETT:

Thank you, Doctor. Mr. Wallace G. Reid.

MR. REID:

My name is Wallace G. Reid, I am the president of the Western New York Committee to Abolish Capital Punishment. This is a division of the New York Committee.

Capital Punishment---Social Schizophrenia.

Nations and states are ruled by small groups of men who have seized or inherited power, or are elected by a popular vote. The policies of these small governing bodies are tempered by the concern and courage of the people governed. In some domains, the people are apathetic, and

thus, the rulers are free to govern as they please. When such apathy exists, the conditions are ripe for the emergence of a psychopathic group of leaders, whose moral sterility leads to large scale destructiveness. Human dignity is lost and assembly line murder occurs daily.

Other nations and states, usually the more democratic ones have developed a high level of culture. In these, amazing progress in the arts, sciences and statecraft has been achieved. I believe that New York State can be included among these. Governor Rockefeller's cultural program, the expanding State University system, and the hearings now being held by the legislative commission are offered as recent evidence. In New York State I witness reverence for life most everywhere I go. Myriads of New York State's inhabitants are seeking beauty, truth, goodness, fellowship, religion, a creative way of life---and they are seeking these in their own unique manner. I like New York and would abhor living in some of the other states in our country.

Unfortunately, there are a few monstrous, gloomy aspects to life in this state. One of these is the absurd practice of capital punishment. How is it possible that we, the people of New York, who profess justice tempered with love, are able to make an absolute decision that another person is no longer fit to live and now may be murdered with premeditation and cruel ritual ?

How can a state that has reached such a high level of cultural maturity suddenly brutalize itself and regress to the law of the jungle ?

If schizophrenia is characterized by a great eruption of primitive functions, a regressive preponderance of irrational and magical behavior, by impulsive, destructive acts, by negativeness and loss of affection, and by disintegration of the personality, then aren't the death house, the executioner, the electrocution of a human being with audience participation all part of a social schizophrenia ?

Society is well protected when a convicted murderer is put in prison. Behind bars he is no longer an immediate threat to anyone. I think we should heal one of the remaining social aberrations existing in our state by abolishing the death penalty.

MR. BARTLETT: I was afraid you were going to leave that out about society being protected ?

MR. REID: No, thank you for this opportunity to speak before your committee.

MR. BARTLETT: Thank you, Mr. Reid. Mr. West.

MR. WEST: My name is H. Philip West, Jr., and I come from Hamilton College, Clinton, New York, where I am a senior.

I speak to you this morning as a college student, too young to vote in last month's election. I have not seen as much of the world as most of you have. I shall not argue about the effectiveness of capital punishment as a deterrent, but

rather, about the responsibility of a society to its members. I shall remind you of things you all know. I speak only in the hope that when my sons are born they will find a better world than you and I have seen.

Whenever we think of society and crime, we discover society's two-fold responsibility. Society is first responsible to itself. It hopes to deter potential criminals by example, it needs to get criminals off the streets to prevent them from repeating their crimes, and it wants to punish. Society's second and often ignored responsibility is to the accused man. If he is guilty, society has produced him, shares his guilt, and should attempt to rehabilitate him. If he is innocent, he should be released and allowed to live a normal life.

Capital punishment may take care of society's responsibility to itself, for whether or not it has value as a deterrent, it does indeed keep criminals off the streets, and it does satisfy our

desire for punishment. But capital punishment cannot fulfill society's responsibility to the individual, for in killing a criminal, society acts as if his crime has annulled its responsibility; it acts like a mother who kills her rebellious son on the grounds that his rebellion has made him no longer her son. Capital punishment makes a mockery of society's responsibility to the individual whether he is innocent or not. In using capital punishment, society takes what it can neither give nor restore: human life. So, this is why I want you to think with me for a few minutes.

To blame someone for a crime is to assert that he acted freely. We usually act as if men were free; we praise men for great accomplishments, and our presence here testifies to our belief in human freedom. Capital punishment pre-supposes that a man acts freely in committing a crime, for as we know, proving that a murder suspect was physically forced to kill or was temporarily insane usually protects him from the

death penalty. However, I think we oversimplify the question by saying man is free and letting it go at that. Some men have less freedom than others. We see a boy growing up in the slums with an alcoholic mother, no father, and thirteen brothers and sisters; the only law he knows is: do it to others before they do it to you. We must wonder if he is quite free to become President. If we think his chances are slim, and if we blame his inferior schools and the moral vacuum in which he is living. We admit that men are influenced and conditioned by their environments. This is not to reduce men to the condition of the proverbial grain of sand among millions swept <sup>by</sup> /along/ the wind, but it makes us admit that some men are not as free as others. In educating men, we hope to release them from conditioned prejudice and ignorance, so that they may see the world objectively and deal more freely with it. Although all of us are limited by the circumstances of our lives, some people we see are freer than others, if only because they understand the

world and know the limits of their freedom. The better men understand the world, the freer they are; the less men understand the forces moving around them, the more these forces bind them.

People have always been controlled by social forces they did not understand. The rapid changes which took place in English society immediately after the industrial revolution must have worried men. Families were displaced when their small farms were absorbed by the rapidly expanding mechanized farms; these families moved to the cities without understanding the vast economic forces of the industrial revolution. But, since there were not enough jobs for all, many had to steal the bread they ate. The crime rate was high, and thieves were hanged, even if they were only children. Did the threat of capital punishment deter thieves? I don't know. But it doesn't really matter, because in the long run, deterrence is not the most important question; human life is. Even if England fulfilled its responsibility to itself by deterring thieves, by

preventing them from stealing again, and by punishing them, it certainly made a travesty of its responsibility to its ravenously hungry people.

But before we judge the English, let us recognize our own responsibility and remember that the future will judge us even as we judge the past. Our mid-century society is diverse and bewildering, especially for those to whom it seems a vast network of hostile powers dragging them along. Society is changing rapidly and must be terribly confusing for those who do not really know what is going on or what these changes mean for them. The first humanly controlled nuclear reaction took place when I was learning to walk, and since then the atomic revolution has profoundly influenced the whole world; the cold war, with its constant threat of nuclear devastation, has made my generation anxious to gather its rosebuds while it may, because tomorrow may never come; our high speed, high cost space program is converting the science fiction I read as a boy into the history my

sons will read. On a different level, many people are upset by unemployment, rising taxes, and by a lack of moral principles to live by. Some people have been disillusioned so often that they find it hard to believe in anything; some have never been taught to understand the world or to cope with life; they feel as purposeless as rats performing endlessly at a carnival sideshow; they resent the routine of the world and the senselessness of life.

Psychiatric casebooks and court records tell how these misfits may panic and slash wildly at the world or at anyone within reach, or how they may seek grotesque inhuman revenge on the world, which they think treat them like rats. They feel unknown and alone; they commit despicable crimes, which make them known to the world through bloody headlines, and which join them to the company of the infamous. Such rebels against the world, at least in my generation, are those who understand it least, or who have never learned to adjust to society; they have received little or no

meaningful education, and they live in a moral vacuum. Understand me, I am not trying to absolve them of their guilt; I am merely suggesting that they are profoundly disturbed by our society. Of course, such people come from all social classes, although as Mr. Isaacs pointed out to you last week, those from the lower classes and minority groups are more likely to die for their crimes than are wealthier counterparts.

MR. BARTLETT: You are not sharing his argument that the death penalty actually discriminates as against those groups ?

MR. WEST: I'm not sharing his argument. I'm saying these people are the ones who don't have the money or don't have the lawyers, and these people are the ones that die.

MR. DENZER: Aren't the reasons probably why they die they are the ones that commit homicides ?

MR. WEST: There are a very low percentage number of cases where you get a substantial business man or

where you get a higher man of a financial life who commit homicides, you get them from the lower echelons. These are the people who haven't been educated and weren't given the education that they haven't got.

MR. DENZER: I thought you were making an argument over bias ?

MR. WEST: I'm not saying anything about bias.

MR. BARTLETT: This is the group that produces the homicides, and this is the group you find in executions?

MR. WEST: And this is the group that hasn't received the higher education. This is my point. The people who commit these crimes do not understand the world. We'll say they are abnormal.

People of all types are frustrated and bound by ignorance; these misfits may kidnap or kill for no apparent reason; they are rebels against the world. Regardless of their class, they seem more like vicious animals than like men.

Whom then are we to blame for a murder ? The killer ? Yes, insofar as he was a free man when he killed. The victim ? Probably, in many cases. The killer's family ? Friends ? Employers; teachers; Clergymen ? Perhaps, for they have all influenced him. Perhaps the whole society must share his blame, for it, indeed, produced him. If we blame England of the industrial revolution for not seeking out the cause of theft and feeding its children instead of hanging them, we must blame our society of atomic revolution, of cold war, and of moral emptiness for the crimes taking place within it. Society is responsible for the men it produces, and it has produced vicious social misfits and beast-like men. It should muzzle them and attempt to care for them, just as it cares for the mentally ill.

Society takes upon itself a great responsibility when it uses capital punishment, for death makes fallible judgments irrevocable. Capital punishment takes what society can neither give nor

restore; human life. Communist leaders who reject our arguments based on the unique value of each human life, may purge and execute whole groups of deviationists and still remain consistent with their basic principles, but we are committed to defend the rights of each individual at all cost. . If we really value life, we must recognize that if a man rebels against something he does not understand, his act does not destroy his right to life or make him ineligible for the moral education he should have been given long before. To execute the angry rebel only adds evil to evil. Justice may convict him, but mercy recognizes him as a maladjusted anti-social beast, who should be rehabilitated, not killed.

Even if you disagree with all I have said, even if you think the only way to fight fire is with fire, not water, to fight evil with evil, not good, you must agree that many innocent men have been sentenced to death by mistaken justice. Nothing can restore their rights to life, liberty and the pursuit

of happiness. You may reply that such practical mistakes are inevitable in human justice. But since when have we considered killing an innocent man a practical thing ? How many sound verdicts can restore the life of an innocent man ? How many innocent men have been the victims of capital punishment ? If we deal with fallible justice, let us not aspire to judge as God does, and let us never destroy human life, for we can never restore it.

Thus, we have seen that although capital punishment may fulfill society's responsibility to itself, it cannot in any way fulfill its responsibility to the man accused of a crime. The strength of any defense of capital punishment rests on the basic assumption that a man be free when he commits a crime. But his freedom depends on his understanding the conditions in which he must act, and capital criminals have somehow missed the education which would enable them to understand the world they live in and how they ought to act in it.

Trapped by what appear to them hostile forces, they often react by impulse, more like animals than men, certainly not from free choice.

Society has failed to free these rebels by teaching them their limits. It has produced them and cannot absolve itself of parental responsibility by killing them any more than a mother can absolve herself of motherhood by killing a rebellious son. Society must share the responsibility for crimes committed by men influenced and conditioned by it; it must attempt to rehabilitate the vicious misfits within it. If it wishes to fulfill its responsibilities to itself, it may: let it deter future criminals by improving education and encouraging religious and other moral groups to fill its moral vacuum; let it prevent criminals from repeating their crimes by imprisoning them until it is confident that they may be safely released; let it punish men not with vengeance, but with mercy. Fire can be used to fight fire, but water is less destructive; evil can fight evil, but good can overcome it. I would be the

last to suggest that society neglect its responsibility to itself, but I cannot believe that capital punishment makes anything but travesty of our principles of the unique value of human life for after executing a guilty man, we cannot free him from the influences which drove him to his crime; nor can we restore the life of an innocent man by engraving the word "innocent" on his tombstone. To the degree that killers, kidnapers, or traitors are free, they must be bound for society's sake; to the degree that they are bound by society's influences, they should be freed for humanity's sake. Society's responsibilities to itself and to the individuals within it are compatible. Society need not neglect its duty to itself <sup>if</sup> it abolishes capital punishment, but it cannot fulfill its responsibility to individuals if it retains this vestige of brutality.

