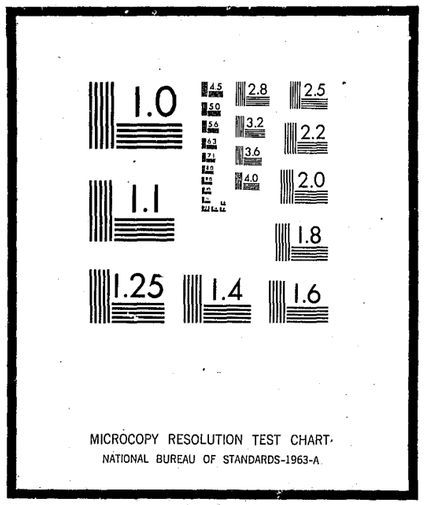

Florida - Governor's Committee to Study Capital Punishment - Initial Report

E. HARRIS DREW
JUSTICE
SUPREME COURT
RETIRED

STATE OF FLORIDA
TALLAHASSEE 32304

November 17, 1972

The Honorable Reubin O'D. Askew
Governor of Florida
The Capitol