I thank you for your attention. I have spoken in the hope that my sons will know a better world than you and I have known; I hope their world will not be one in which one man is killed for

the guilty shared by many; I hope they will read with pride how we emancipated men from self-enslavement by teaching them their limitations, and how we released justice from the bonds of brutality by abolishing capital punishment. Thank you.

MR. DENZER: You haven't mentioned the issue as to whether the death penalty is a deterrent ?

MR. WEST: I purposely avoided this.

MR. DENZER: Do you believe it is ?

MR. WEST: I read the statistics and I think you can make statistics prove things either way. I read a case where in Britian they stopped capital punishment for eighteen months.

MR. BARTLETT: And if you were firmly convinced that it was, would your position be the same ?

MR. WEST: If I were convinced that it was a tremendously great deterrent, I might be convinced to change my mind, but I cannot say in any way how

great the deterrent is, there is not a better deterrent than if we improve education.

Perhaps there is a better way. It seems to me that the most important thing is brutality, and it kills the innocent as well as the guilty men, it kills one man for the guilt which men share, and this is just a vestige of barbarism, it seems.

MR. BARTLETT:

Thank you, Mr. West. Mr. Melvin

Buetens.

MR. BUETENS:

Good afternoon. My name is

Melvin Buetens. I'm an attorney, and I have been an attorney in Rochester for twelve years. I asked to speak before you to express my feelings against capital punishment.

I am in opposition to capital punishment on the following grounds:

(1) Capital punishment is not a deterrent. Statistics from the States and Countries where

capital punishment has been abolished indicate that the doing away with death penalty does not result in an increase in homicide. Actually, there are indications that the homicide rate in these jurisdictions is lower than in similar jurisdictions with the death penalty.

(2) The death penalty is a manifestation of irreverence of human life. It legalizes and legitimatizes the taking of human life and is primarily vengeful in nature.

(3) The contrary effect to be accomplished by the abolition of the death penalty would be the creation in the minds of the public of a reverence for human life. It probably would result in lessening of the circus atmosphere that attends murder trials.

(4) Juries are not infallible and there is no way to absolutely guarantee that only the guilty are executed. The execution of 1,000 guilty individuals does not justify the taking of one innocent life.

(5) The public does not favor the death penalty. This is borne out by the fact that the public, when acting as jurors, rarely convict:

(6) The threat of death is not necessary to maintain law and order. The United States Navy has had no executions in the past 120 years, and there is no lessening of its authority.

I thank you.

MR. BARTLETT:

Ladies and gentlemen, we are going to recess for lunch now. We will convene again promptly at 2:00 o'clock. May I ask those of you who have advised us of your wish to speak to indicate that you are here and intend to speak to Miss Chapman before you leave for lunch, so we can have some notice of how many of you would like to be heard this afternoon. Thank you.

REUPON AT 12:35 P.M. RECESS WAS HAD FOR LUNCH.)

( COMMITTEE RECONVENED AT 2:07 P.M.)

MR. BARTLETT: Ladies and gentlemen, we will continue with the hearing. The first witness will be Mr. Harry Thayer from Kingston.

MR. THAYER: I don't have a prepared script. I had to change it. Chairman Bartlett, and Gentlemen, after what we have heard here this morning, I am glad in a way that my approach is going to be a little different, and perhaps may not be accepted in a layman's circle as being the popular side, but I would like to set a little of my background if I might. I am the General Manager of a radio station in Kingston, New York, and Vice-president of the Mental and Health Association, and I was born in Dannemora, New York, where my father, Dr. Walter N. Thayer, was a physician at Dannemora Prison.

Some years prior, my grandfather, Walter N. Thayer, Sr., was warden. In 1913 we moved to Napanoch, New York, where my father became physician of the Eastern New York State

Reformatory which was a branch of Elmira Reformatory.

In 1920, my father became Superintendent of an institution he created, known as the Institute for Mental Defective Delinquents, the first Institution of its kind in the United States. My father's concept was that criminals with a low mentality should be separated from the hardened and more usual normal type criminal, the mentally defective was a victim and was preyed upon by the normal. The idea was to take them out of Sing Sing, Attica and Dannemora, and bring them to his institution.

In 1929, my father was named Commissioner of Correction for the Maryland State Prisons. In 1930, when riots broke out in New York State prisons, Governor Franklin D. Roosevelt asked Governor Millard Tyng of Maryland to release my father so he might return to New York State to accept the post of Commissioner

of Correction, which he did in 1930. After Governor Roosevelt became President, Governor Herbert Lehman continued my father as Commissioner of Correction, and he still held that post when he died in 1936. I would like to say two things on behalf of my father when he took the office as Commissioner, he gave Governor Roosevelt a blank resignation, and when Governor Lehman took office, he gave him a blank resignation. He said, "Gentlemen, any time you interfere with the running of the prison facilities, fill in the date and I am through. Incidentally, I believe that Nagasack Institution was the first institution in the United States to have a full time psychiatrist and psychologist in a prison.

During my father's term of office as Commissioner of Correction, under two Governors, more prisons were built than ever before. The institutions that were built are Attica State Prison, Wallkill Prison, Woodbourne Prison and Coxsackie Institution. In addition, Green Haven Prison was

MR. THAYER:

I'm saying as a deterrent in society before a man ever goes out to commit a crime.

Incidentally, during the entire period from 1920 to 1936, when my father died, we had at least two prison inmates as house servants for a long time, and many with long records, and from 1929, when Ruth Snyder and Judd Gray were executed for the murder of Mrs. Snyder's husband; during that execution, a newspaper representative took a picture of Ruth Snyder in the electric chair through the use of a tiny camera strapped to his garter, and as a result of the uproar from the public which followed, my father banned that newspaper from the prisons.

Shortly thereafter three youths known as the "Cry-Baby-Bandits" were to be executed. My father, feeling that another Ruth Snyder incident might happen, said he wished he could have a representative there who could give him the facts of what took place during the execution. I volunteered

to be his confidential representative and witness the execution of these three youths whose ages ranged from 20 to 22.

Let me cite the background of these executions. The three killers stuck up a kosher meat market in the Bronx one Friday night. When it's owner made a grab for a cleaver in an effort to thwart the holdup, the three young thugs gunned him down in a hail of bullets. They then took his body into the meat cooler and hung it on a meat hook behind large pieces of meat, and he was not found for two days. After robbing the cash register, the killers turned off the lights, locked the door, and went on their way, and left no evidence really, other than the empty cash register that there had been a killing. The gun I now show you is one of the guns used to slay the Kosher butcher. It was presented to my father after the execution of the "Cry-Baby-Bandits", by the District Attorney.

The killers received their "nomme

de plume" by virtue of the fact that all during the trial they whimpered and cried.

I hope you will take more than a casual look at this weapon. It is so-called a Colt Super .38 mounted on a Colt automatic .45 frame. This gun uses only copper and steel jacketed bullets and has penetration power adequate to put an automobile motor out of commission. It is a wicked weapon.

Several months later I witnessed the second set of executions. The killers this time had held up a bank, killed a guard, were chased by New York City police over rooftops in a running gun battle, and when finally cornered, the two killers stood off the police for some two hours until their ammunition ran out. One of them was captured on the scene when he surrendered by coming out of the apartment house with his hands in the air. The second got away. Later, under police questioning, the captured killer revealed the identity of his partner.

The night of the execution, the first killer to be captured went to the chair first. When his partner was brought into the death chamber some few minutes later, he grabbed a towel from the hands of one of the guards, spat on the electric chair and wiped it with the towel, then he flung it at the witnesses. At the same time announcing so all could hear, that he did not want the "filth of that blank -- blank -- blank on him." It seems our second killer believe he was about to die because his associate had ratted on him. These two crimes are not exceptional. There are scores of similar murders committed annually.

If capital punishment is not the answer for brutal killers such as the five I have described, then what is an adequate substitute ? I offer also Bruno Hauptman, the Lindberg baby killer, as a further example - what is a substitute for capital punishment ?

As my father maintained throughout his prison career of 35 years, "It isn't capital punish-

ment that's wrong -- it's a substitute that's wrong".

Being close to prisons all of my life, some people say, "Why aren't you in it?" I followed my father's career, and I was offered and tentatively qualified for and tentatively accepted the Assistant Superintendent's position up at Wolcott Prison, and my father found out about it and said, "Harry, neither you / your brother can have a job in the New York State Department of Correction as long as I am Commissioner," and I never followed it thereafter. But my father maintained throughout his 35-years, it isn't capital punishment that is wrong, it is the substitutes, and there is no question, through his long career and my association for 16 years, from the age of 16 until past 30, talking to these inmates, they talk about other crimes naturally, and they had a special word for them, it wasn't sucker, but it amounted to that for any holdup man that would go out with a gun, he said they were begging for it, or he is asking for it.

Let's approach the subject from another angle. I do not believe there has ever been a capricious District Attorney who would frivolously ask for an indictment for murder first degree if it was not warranted. Therefore, let's follow the steps of what takes place after an alleged murderer has been arrested. The District Attorney studies the evidence and decides that he will ask for a murder first indictment, not a murder second indictment, not a manslaughter indictment. After preparation of the evidence, he goes before the Grand Jury for his indictment and ultimately proceeds into court. In Court the District Attorney is ham-strung by the rules of justice. The jury cannot in any way consider the failure of the defendant to take the witness stand as an inference the accused is guilty. Also, the prosecution cannot in any way bring out a prior bad record unless the defendant takes the stand, or through another witness's endeavor to establish good character. It is not an easy road for the prosecution to obtain

a conviction of murder first degree by convincing twelve jurors "beyond any reasonable doubt".

Prior to the adoption of the present statute wherein a jury may recommend mercy in certain murder cases, there were many mistrials and re-trials because there was no alternative for the jury but to bring in an out and out verdict of guilty or not guilty. That is the way it should be today. It is all wrong in my concept that a jury should have the right to come in and recommend leniency, that should remain up to the presiding judge. Then, if the judge, devoid from emotion, decides that a recommendation should be made, then he should have the right to send a confidential, I believe, confidential recommendation to the governor, that he thinks a commutation from the chair to life imprisonment should be in order, but I do not think that a jury should have any right to decide anything but guilt or innocence.

MR. BARTLETT:

Mr. Thayer, do you think the judge

himself ought to have discretion in imposing the death sentence then ?

MR. THAYER: I don't understand your question.

MR. BARTLETT: Assuming there is a finding of guilty in a capital case by a jury, and the judge having made available to him the usual probation report, and so forth, do you think he ought to have the discretion to impose the death sentence ?

MR. THAYER: No, I don't think he should. I think he should go by the law, pronounce the death sentence and recommend to the governor.

MR. BARTLETT: Isn't that an awful burden to place on a man who has been remote from a prosecution from beginning to end ?

MR. THAYER: Yes, you have a point there. I would like to go along with my views.

In my experience as an owner of a small newspaper, I have had the opportunity

to talk to a number of jurors who served on murder first degree trials. In at least three instances these juries have brought in a conviction, but with a recommendation for mercy. When I queried them about how this happened, it developed that nine or ten jurors were convinced the defendant should be sent to the electric chair, but finally gave way to a minority after being in the jury room for 18 to 20 hours. It is my contention that if there is to be anyone permitted to make a recommendation for mercy, it should be the judge who is dispassionate, unemotional, and who analytically measures and weighs the evidence. Therefore, I would recommend that juries have no loop-hole to escape through in deciding the one issue of guilt or innocence. After the verdict has been brought in, the judge, if he believes there is merit for such a recommendation, he could then make a confidential recommendation to the Governor suggesting commutation of the sentence.

I do not approve of the California and

Pennsylvania system now in effect with respect to first degree murder trials, but do believe it is better than the one the State of New York is now functioning under. I repeat, it should not be the function of the jury to decide anything but the guilt or innocence - the matter of penalty in capital cases should not be theirs to consider.

I do not approve of the California and Pennsylvania system for that reason, the period in between the time the jury brings in its verdict and then waits and comes back there is just too much leeway for the possibility of changing their minds, or weakening under emotions, and also the possibility of talking it over with their family or friends and an emotion can change ...

MR. BARTLETT: You mean in either direction ?

MR. THAYER: It could in either direction, it doesn't on the guilt.

MR. THAYER: No, I don't think so, but one that

has been, we'll say, for mercy, we'll say leniency, his attitude may sway another toward it.

MR. BARTLETT: This I understand. You feel the outside influences might have some effect? You would leave this on the judge alone?

MR. THAYER: That's right. I heard Judge Samuel Leibowitz testify in New York before your Honorable Commission. I concur with Judge Leibowitz in the establishment of a commission which would serve to investigate following the conviction. This commission could go a long way through its investigation in preventing an innocent man from going to the chair; and at the same time its creation, I believe, would take away much of the objection some people have for capital punishment on the grounds there is too great a chance at present for an innocent person to die in the chair. I do not agree that there is such a great risk, but Judge Leibowitz's suggestion would be a fine protective step. Like Judge Leibowitz, I do not think that the Governor or Legislature should have any say in the appointment of a commission. I feel it should be done solely by the New York State Court of Appeals.

MR. BARTLETT: Do you make the standards for this commission finding him guilty without any doubt rather than beyond a reasonable doubt ?

MR. CONWAY: Which is Judge Leibowitz ?

MR. THAYER: Find him guilty beyond any doubt.

I go along with that. This should be a point, I suggested, not by the Governor, but by the Court of Appeals on a permanent basis; I think, three or four men, I think three would be adequate. I feel definitely that the only deported powers should rest with the Court of Appeals.

In conclusion, I would like to repeat my earlier question -- what substitute punishment is there which is appropriate for the "Cry-Baby-Bandits", or the other killers I described. If life imprisonment and true life imprisonment is the answer as a substitute, it isn't, you got a verdict of life unless it's twenty to life, or if the Governor commutes the sentence, then it's supposed to be life.

MR. BARTLETT: It's natural life for that defendant found guilty of murder in the first degree, and in a felony murder.

MR. THAYER: That's right, you are correct, of course. They are eligible for parole after 27 years. Now, if you are going to do that, if you are going to take away this deterrent, society is giving every young punk that goes out an open invitation to carry a gun. I know a lot of underprivileged youngsters, I know a lot about them and it is true. I don't know what the population figures are today in a prison. It was that the colored and Italians and Puerto Ricans very definitely pronounced one point, something of the institutions in New York State. I don't know what it is today, but by the same token, it isn't true that they are underprivileged, that they should be given a free hand to go out with a gun like this, because they are taking no gamble if they go to jail for life, if they are sentenced to life, there is always that hope of getting out, and, Gentlemen, you put the "Cry-Baby-Bandits", and you put those other two in Sing Sing or Dannemora, and you turn

your back, it's just like turning your back to a lion or tiger after he has been in a cage for ten years, there's no turning back.

He also is then given a second invitation by society to use the gun, because if he does slaughter one or more innocent victims, he always has the chance of not being caught. Secondly, if he is caught and convicted, why shouldn't he manufacture a home-made gun or knife in prison with which he kills a guard or two and escapes. Now, if he is captured for the second killing, the only punishment is to send him back for a so-called second life term. Gentlemen, I have a long-term prisoner chase me up two flights of stairs with such a knife. I managed to get through a door which I slammed and locked, but it wasn't much fun, and he wasn't fooling.

True life in prison for cold-blooded killers is not like putting a tiger in a cage and throwing the keys away. Ten years later it wouldn't be safe to stand next to the bars with your back turned if you value your life.

I, again repeat, Gentlemen, it isn't capital punishment that is wrong, it's the substitute that is the problem.

Thank you very much for your considerate attention. If there are any questions you care to ask, I will do my best to answer them.

MR. BARTLETT: My one last question. If you are correct that capital punishment is a unique deterrent to potential murderers, don't you think we are being hypocritical as a society in shielding the public from the executions ? If it's a deterrent, why shouldn't we have the pictures of the Snyder girl taken and put in the paper ?

MR. THAYER: Well, I can see your point to that. Actually, physical pictures would deter somebody by seeing it. This is not a pleasant thing to watch, that is for sure, and I wouldn't recommend it to be shown to the public, and I don't think that you have to go that far with it, but I don't think enough people have been exposed to direct prominent contact with inmates of a prison to have

have a real good talking knowledge on this subject.

I agree that we love thy neighbor.

I go along with this and take care of our fellow man, in a sense, but you are not talking about this, you take away capital punishment in New York State, and I guarantee you that you will find many many more homicides, I'm sure of it.

MR. BARTLETT:

Thank you very much. Mr. Klein

MR. WILSON:

My name is William C. Klein.

I am the Chairman of the Rochester Chapter, New York Committee to Abolish Capital Punishment.

All of the Commissioners have done exhaustive reading on the matter of capital punishment, as well as having heard two days of testimony, and are well aware of the issues involved. Therefore, I would like to take this occasion to make a few comments on my experiences in one year's activity of the Rochester Chapter which might be of interest to the Commission.

As responsible citizens, we object

to the State committing an act which we consider as barbarious as it is archaic an act which we would not do ourselves as individuals. On the sphere today I am sure we will continue to present arguments against capital punishment and with more authority than I am able to do, instead I would like to make a few comments on my experiences as chairman of the local abolition group for the past year.

It is my personal opinion based on a large number of conversations, that people would oppose the use of the death penalty. I have acquired this present view through some conscientious learning, either sociallogically or from text books. A. Kessler and Warden Lawes, and Warden Duffy seem to have had the greatest impact somewhere converted when they had to do research on the subject for a high school and college theme. Others were influenced by hearing a debate perhaps or a sermon on the subject. The point I'm trying to make is that abolitionists have arrived at that present attitude by an intellectual approach, and approach capital punishment on practical or rational grounds.

This is in contrast with the instrument, I'm sure, held by many and that more than sentimentality motivates the abolitionists.

Now, one of the differences we have encountered here in Rochester is: to get a lively discussion of the issue. We have tried to start such a controversy on capital punishment by writing letters to the editor and by presenting our views over the radio. All that has resulted was more letters and comments from people supporting our position. We don't have any Mr. Thayer in Rochester.

MR. BARTLETT: Was that a unanimous reaction ?

MR. KLEIN: There has been no answers to or letters to the editor.

MR. BARTLETT: Do you know of any polls taken ?

MR. KLEIN: No, I know of no polls taken.

MR. DENZER: Would you conclude Mr. ~~Wick~~, there was nobody in Monroe County in favor of capital punishment ?

MR. KLEIN:

No, I would not conclude that. I'll

come to that in a moment.

Apparently, most of those who favor retention of our laws will not make public their stand. We should really ask why their reluctance, since when has a status quo been without militant supporters? Surely, they can claim capital punishment is a part of American way of life. Could it be these people are afraid to express their prejudices to life in open discussions? One can't help but wonder if they too feel that there is something basically indecent in snuffing out a human life. The fact that the opposition remains silent is of concern to us because we are unable to get the public involved in the controversy, and this public apathy is at least two results which work against the call as followed by our committee: The public is isolated from the controversy; the public will make no efforts to educate itself on the issues involved, and we are concerned that this commission and the State Legislature may interpret this apathy as to any attempt to abolish capital punishment in New York State.

Now, not only is there a reluctance on the part of those who favor the present laws to present their views, but our committee has also observed a certain reluctance on the part of public officials who are ardent abolitionists to express their views in public for fear of embarrassing their agency or their political party, or for some other such reason. Some of these officials could give what would be considered expert testimony in their professional fields related to the subject of adherence. It would be unfortunate if this commission were denied their testimony. Perhaps some way could be devised that would permit these persons to testify in executive hearings or some way in private.

At the present time Rochesterians appear to be apathetic to the issue, although not particularly hostile. The issue is just not that close to the people. The County homicide rate is lower than that of the State average, and Monroe County has sent only two persons to the electric chair in the past twenty-three years. But, in any event, the issue should be resolved on the basis of

whether or not capital punishment serves a useful purpose, and is morally acceptable rather than on the basis of its popularity with the voters.

MR. BARTLETT: You don't think a poll of any kind should be influence either to this commission or the legislature, do you, Mr. Klein ?

MR. KLEIN: No, I really don't think that a poll should influence the legislature on the matter of whether, let's say, capital punishment is a deterrent or not. I think a poll might be useful to determine whether people think the state has a right to take a life or such a thing as that, but when you get into a technical area, I think, that unless we have had a vast educational process conducted in New York State, the people just would not have the facts on which to base a rational decision.

MR. DENZER: If the poll shows that 99% of the people of the State of New York favored capital punishment, don't you think that should make any difference ?

MR. KLEIN: Either way.

MR. BARTLETT: You should have that both ways.

MR. KLEIN: All right, either way. It should have some effect. I'm not so sure it should have the overriding effect.

In conclusion, the Rochester Chapter of the New York Committee to Abolish Capital Punishment maintains that the many arguments against the continued use of the death penalty, most of which you heard today, far outweigh those to retain judgment laws which join with others from all parts of the State to urge you to recommend to the State Legislature that capital punishment in New York State shall be abolished. Thank you very much.

MR. BARTLETT: Thank you, Mr. Klein. Mrs.

Evelyn Piersol.

MRS. PIERSOL: I represent the local friends meeting, and before I make my brief statement, I would like to say just a little bit on how friends reach a decision on a matter of this kind. In our business proceedings

we have no voting because all our decisions are unanimous, so that, when a proposal is made to the local group that a statement of this kind be presented at a hearing, the statement must be presented in its entirety to the group, and the group itself must unanimously accept the statement.

The following statement has been prepared by Rochester Monthly Meeting of the Religious Society of Friends, 41 Westminster Road, Rochester, New York.

Our fundamental belief in the essential value and dignity of every person leads us to oppose capital punishment by the State of New York, or by any other governing group. We believe there is no crime for which the death penalty should be imposed, and that it is as such forbidden to society to deprive a human creature of life, as it is forbidden the individual to do so. Respect for human life is taught not by the execution of one human being, but by the care and protection of all.

As individual Quakers and as a group, we feel a deep sense of religious and social responsibility for correcting the ills in our society which produce the criminal. We feel also a responsibility to help the criminal become a respectable member of society, if possible. We support the present trend in the penal system toward rehabilitation of the wrong doer and believe this trend would be strengthened by the abolition of capital punishment.

We suggest as an alternative to capital punishment, an indeterminate sentence with the possibility of parole. During the period of his rehabilitation, we believe the wrongdoer should have the opportunity to help support his dependants, and to make restitution to those whom he has wronged. Thank you.

MR. BARTLETT:

Thank you, Mrs. Piersol. I would like the record to reflect that we were joined this morning by Assenblyman William Rosenberg and by Assenblyman Paul Hanks.

Mrs. Viola Magar.

MRS. MAGAR:

Gentlemen, there are many reasons why I am against capital punishment as an individual. However, I think these aspects have been adequately covered by the various representatives of the professional field who have spoken before you today. Therefore, I will confine myself to those reasons which I feel are pertinent to my viewpoint as a mother.

Let us begin with the home. We start at an early age in our children's lives to teach them those guide posts that distinguish right from wrong. We attempt to instill in their minds a desire to understand, cooperate with, and communicate with their fellow human beings. Then we send them to church where we are confident these basic rules will be reinforced. Finally, the school provides the instructive framework and supplements the overall balance of behavior and discipline.

By these three avenues: the home, the church and the school, we strive to train and guide our youth so they will be able to assume the role one day of responsible citizenship. We want them to use

the morals and knowledge we have studiously implanted.

It does not seem unreasonable, therefore, to expect the laws which govern our society to coincide with these three branches of learning. However, we find in paralleling the present laws relating to capital punishment with the teachings we affirm, there exists a conflict. What we are endeavoring to accomplish is negated by the practical application of that law.

Let us compare: In the home we believe guidance is more beneficial than punishment, that punishment is not a deterrent in itself and should never be drastic. A parent who must administer the child's punishment will not feel guilty or ashamed if he is mindful of the end result and understands the behavior patterns of the child.

Now, our penal system applies this element of understanding and theory in reverse. The law operates contrary to the methods employed advantageously in the home. Capital punishment is a

drastic, final punishment which carries with it the overtones of guilt and shame--else why do we perform this act behind closed doors ? Surely, if we really believe this method is a deterrent and a just correction, we should encourage our citizens to witness this act of justice, and bring their children , satisfied by this exhibit of retribution we are strengthening their moral education. But we do not do this. It would appear that unconsciously we acknowledge by our secrecy that our action is brutal, immoral and ineffective.

As to the role of the church, when we examine the teaching of the church with the justice, we exact in our laws, we find still more conflict. The church has been preaching for generations the evilness and futility of revenge. But this has not influenced the State. We have not been guided by our spiritual advisors. Can we then expect our children to respond to our religious leaders when they observe our laxity in applying these concepts and ideals into our legislative programs. This inconsistency does not fortify the moral fibre of our children.

The last phase of our children's education comes from the school which supplies the academic structure. Here the child is encouraged to examine new facts, keep an open mind, explore the ever expanding areas of knowledge. They study the progressive methods and gains their nation and state made in comparison with the other nations and states throughout the world.

The school, like the home and the church, expect the student will use these tools of truth, knowledge and research in their daily lives. And what about ourselves ? Do we avail ourselves of the tremendous advances that have been at our disposal in the fields of psychology, sociology, criminology, and psychiatry ? Has all this knowledge been utilized and incorporated in our laws ? I think not. The statute which maintains capital punishment is obsolete and barbaric examined in the light of the sciences. Our children can ascertain from this how well we learn our lessons,

In summation, I believe, when we contemplate the tragedies that befall mankind, which we are helpless to alter, we must not tolerate those laws in our society which do not correct human behavior, but add to mankind's misery and injustice. I believe we CAN bring into our laws the sciences, the morals, the humanity that add stature to a responsible society. And by doing this, we can create a system of laws that are synonymous with our teachings that we expound in the home, the church, and the school. Thank you.

MR. BARTLETT:

Thank you, Mrs. Magar. Mr.

Walter Carroll.

MR. CARROLL:

I am an Editor for the Syracuse Post Standard.

In twenty years of newspaper experience I have seen my share of violence and death. My thousands of colleagues have seen it too...murder, suicide, accident and disease; and we have learned that a true definition of tragedy cannot be arrived at merely by a recitation of the facts of death. There is neither

poetry nor philosophy in the revelation of such facts.

In all the years of newspapering the most discouraging, humiliating, horrible things I ever witnessed was a double execution. Needless to say, the experience would have been just as hideous had there been only one life involved.

In March, 1952, after a long wait on death row, these men, both convicted of rape and murder, were led into the gas chamber at Central Prison, Raleigh, North Carolina, and strapped into chairs. By remote control, a pound of cyanide pellets were dumped into a vat of sulphuric acid, and the gas danced up around them. While doctors counted off their heart beats, the witnesses watched the twitching hands and feet of the victims... saw the saliva drip from their death muzzles... watched their necks and chests turn red... saw them finally grow limp... saw them unstrapped and placed in hearses.. in the name of the citizens of North Carolina.

Said the Warden of the South Carolina

prison, where they use electricity to kill: "Your way leaves them looking better, but our way is faster."

When we filed away from the chamber and out of the prison, we went away with the conviction that capital punishment is uncivilized - indefensible - morally wrong.

Christians, at least, are supposed to believe while there is life, there is hope. When you kill a man... and if you do not actively oppose capital punishment, you help kill the man... you say there is no hope. The prayers then that are offered to the condemned become meaningless, and those in whose names he is executed become somehow non-Christian.

As a result of having witnessed the killing, or the murder, if you will, of these two men, I am against capital punishment; and I urge legislation that will do away with it. I believe that a transition toward psychiatric rehabilitation is an answer.

For residents of New York State who have not witnessed an execution, we recommend a

reading of John Bartlow Martin's "Butcher's Dozen".

In it Martin describes an electrocution.

MR. BARTLETT: I'm curious about one thing. There doesn't seem to be a great deal of editorial comment on capital punishment. Do you find that to be true ? There has not been much editorial press on this question.

MR. CARROLL: I don't think there has been .

MR. BARTLETT: How do you account for it ? It surely is an issue that grips public interest ?

MR. CARROLL: People stay away from it like they do with the race issue. It doesn't make the advertisers happy, apparently.

MR. BARTLETT: You said something about you think they duck ?

MR. CARROLL: I think they do duck. I will be willing to answer any questions you might have to the five reasons why I believe it was murder.

MR. BARTLETT:

You mean to the specific ?

MR. CARROLL:

To the specific case.

MR. BARTLETT:

I think you made your point very clear

on the matter. Thank you. Mr. Carl Salzman.

MR. SALZMAN:

Good afternoon. My name is Carl

Salzman. I'm a medical school student at the University

and College of Medicine at Syracuse. I'm here to talk

against capital punishment in a rather direct manner.

This is because I feel much of my opinion has already

been expressed.

Many people have told you today

their feeling of dignity of a human life and why it

should not be taken away. I'm just going to say a very

very few words how I personally have come to this

conclusion.

This conclusion came about by a

personal experience that I had last year as a third-year

medical student. It involved the death of a person I

did not know, or had no knowledge of. I am telling the

story to you not to be melodramatic but because I was deeply affected by this experience, so deeply, in fact, that it helped shape an opinion that I will not set forth; namely, that human life is too precious to be lost or taken away.

I was spending my first evening on call in the hospital emergency room along with two other third year medical students, and an intern and resident. A young man, about thirty years of age was brought in because he had been in an automobile accident. When I saw him, he was conscious, very pale, and in severe pain. There were no other visible signs of injury. It was determined that he was severely hemorrhaging, and an emergency operation would have to be performed immediately in order to save his life.

The situation was thus clear as we entered the operating room. It was a thin line between life and death for this man who none of us knew. And everyone in the room.. a surgeon, the resident, and the intern, and the three students -- knew well that we would have long hard work ahead of us. The surgeon

operated on the man's abdomen and quickly saw that the patient was indeed hemorrhaging severely from his liver, spleen and pancreas. Great quantities of blood would have to be given to the patient, and it became my job to stand by the operating table and pump blood into the man's veins. He had lost too much blood for his heart to work efficiently, and it was necessary to pump the blood in by hand.

For four hours I pumped blood into the patient, but as fast as I pumped it in, he lost it in hemorrhage. Numerous surgical attempts were made to short-circuit the sites of bleeding which was the only hope left for the man was hemorrhaging to death. And we were all working without regard to physical exhaustion because a life was at stake.

Then the surgeon announced that the man had died and that I could stop pumping the blood. I could hardly believe that he spoke the truth. It seemed incredible to me that this man who had been alive, and to whom I had talked on a few hours

before, was now dead. Through the four hours that I was working, I secretly felt that the man would not, could not die for he was young and was in a modern hospital operating room with an excellent surgeon, and no shortage of assistance or blood or equipment. But he did die. Under my eyes and hands, and under the eyes and hands of the surgeon, he had died in spite of us. I left the operating room stunned and deeply moved.

That is all there is to the story. It is a story that almost any medical student could tell, for it is repeated frequently. But I found in this experience a valuable lesson, human life -- any human life -- is of inestimable value and should be cherished for it can easily be lost. And it is simply too precious to be lost or to be taken away.

MR. BARTLETT:

Thank you. Dr. Francis Durgin.

DR. DURGIN:

My name is Francis Durgin. I'm a psychiatrist. I'm instructing psychiatrist at the New York State Medical College at Syracuse, and I'm

Senior Psychiatrist of Health and Education of Syracuse, and I speak as a private citizen.

Now, for an individual person to purposely kill another person for any reason other than the immediate defense of some other life, including his own, is popularly recognized as a murder. If this killing is premeditated, it is popularly recognized as the most serious kind of murder. It makes no difference whether the killing is done for the simple joy of killing, as in vengeance, or for some more practical reason. It also makes no difference whom specifically is killed. Whether the victim is a productive public servant, a social recluse or another killer: In each case, it is equally murder and prohibited by law. Nor may the action be taken by a group of persons, however large or small. If a group of persons are equally involved, they are equally guilty of murder.

By what principle then do we, as a perfect social group, the state, permit ourselves

action against which, as individuals and as smaller groups, we evict such vigorous prohibitions ? I hope to show that we accomplish this by a logical inconsistency against which we close our eyes. Either individually or as a group we may kill a person for one of only two possible reasons. We may do it either as an end in itself, or as a means to some other end. This closes out the logical possibilities. In the first instance, we desire nothing more, nor less, than the death of our victim itself. Whether it be a vengeance killing, a lust killing or something similar, we desire this death as something good and satisfying in itself.

It pleases us to kill him. We may justify ourselves by asking that he has no right to life, that it is just retribution for some crime, or in any number of other ways. Whatever reasons we give is logically inconsequential. For whatever reason, we chose his death as something inherently desirable. While this possibility is logically defeasable, I personally consider it barbaric and believe that most citizens of our state would also, if we clearly adverted

to what we are presently doing. If this is why we are practicing capital punishment, then as a political body, we are rendering vengeance and are glorifying vengeance with the majesty of law.

The only other possibility in killing members of our group is as a means to some other end than the death of our victim itself. With the exception of the care of immediate, personal life-saving action, this possibility is logically indefensible. To say that we are killing only in order to save lives is contradictory. To say that we are killing for other ends is to deny the primacy of life as that human good which makes all other human goods possible. When we kill another man, if it is done neither in vengeance nor as an immediate life-saving act, it reveals a cheap regard for human life that is unrealistic, even if we profess to do it for noble social purposes.

As an example -- we might say that we kill our murderers in order to discourage others from murdering; but this is to choose an immediate evil in order to discourage a remote one, even if this reason

were proven statistically valid. It might be noted that if this were our purpose, it would not even be necessary that our victims really be murderers. It would be sufficient if they were generally considered such, whether by some juries' or witnesses' mistake, or even by some design. Another example would be to say that we kill our murderers to prevent them from murdering again. Even if it could be proven that they might, this is not necessary: permanent incarceration would do as well. Furthermore, if we operate on this principle, that is - to kill a man not because he has murdered in the past, but because he might murder in the future, who will his victims be ? If we kill for any retribution, that is, vengeance, we are caught in a logical fallacy concerning the value of human life.

MR. BARTLETT: Do you suggest that as an alternative, Doctor, for capital punishment ?

DR. DURGIN: If necessary.

MR. BARTLETT: Depending on the individual case you mean ?

DR. DURGIN: : Yes.

MR. BARTLETT: You wouldn't suggest that we institute mandatory life sentence for capital punishment in all cases ?

DR. DURGIN: No, I believe that in actual fact we deceive ourselves. We disclaim vengeance as our purpose in capital punishment and profess noble social goals. These goals, however, are logically inconsistent with capital punishment, and, furthermore, are impractical and dangerous ideals in themselves. It only can really / be justified on the basis of institutionalized vengeance.

The question that is before them, if we are logically consistent and honest with ourselves, is whether or not we have achieved a state of civilization such that we are willing to forego vengeance. On this matter, I can speak only for myself.

Thank you.

MR. BARTLETT: Thank you, Doctor. Professor Cain.

PROFESSOR CAIN:

My name is Edward Cain, and I'm

Associate Professor of Government at the State  
University of Brockport.

Capital punishment is not simply inhumane, it is far worse. It is bad law. A good criminal law should be considered just, efficacious, and deterrent. Capital punishment fails all three tests. It is not just because it troubles our conscience as no other law does. We are in effect asked to repeat the temptation of Adam who believed that he too could tell the difference between absolute right and wrong. Adam was denied the right by a God who reminded him that man could never possess such knowledge. Yet we gag on this apple every time we are asked to pass absolute judgment on a man's life. The strains of infallibility may be measured by the 15 men mistakenly executed in the State of New Jersey alone.

Any decision which automatically precludes revision or remedy is a venture in pride or vengeance, but not in justice. The fear witnesses feel

at an execution is not merely for their own lives. They are sensing the horror of knowing that this was done against everyone's instincts. With grotesque logic, we presume to affirm life by denying it. Justice becomes a travesty.

Capital punishment is seldom efficacious law. When Britain's "Bloody Code" listed 230 capital offenses, juries were not convicting merely because the law said that stealing turnips was a capital offense. In 1801 a thirteen-year old boy was hanged for stealing a spoon, but generally juries rebelled by failing to bring in convictions. This was one way of altering the law. We do the same today. In a twenty-six-year period in New York State, only 2 1/2% of the homicides ended with executions. The rest either evaded the law or benefited from indulgent juries.

MR. BARTLETT:

Excuse me, Professor. Your

2-1/2% figure would include all homicides ?

PROF. CAIN:

All homicides.

MR. BARTLETT: Manslaughter and lower degrees of murder and everything else ?

PROF. CAIN: Right. How equitably can this law be carried out if one murderer can afford expensive legal aid and psychiatric counsel to pry for loop-holes, and another cannot ? Unless the defense's resources at least equal those of the prosecution, dare we claim an equality of condition in carrying out this contest for life ?

If convictions are avoided by reluctant juries or secured because of an impecunious defense, we may well question both the effectiveness and the equity of the law.

How many juries would convict in those 16 U. S. states which can still legally execute children from the age of seven ? Too severe a punishment might possibly boomerang. A murderer may be more seriously deterred by the absolute certainty of a relatively mild punishment than by a one in ten chance of getting the death penalty.

In the 18th Century, England public executions of pickpockets had to be abandoned because too many spectators at the executions had their pockets picked. No country equalled England's catalogue of capital offenses. While Europe averaged twelve executions a year, London had 149. History past and current offers no evidence that capital punishment decreases homicides. A contract of five comparable abolition states with five retaining capital punishment showed that over an eight-year-period, the punishment states ran 56.5 homicides per million population versus 37.9 homicides for the abolitionist states. (Barnes, H. E., Society in Transition, ch. 17. States were, New Hampshire, Connecticut, Ohio, Missouri and Indiana, vs. the Abolitionists, Maine, Rhode Island, Michigan, Kansas and Minnesota. Where are the studies to prove the contrary ?

Capital punishment is bad law and remains a tragic and pathetic example of capital vengeance. It masks the willful exasperation of the community. It is in effect the child's "Then ~~the~~ ... can't play anymore !"

MR. BARTLETT:

Thank you, Doctor. Mr. Sterling

Weaver.

MR. WEAVER:

Chairman Bartlett and Members

of the Commission, I am here today as the representative of the First Unitarian Church of Rochester, some 500 citizens strong, who have asked to look into this problem and see what they thought about it. The committee for social action of this congregation selected this issue some time last January and proceeded to investigate the pros and the cons. We had a very difficult time with the proposition that capital punishment be retained. We did our individual kind of research. We contacted our local directors, we contacted the local members of the Greek Institution, and the leaders of those institutions, and in so doing, we were unable to find, as Mr. Klein has already earlier pointed out today, people who are willing to come out and state for the record that we were in favor of the retention of capital punishment.

Once we had gathered together all of the material that we could find, we presented two written statements to the congregation through the

weekly bulletin that goes out through the church office; one in favor and one opposed. Following this, we took one Sunday at church, using the whole church service for the discussion of this issue, again presenting both sides of the case, and in attempting to ask questions and obtain questions from the floor, I think, that members of our committee and members of our congregation expressed silently what we have found to be the case, and that is the general apathy in the absence of any clear-cut feeling about it one way or the other.

I think this perhaps can be best summed up by one statement which we made in our stand that said, perhaps that capital punishment should be retained, that is basically, that there is no reason we could exercise by repealing capital punishment. That effected a small number of persons that our time can better be spent somewhere else. Following this presentation, we had a congregational meeting, and one of the topics for discussion was this issue, having been exposed to the extent that they were, the congreg-

ation voted overwhelming to recommend abolition, and to suggest that we present our views to this Commission.

MR. BARTLETT: Can you tell us approximately what the proportion was, roughly ?

MR. WEAVER: I do not have the roll call vote at this time. Roughly, I would say that it might be a vote of about 2% of the people were in favor of retaining capital punishment.

I think the experience of the congregation and of the committee is perhaps typical of the entire population of the state, and that is, that you start from the point of view of absence of any concern and general apathy that when you are, whether or not you are forced to be exposed to it, and when you are exposed to the arguments in favor or opposed to capital punishment, then that one conclusion can come of it, that an educated electorate will vote in favor of abolition.

The problem here is very severe and how do you avoid and prevent, and get away from their apathy...

MR. BARTLETT: I don't think this ought to be resolved by referendum.

MR. WEAVER: I don't think it can be, the educators will precede the referendum. Again, even if you make it available, you have trouble getting the people in to vote. I think if there were some way to propose a referendum by education and to be sure it was successful, I think, the parallel would follow very closely as of that of our congregation.

It seems, perhaps, the only way under the present circumstances is to recommend abolition of capital punishment. This, then, would give the person who felt strongly enough to favor capital punishment, the opportunity to step forward or forever hold their peace. I do not feel obliged, at this time, to go into the reasons that we discussed on the abolition of capital punishment. It may be necessary, as we discussed, to suspend capital punishment for a period of time. Perhaps, a trial period of time in which capital punishment was not used.

MR. BARTLETT: You mean to declare a moritorium  
on it ?

MR. WEAVER: Declare a moritorium.

MR. BARTLETT: Did you ever give it any thought  
to the possibility of convicted first degree murder  
defendants piling up in the death house during the  
moritorium. What would happen at the end of the  
moritorium if we were to re-impose capital  
punishment ?

MR. WEAVER: I don't think this could be done  
retroactive.

MR. BARTLETT: You mean temporary abolition ?

MR. WEAVER: Temporary abolition. In substance,  
then to support the recommendation of our congregation  
that capital punishment be abolished in New York  
State. Thank you.

MR. BARTLETT: Thank you, Mr. Weaver. Mr.  
Ralph A. Milligan.

MR. MILLIGAN: Gentlemen, I am Ralph Milligan, who asked to come before you as an individual, but since then, I have been authorized by an Independent Political Forum to come as their representative.

MR. BARTLETT: Is this a Rochester group ?

MR. MILLIGAN: This is a Rochester group, and I am Chairman of it.

I am chairman of the Independent Political Forum, an organization which works toward peace and disarmament, and tries to keep our civil rights from being abridged.

A meeting was planned for the evening of Wednesday, December 5, at which time we decided to consider the question of capital punishment. Our news sheet with this information and an invitation to the meeting was sent to the membership. At the meeting the following resolution was moved and seconded:

"WHEREAS, the preponderance of

scientific evidence holds that capital punishment is not a deterrent to crime, and

"WHEREAS, rehabilitation and not punishment should be the goal of modern penal practices and

"WHEREAS, the State's futile use of violence brutalizes society. Therefore, be it

RESOLVED, that the Independent Political Forum urge its members to actively work toward the abolishment of capital punishment in New York State, and to make its position known to the responsible state officials".

After a period of discussion, the resolution was adopted by a unanimous vote of those present. From a membership of about 200, the meeting attracted about 35. As we are not a pacifist organization, I feel that this indicates that a large number of people in Rochester are in favor of the abolition of capital punishment.

We know that capital punishment has been used as a deterrent for a great number of years,

and has failed to cut the crime rate. This fact has not been too hard to establish. However, the claim that a few people may be deterred by capital punishment is difficult for one to believe not to be true. But, if there are such people, how do you find them, and which form of capital punishment actually deters them ? Can we afford to have the hangman's noose for one, the gas chamber for another, and all the numerous types for others who would murder, if not deterred by some special type that might be made available ? This shows the absurdity of trying to deter each individual by special means and, therefore, rules out the deterrence principle.

With the knowledge that capital punishment is not a deterrent to crime, we feel that the State once having the criminal under their complete control, should not take his life. The State certainly does not do it to defend itself or its citizenry. It must, therefore, commit this deed in a revengeful spirit knowing that it will only raise in other people an inner feeling of the rightness of violence.

As a group, we are trying to find means and to persuade people and states to use those means to overcome the use of violence. Even in time of war it has not been customary to kill the prisoners of war, but only those who are still in a position to continue killing.

If we are to have our civil rights upheld by the state, then it should not be minority groups that are victimized by the state when they commit a crime now punishable by death. However, in our own state minority groups are the ones that receive capital punishment, as their lot, whereas the larger number of criminals always conclude that, with sufficient cash, he can actually buy his way out of the death chamber.

We feel that justice should be the right of every person, and as capital punishment is the most unjust of all forms of punishment, we believe it should be abolished.

MR. BARTLETT: Mr. Milligan, do you have any figures to indicate that the percentage of those people executed who are from minority groups exceeds that percentage of major groups committed by the same minority groups ?

MR. MILLIGAN: Well, I repeat that ...

MR. BARTLETT: Is it your contention that there is some disparity between the percentage of those executed who are from minority groups as compared to the percentage of those who commit major crimes which are from the minority groups, especially murder ?

MR. MILLIGAN: Yes, you are asking whether the number executed is greater or less ?

MR. BARTLETT: In proportion.

MR. MILLIGAN: As to the proportion, as to the number of crimes committed, I do not have that.

MR. BARTLETT: To this discussion of discrimination, now, I'm wondering whether you are suggesting a discrimination by society in a sense that this group is

underprivileged, produces the criminal, or are you suggesting a discrimination by the Courts and the judges, and the juries, in fixing the death penalty here ?

MR. MILLIGAN: I think that this is a case of discrimination in the case of the people in the minority groups not having the money, as I pointed out here, to hire lawyers.

MR. BARTLETT: You know, of course, in all capital cases paid counsel are provided ?

MR. MILLIGAN: That's right.

MR. DENZER: You are assuming in this proportion that if 80% of people executed are from groups X and Y, isn't it possible that the 80% of the capital murders were committed by groups X and Y, if that is the case, there is nothing shown by your figures unless we could prove that considerable fewer than 80% homicides were capital homicides were committed by X and Y, your figures mean nothing. Isn't that so ?

MR. MILLIGAN: That would be true. I have not tried to bring such figures to the Commission today, and I haven't them in my mind. So, I would not try to say one way or the other. Thank you.

MR. BARTLETT: Thank you, Mr. Milligan. Mr. Dady.

MR. DADY: Gentlemen, I am Roger Dady, a minister of the Richmond Avenue Baptist Church in Buffalo, and I'm here speaking for myself. I can't tell you what percentage of my congregation would be behind me in the stand that I take in this particular issue, but I do feel that the people in my congregation are open on this issue and can be led. They don't have the same emotional reaction to leadership in this particular social concern that they might have on some other social concern like discrimination and housing.

Most of the major denominations have taken a stand against capital punishment. I do not want to suggest that these resolutions represent any

grounds on the local levels. These resolutions and these statements are made by the leadership in churches and represent them rather than the congregations.

What I have decided to do is summarize ten positions, ten arguments against capital punishment. I will make them as brief and simple and clear as I can, and really what it amounts to is kind of what some of the others have already said. I thought I would list them, so, that is what I am going to present to you now.

#### WHY CAPITAL PUNISHMENT SHOULD BE ABOLISHED.

(1) Innocent men have been executed under this system, Human justice is imperfect. Because we know our fallibility, we ought to stop at the point of imposing the death sentence in administering justice.

(2) Capital punishment is a penalty that cannot be undone, once it is carried out. Once a life is taken, it cannot be given back. The act is irrevocable.

(3) The sacredness of human life is best protected by substituting life imprisonment for capital

punishment. The uncommon value of individual life is acknowledged when the state refuses to take life. Dangerously irresponsible people can be separated from society without taking their lives so that all life is revered.

(4) The death penalty is not informative. When imposed, all avenues to reform are closed. It negates the possibility of rehabilitation. The second chance or the thousand and one chances are withheld.

(5) Justice demands that the lawbreaker as well as society explate (make up for) the crime. When the state takes a man's life, it cannot compensate for what has been left undone in the lawbreaker's life. Society is the first and chief criminal, and so shares the guilt for crime. When the state imposes the death penalty, it refuses to admit its own participation in the crime through the lovelessness, the impossible conditions, the climate of war in society. It rejects its corporate guilt. It assumes a self-righteousness damning to itself.

(6) It is not a deterrent to capital crimes. One of the most recent comprehensive studies of the

experiences of the states which have abolished capital punishment in the United States and 36 foreign countries was made from 1948 - 52 by the English Royal Commission on Capital Punishment. The conclusion reached in this study is that "there is no clear evidence in any of the figures we have examined that the abolition of capital punishment has led to an increase in the homicide rate, or that its re-introduction has led to a fall."

(7) Capital punishment diminishes the certainty of punishment. Without capital punishment, more convictions are possible with fewer delays. It is a common experience that juries often will not convict when they know the penalty will be death. Capital punishment gives juries an unconscious excuse for acquitting a guilty person.

(8) Capital punishment deprives our judicial system of having many of its most able and conscientious citizens serve on juries. Many citizens are excluded from jury duty by giving an affirmative answer to the question, "Do you have any conscientious

scruples against inflicting the death penalty ? "

(9) Justice is notoriously unequal when it comes to the death penalty. A person in one section of the country may pay the supreme penalty, while a person in another part of the country convicted of a similar crime under similar circumstances may "get off light". The poor, the ignorant and Negroes have the death penalty disproportionately imposed on them. Unequal justice in the matter of life and death is reason enough for the abolition of capital punishment.

(10) The possibility of the death penalty heightens the sensationalism in a trial and adversely effects the administration of justice. Furthermore, the publicity surrounding a highly sensational trial may result in more murders and crime.

For these reasons I believe capital punishment should be abolished. Before sitting down I would like to comment on just one of these arguments. I feel, perhaps, as the strongest, and that is, that justice demand it in the lawbreaker as well as society in some sense, atonement for this

terrible crime of murder. Somehow, in our system of justice we select the final hinge in the causes of and charge him with the complete crime crime/and in the case of a murderer, capital punishment, he is the one whose life is ended.

Now, I think it has been said here before, I'm sure you gentlemen agree, that in some sense the citizen has a responsibility, in some sense we have a corporate guilty. Society has a certain guilt and responsibility for ..

MR. BARTLETT: There is nothing peculiar about murder in that regard, isn't this true about all crime ?

MR. DADY: Yes, there is, but there is this peculiar thing about murder; well, capital punishment. When the person's life is taken by the state, the state can no longer atone or expediate or help to make up for that which has been missing or lacking in the person's life that has been taken. Neither can the person whose life has been taken do the same. He has no possibility of atoning. It seems to me that every person has an inalienable right to atone for

crime and it also seems to me that society or the state in this case, when they take a man's life, is being just a bit hypocritical not accepting some of the blame, at least for this crime. It seems to me this is a pretty strong case, at least from my point of view, for the abolition of capital punishment.

Thank you.

(WHEREUPON AT THIS POINT THE HEARING RECESSED FOR TEN MINUTES. RECESS WAS HAD FROM 3:30 P. M. TO 3:40 P. M.)

MR. BARTLETT:

Ladies and Gentlemen, we will

proceed with the hearing. I would like to ask to be sure that everyone who wants to be heard will be given an opportunity to speak. The people I have yet to be heard are: Mr. Napier, Mr. Neuman. Is Mr. Neuman here ?

MR. NEUMAN:

Yes.

MR. BARTLETT:

Reverend Grove and Mr. Michaels.

Are there any others who have indicated that they wish to be heard ?

Mr. HUGHES: Yes. My name is Reverend Richard Hughes.

MR. BARTLETT: We were looking for you all day Mr. Hughes. You may as well start off the batting order for this session then.

MR. HUGHES: I'm sure I do not deserve that privilege, but I appreciate it nevertheless.

Gentlement, I have been in the most embarrassing situation for the last twenty-four hours, for within the last twenty-four hours I lost some important documentation. I am sure the documentation I was going to present in support of my argument is well known to all of you. I am not going to say anything I could not document, and I've lost my documents.

My name is Richard Norman Hughes, I am an ordained minister of the United Presbyterian Church in the U.S.A. I am currently serving as Executive Director of the Rochester Area Council of Churches.

I wish to state to the Honorable Members of the Temporary Commission that I am here on my own responsibility speaking as a private citizen.

I have asked for a brief period of time to add my voice to those who are pleading for abolition of the death penalty in relation to capital crime. I believe the term used is commonly called "capital punishment".

I plead for the abolition of capital punishment on no new or novel grounds, and I assure the members of the Temporary Commission that I will be brief in summarizing the reasons for my position.

In 1945, while serving as a Chaplain Interne at the House of Federal Detention on West Street in New York City, I had occasion to counsel with a deeply depressed inmate who had attempted suicide by slashing his wrists, and then had suffered a mild cerebral hemorrhage, though he was a man of only thirty-three years of age.

Over a period of several months, through privileged confidence, I learned much about this man, whose career sorely justified the journalistic cliché, "a hardened criminal". His depression was apparently due to deep feelings of guilt and anxiety over the impending death in the electric chair, (in New York State) of two men who had been tried and found guilty of murder. He swore to me that the two men, (whom he did not know) were innocent of the murder for which they had been convicted, and that he knew who had committed the crime and the motive and circumstances under which the crime had been committed. He could not bring himself to help save the innocent men, partly out of a degree of concern for his own personal safety, but tragically, more because of the peculiar code of certain criminal types who somehow convince themselves that you don't 'squeal' or 'rat' on another member of the sociopathic fraternity. Yet, he felt guilty enough to experience for two months a deep depression. The last of the two men had died in the

chair moments before I was told the real reason for the depression of this inmate. Although I am sure that the Temporary Commission takes a dim view of the so-called 'emotional' view of the capital punishment issue, I should like to say that my emotions were much involved in hearing this just-too-late-to-do-any-good-at-all statement from that inmate back in 1945. It caused me then, as it does now, to believe that the risk of condemning one, just one person innocent of capital crime to capital punishment, is enough to determine upon its abolishment in a civilized state. The adverse side of the argument, that some guilty of willful capital crime have gone unpunished to their graves, or have been jailed for brief periods of time on some charge like income tax evasion, is to me further argument for the abolition of the death penalty. May I say, I cannot go beyond this without certainly violating the private confidence, although after 17 years, you don't squeal or ~~rat~~ on another member. I never understood this, but it was true in this case.

MR. BARTLETT: Mr. Hughes, were you satisfied at that time, or did you ever attempt to make an investigation to determine the veracity of it ?

MR. HUGHES: Yes, sir.

MR. CONWAY: In what way did you corroborate him, Mr. Hughes ?

MR. HUGHES: There is nothing I could say without violating the code as I do dare as Chaplain. I'm sorry, that is private confidence.

MR. DENZER: Was this the case where the people's proof depended largely on a dying declaration ?

MR. HUGHES: Gentlemen, the man was an accessory to the crime. May I unquote there ? May I also add that during that same period of seven months, the Chaplain during the internship, confessions that involved murder, although those who were making those confessions were not incarcerated on that charge, nor would they be, as far as any of us knew at that time... Now, the following are my personal beliefs:

(1) that on occasion those innocent of capital crime have received the death penalty.

(2) That the fear of capital punishment is not a deterrent to the commission of capital crime.

a. Crimes of passion obviously blind one to either moral or prudential restraint.

b. Sociopathic or criminal types are always sure they will not be caught.

(3) That capital punishment obviously denies any opportunity to rehabilitate those convicted of capital crime.

(4). That the death penalty tends to be visited upon those who are poor.

(5) That the death penalty is basically punitive and vindictive.

I admit that the question that arose in my mind as to whether I should appear at all today unless I could claim to represent a large number of people because in the final analysis, it is the sentiment of the largest number of people that will determine whether we eliminate the death penalty in New York

State. Vox Populi, Vox Deo!

I could only say to myself that appearing before you is something which I have needed to do out of my own conscience and what I believe to be the Will of God in relationship to this concern. We don't have to kill a convicted killer -- we want to and that is our sin. We could incarcerate him life... we could attempt to rehabilitate him - for once convicted he is at our mercy, a pawn of the State.

In spite of the frightful destruction of human life which has taken place in our generation and the threat to human life which hangs over the heads of all humanity in the form of nuclear war head at the tips of modern rockets, I believe it is of the deepest importance in areas where we have some measure of control over events and lives to prove by our deeds that life is still precious to those who hold it and to Him who gives it; that retributive justice (an eye for an eye, and a tooth for a tooth) is archaic and in the light of present knowledge immoral; that we recognize human justice is too fallible to justify the death

penalty for capital crime. Thank you.

MR. BARTLETT: Thank you, Doctor. Mr. Napier.

MR. NAPIER: Gentlemen, I am Robert Napier, practicing attorney here in the City of Rochester, and also a member of the Rochester Bar Association, the New York State Bar Association, and have the good fortune to be on the Committee of the New York State Bar Association relative to the Penal Code and Criminal Procedure.

I speak here, however, solely as an individual, and as a member of the New York Committee to Abolish Capital Punishment. Now, I have spoken on this subject in front of groups varying in size from five people to one hundred and fifty. The most recent talk that I gave was this past Sunday in front of members of the Third Presbyterian Church, at the Johnson House, here in Rochester. That, of course, is a speech that I could now give to you. I am not going to give it to you. It embodies things that you have heard here today. It does not make it

less weighty or less important in my opinion, because it is repetitious. The arguments I think are in favor of the abolition of capital punishment.

I would like to bring to your attention a particular quirk, perhaps, of this problem. I can only speak personally as all of us can when it comes to a subject such as this.

I have had the good fortune or misfortune some six years ago to be asked by one of the judges to take an assigned case for felony murder. I tell you, gentlemen, the experience is one I would not want to go through again. I am afraid I would have to shirk any duty as a practicing attorney if I were so requested in the future, and I would only do so because of the finality of capital punishment; and as such, to take the assignment to investigate it as I did, to go south as far/as Birmingham, Alabama, to get the background of an individual to be assured in my mind as every questions that this man was legally sane. There were many factors for which he should not be sent to the electric chair. It was an experience that I

will never forget, an experience that I do not want to undergo again. I'm quite sure I would not feel this way if the worst thing that could happen would be life imprisonment and/or other penalties. I don't know if any of you have ever had that experience. I will assure you that it was most heart rendering when ultimately a good result was obtained from a standpoint my client was being sent to prison, he was not sent to the electric chair, but as long as that possibility was there, I do not want to undergo it again. I would like to say a word as an individual practicing Roman Catholic. I would like to quote you from the "Commonweath". The independent Catholic magazine, an article written by Robert Hovda for which he said. "Reverence for life as the Christian's sluggish awareness that when he confronts another man or woman, he confronts Christ, the Son of Man, the second Adam. Reverence for life as the intuition that we are not so isolated from one another's guilt or goodness, that we have a right to cut these mortal ties. Reverence for life as the understanding that,

since each of us is invited to share, for all eternity, the life and happiness of the Holy Trinity, this life is more, not less, sacred and crucial and important."

This mortal span is all the time we have for choice. And it is much too easy to say that, knowing the time of his death, the prisoner has ample opportunity to prepare. A state of shock is not fertile ground for faith. Nor can the external pressures of death row, whatever happy urgency their advocates find in them, be conceived as encouraging the dispositions necessary for a fruitful reception of the sacraments. Those who advance this argument suffer from a view of the holy signs that is as outdated as it is mechanical.

It has been termed "sentimentalism", I know, to broach with awe and sense of mystery this reverence for life. But deciding on the end of a human life is not to be placed in the same category as a decision regarding a hymn for Vespers. The word "sentimentalism" might be appropriate in the latter case; it is not in the former. And I have never heard it used when a Christian evidences genuine concern

for the life of an unborn infant or recoils from the prospect of suicide.

MR. BARTLETT: Bob, one question. Are you familiar with the California practice as it now works ?

MR. NAPIER: Yes, I am Mr. Bartlett.

MR. BARTLETT: In your opinion, would this be a substantial improvement over our present mandatory sentence ?

MR. NAPIER: Yes, I think it would be. I don't consider it the ultimate as I would want it. I consider it much of an improvement, yes, sir.

MR. BARTLETT: Thank you, Mr. Napier. Mr. Neuman:

MR. NEUMAN: Mr. Bartlett, Mr. Conway, Mr. Denzer, I speak as an individual. I'm a high school student in the City of Rochester. I did not bring any notes. I'm trying to express what is in my mind to you. I think that notes would only hinder me.

In this last year I made the decision on my own, I was just confronted with this issue last year, with the problem, well, actually, with the possibility that capital punishment could be abolished.

I analyzed the people here this morning as coming from two major groups, one of which I would label as moralists. These people think that it is wrong to kill in any circumstances; these people, I think, would generally be people very much in favor of negotiations, and fearing war very much. The other group of which I think only one, that was only one representative, is the kind of a person which I call practical and sees that there are people who have got problems, maybe they're sick, but they are still evil in committing crime. Therefore, it is safe just to maintain capital punishment.

Because there is just a chance that somebody innocent might be, more people would be killed, innocent people, and it is better if our legal system is at all valid to take the chance with death of people who are evil rather than just somebody innocent who could have been killed on the street.

MR. BARTLETT: This group recognizes, or claims at least, the capital punishment is valid and unique as a deterrent for murder ?

MR. NEUMAN:

Definitely. I come before you

then and ask your attention, because my position is a little bit different. I came here actually to learn this morning, as much as to talk before you.

Therefore, I'm not as definitely a person in any opposition to capital punishment. I see a value to the very practical thought that it makes sense that somebody is not going to commit a murder if he is going to commit a murder, he is selfish, he is going to be selfish about his own life, this makes sense; but I have a feeling that many of the people who believe this are using this in a very logical sense. I believe this by their own logic, it makes sense.

I don't believe it is possible to actually think like a criminal. I don't see how they can actually put themselves in his shoes and, therefore, I see the only other way to be possible, try to figure out if it is the deterrent; to look at the statistics; the statistics doesn't seem to be definite either. So there could not be any definite statement. I made my decision against capital punishment instead of us questioning capital punishment as it is now, we should

completely abolish it. It was suggested before to make a moritorium official. If this be the case, it is not, the case we should be examining our right while we should not be killing.

MR. BARTLETT: Do you think the burden of proof should be reversed ?

MR. NEUMAN: I do believe though there should be a very definite investigation made as to whether another deterrent could be substituted. Nobody else has managed to think of something new. We have a life sentence now without parole in some states. I believe there should be some investigation into something new besides this as well. Can common sense with an investigation with the deterrent value of a life sentence, because I believe right now we are investigating the deterrent value, this is something that is very hard to do.

MR. DENZER: What other types have you in mind ?

MR. NEUMAN: The only other idea I could think of off-hand, and this is from no experience, in penology, and not even having read clearly Chessman's book ...

MR. DENZER: That doesn't make you an expert.

MR. NEUMAN:

I was thinking along the lines of solitary confinement and something I have read since, and made a decision, that some states offer capital punishment for those people already serving a life sentence.

And to having made my decision, I wouldn't consider myself as to one of these two camps, the Liberal Camp or Conservative Camp. But I think that my position is unique.

MR. BARTLETT:

You did a good job analyzing the points of view here today. Thank you. Mr. Julius Michaels.

MR. MICHAELS:

Gentlemen, I am an attorney as Mr. Napier, and I have heard a number of people speak here today and I believe they have great competence. In other words, to save time I have generally for most parts endorsed the arguments that have been given. I appear because having practiced for most of my twenty-one years as a lawyer in the court room and in the trial arena, perhaps any point of view that a lawyer might get from that particular experience or experiences may be of some value to you.

I don't think there is any question that as has been stated that there is a form of barbarism to capital punishment, and with the number of examples that have been given, I feel certain in my own mind that it is not a deterrent. I think if you picked up a Rochester paper within the last couple of days and saw a person who dictated into a tape recorder that he was going to kill and then went out and killed knowing full well that we have an electric chair here, assuming those are the true facts, as we read them in the paper, it is obvious there is a lot to be desired as far as the deterrents are concerned. But I'm going to be a little paradoxical for just a moment, I cannot deny and I think many people cannot deny that we have all seen certain crimes committed that have been so cold and so calculated, and we feel so certain in our minds that a person actually committed that crime with all deliberateness and for a certain selfish profit, that many of us deep in our minds have felt at times that the only punishment this person could get would be to

take away the life that the food from somebody else.

Paradoxically, I still am in favor of the abolishment of capital punishment despite this type of a subjective thing that has occurred to me, and certainly has occurred to others. I don't suppose it is necessary to name types of those murders where we felt almost in favor of an "eye for an eye", the point I want to make, and the reason for the paradox is this: Determining who really deserves in the last analysis to have his life taken away because of the life he took of another, because of some other crime by statute which says the life should be taken away is a very tenuous thing.

I think it has been stated here now that this McNaughton rule is an illegal type of a rule on the signs of who knew the quality of his acts, and so forth, and we all know that our society has reached a point where we realize that we can't use legal signs in determining whether people should or should not receive the ultimate penalty. We know that our head scientist has reached such a point, our science of psychiatry and

so on has reached such a point that making the decision as to whose life should be taken is an extremely tenuous one, and by whom must this decision be made, it must be made by a jury and having worked, as I say, for a number of years before juries, and having full regard and due respect, mind you, for our jury system, and I will say this, that off-hand I know of no improvement on it for the most part. Nevertheless, the fact is that no jury system is infallible. A jury represents a cross section of our community, but I tell you, gentlemen, that some days you get a creamy slice of a cross section of your community, and other days you get a pretty rough slice of cross section of your community, and that means that one jury confronted with this very tenuous point as to whether or not a life should be taken may say, yes, it should be taken, and the very next day this other piece of cross section would say, no, an absolute contrary determination.

MR. BARTLETT:

You are really talking now about the situation where the jury fixes the penalty ?

MR. MICHAELS: I think that is what they do in essence here, isn't that correct ? Presumably based on the facts. Then there is a mandatory death sentence.

MR. BARTLETT: I'm leading up to this. Would you be satisfied with the Claifornia system of a two-part trial ?

MR. MICHAELS: You mean where a jury decides after they found the defendant guilty or innocent, then to decide the question of death or not death ?

MR. BARTLETT: Right.

MR. MICHAELS: No, because I still maintain that this question of death or not death is such a tenuous question based upon our medicines that you can have one juror one day say, yes, he should die, and another jury from the community, twelve different people would say no, he shouldn't die.

MR. BARTLETT: What has medicine got to do with it ?

MR. MICHAELS:

Medicine has this much to do with

it. I think some of the arguments that have been developed here sociology as well as medicine. The arguments that have been developed here indicate that there is somewhere, way above us, or way above our thinking, and I refer to a very delicate point, there is some justification whether he likes it or not, for persons having done what they did, we don't like the end result of what happened, but searching back in the background and the society we live in, and looking into the entire situation there may be some justification in the last analysis for a person or at least there might be some reason to exonerate a person who committed a crime. I think that has been developed here, but I say, that making this determination, I think at times is so delicate that you find nine were in favor and three were against when they hang the second time.

MR. DENZER:

Isn't this an imperfection that is

throughout...

MR. MICHAELS: Yes, I'm pointing out that when there are imperfections which are beyond cure, and where I can see no cure, and I don't think I see anybody suggesting a cure, then I think that we have no alternative, but to not take a life.

MR. BARTLETT: Your point's very simple, Mr. is it Michaels, /because of the risk of convicting an innocent person and the possibility of correcting that error ?

MR. MICHAELS: That is correct. I have really tried to bring my argument down to the arena in which I have seen this operate. I can add, I have jurors call me up years after a trial, out of a sense of repentance at times, and this has happened on more occasions than one where they did a lot of thinking later on but, of course, that may be at a time when it's too late to do anything. Thank you.

MR. BARTLETT: Thank you, Mr. Michaels. Any others wish to be heard ?

DR. BROIDA: My name is Dr. Daniel C. Broida. I happen to be Chief Psychiatrist at the Veterans

Administration Out-patient Service. I speak today as a private citizen and psychiatrist, so, I must detach myself from that official affiliation.

I have been here since two o'clock listening to the testimony of the people before me, and much of what I hoped to tell you has already been said, so, that I will confine myself to some other points which, perhaps, have not been mentioned.

I, too, have been educated as the high school student was, and one thing in particular that interested me was the feeling of those who have been close to this and what can we learn from this behavior. Mr. Napier, for example, he feels he cannot practice as fully as an attorney because of this kind of law, a law that will permit capital punishment. This disturbs me. It is interesting also, I believe, it makes the executioner himself. I don't know what the law in New York State is. It is kept disguised, hidden as to know he has a conscience of guilt, even though what he does it not right.

We also know from studies and from soldiering during the war, for example, that in the battlefield a shockingly small percentage of soldiers can pull the trigger; why this reluctance even during the time of war ? Yet this is a deep seeded reluctance, a deep reluctance when it comes to killing one's fellow man.

MR. BARTLETT: You are getting away from the point. Are you suggesting that a very high percentage of our combat groups during the war have failed to pull the trigger ?

DR. BROIDA: Surprisingly high, I can't give you the exact figures. I was shocked myself. I believe it was recorded. I can't give you the figures.

MR. CONWAY: What outfit was he in, check on him?

MR. BROIDA: It's surprising. It really is an eye opener. I should get the exact figure, it's well over 50%. I also thought of this possible explanation. Mr. Klein indicated that he has heard very little

or nothing from those who have taken the other view. Those who would have us retain capital punishment, and once more I wonder if their reluctance to speak up doesn't explain their own unconscious guilt. They don't feel free to step up, and they don't feel free to.. the point I'm trying to make here is that this is somehow basically alien to our nature. And I say this now as a psychologist, because psychologists want to see all kinds of apathy.

As a psychologist, I should also like to comment on what we know about learning and tht that is what we are dealing here on, when we talk about capital punishment. Apparently, I think we have to demonstrate, and nobody has demonstrated, statistically or otherwise. It has been demonstrated in some research that punishment could be received. It occurs to me, for example, in the minds of the psychotic character who might want to destroy if he knows that he himself be destroyed. This would only motivate him to commit the crime. It's quite possible that capital punishment motivates in pathological

states. We have to think in his terms, not in terms of the way we see it. We don't quite understand the criminal mind. I think we have to.

Regarding discriminatory evidences; according to the 1962 edition of the Encyclopedia Brittanica, the study was recorded in 1961 in the State of Virginia, 189 white men , there were no executions; during this same period, 52 Negroes were executed for rape.

MR. BARTLETT: This has no validity in our deliberations here ?

D R. BROIDA: No, but I think that is true. We should confine ourselves to New York State. The comment was made in this document. I'm being educated by Joyce on Capital punishment, the immigrants, the illiterates and the poor, presumably by Mr. Joyce in this book on Capital Punishment. Mr. Joyce says quite a few things I don't think can be backed up, and I for one am a little reluctant to accept his standards.

DR. BARTLETT:

The reason we have been pushing this line today with the witnesses is to determine whether the claims made that this is true, the majority of those executed come from the underprivileged and minority groups, or whether they claim this is a result of a discrimination in the process of criminal justice, or in the sense that this is the group in which crime is bred. It is a very important distinction to be made between the two points of view. I wonder if that is inconsistent...

DR. BROIDA:

I think this point has been made clear by our attorneys earlier who have spoken here today. The final point, if I may make it, is I have become identified with the so-called peace movement, and I wonder if this does not have any implications for the greater kind of destruction facing mankind today, the dehumanization the nuclear war represents.

I wonder if we can, in this concrete way, in the State of New York abolish the death sentence and point out that murder is bad, it is wrong

and in some small manner help people to think with the broader problems of destruction. Destruction doesn't solve problems, and destroying people doesn't solve problems; and the nuclear war ...

MR. BARTLETT: Do you take exactly the same position towards the taking of a life in war even though it is a matter of self defense on a part of a given nation as you do in capital punishment ?

DR. BROIDA: I'm not a pacifist, and I was a member of World War II and supported its efforts at that time. No, I think our technology is so, that war doesn't solve problems. We must not labor under the illusion that it does, no more than that the capital punishment itself is an illusion of the crime. Thank you.

MR. BARTLETT: Ladies and Gentlemen, this concludes the hearing on the question of capital punishment.

MR. KLEIN: I wonder if I may be permitted to answer one question that you have asked

repeatedly during the day, regarding bias and the minority groups.?

MR. BARTLETT: Yes.

MR. KLEIN: William Klein. The question was raised several times as to the proportion of Negroes and Whites executed in New York State, and I guess the reason why I imagine no one has brought this up at these hearings was because we had assumed that the Commission had this information and you probably do. But I just like to repeat them here now.

MR. DENZER: If that were true, you wouldn't be making any argument at all? Let me ask you my question to you in this way, if I may. Do you have any statistical analysis of it, any break-down of those charged with first degree murder in New York State as to their background...

MR. KLEIN: Let me tell you what I have done here. It bears on the subject.

MR. BARTLETT: Do you have anything along that line that he just asked about ?

MR. KLEIN: Yes, since the 1st of January, 1959, New York State has executed twelve persons. Of the twelve that were executed ten were Negroes, one was white, and one was Puerto Rican. Now, if we go to how other death penalty cases were disposed of, we find that according to the figures that I have here, the information which I have here which might not be right up to date, there were twelve death penalty cases disposed of in manners other than execution, and of the twelve...

MR. BARTLETT: You mean those who were sentenced to death ?

MR. KLEIN: Who were sentenced to death and whose sentence were either commuted or avoided or given twenty to forty year prison terms.

MR. BARTLETT: I don't understand you, Mr. Klein.

If they were found guilty of first degree murder and sentenced to die in the electric chair, there is only one other possibility.

MR. KLEIN: The Governor's commutation.

MR. CONWAY: Are you suggesting that Governor Rockefeller is prejudiced. This has been your conclusion ?

MR. DENZER: The capital conviction of another twelve, is that right ?

MR. KLEIN: These are another twelve.

MR. DENZER: If they are capital convictions, they must have been sentenced to death, and the only way it could have been commuted was by the Governor.

MR. KLEIN: All right then, but five or six of these were commuted by the Governor, and the others I'm not sure of, I am not a lawyer, and I don't know how these other cases...

MR. BARTLETT: What is the source of your figure ?

MR. KLEIN: New York Committee to Abolish Capital Punishment, a piece of material they put out in March, 1962, I try to keep it up to date through newspaper articles.

Now, I'd like to pass this up to you. Perhaps you can determine it better than I because I'm not a lawyer. Of those who were sentenced to death and who are not executed, there are a total of twelve such cases, of those cases eight were white and four were Negroes.

MR. BARTLETT: I don't mean to keep pressing you about this, but if the figures given are correct, for what you state to us is correct, that these cases all involved defendants who were convicted of first degree murder and sentenced to die ?

MR. KLEIN: Yes.

MR. BARTLETT: And this is after a review by the Court of Appeals. Then, you are telling us that out of some

twenty cases involved, I gather from your figures there must have been fifteen Negroes and five Whites, is that right ?

MR. KLEIN: Out of the twelve cases that were disposed of in a manner other than the chair, 24 cases altogether.

MR. DENZER: This happens to be twelve and twelve, or twenty-four convicted of murder on the death penalty imposed and then twelve of them were executed, and the other twelve were not, is that right?

MR. KLEIN: That is correct. Of course, there are a large number of prisoners in the row right now.

MR. DENZER: Seventeen.

MR. KLEIN: Whose future is hanging in the balance, shall we say ?

MR. BARTLETT: I still don't get your point, Mr. Klein. Is it your contention that there is discrimination in the process of criminal justice in first degree murder cases in New York against minority groups ?

MR. KLEIN: That is the only conclusion I can draw from the figures which I have before me. I don't say this is a conscious discrimination on the part of jurors. Perhaps, it is merely what has been.

MR. CONWAY: It goes farther beyond the jury, Mr. Klein, you are talking about the Governor. You say, if the Governor has two cases to decide, he commutes one and one he convicts. He commutes the white man and executes the other one, and that is absolutely invalid.

MR. BARTLETT: You have no understanding of the local system of clemency hearings, Mr. Klein. I really think I have to disagree with you.

MR. DENZER: First of all, I think you better analyse those twelve cases. I have the feeling maybe they are not all cases involving capital punishment, or capital convictions. Perhaps, they are cases that simply wouldn't proceed to execution. I would not analyze that group.

MR. KLEIN: I withdraw my argument, and we will have to find out more about the information which we have received, where ten Negroes and one White and one Puerto Rican have been executed in New York State. It seems unlikely to me that the proportion of crimes by Negroes is that high, capital crimes.

MR. BARTLETT: Do you know? Unless we have some figures as to the proportion who are charged with first degree murder, your analysis is completely of no means, that is the reason I brought up the matter of how these other death penalty cases were disposed of.

MR. KLEIN: May I leave this with you ?

MR. BARTLETT: We got your sheet, your committee sent it to us in New York last week.

MR. KLEIN: Well, then, I guess I will have to find out more about these specific cases.

MR. BARTLETT: You better communicate with us for any further information. I suggest if it is your position, that there has been discrimination, you had better document your evidence, you had better document your cases well.

MR. KLEIN: May I ask you whether you know what the proportion of first degrees were committed ?

MR. BARTLETT: No, we don't. That is why we have been asking.

MR. DENZER: As proportion to what ?

MR. KLEIN: What the proportion is with respect to Whites ?

MR. DENZER: You mean the numbers committed, you mean as against percentage ?

MR. BARTLETT: You will never get that figure. They are not kept because of the anti-discrimination law. The various courts and District Attorneys' offices don't write down whether he is a Puerto Rican, or that he is a Negro, or Italian, or Jew.

MR. KLEIN: This being the case it will be  
very difficult for us to prove our point.

MR. BARTLETT: I think you better get a stronger  
argument than this one. The meeting is now  
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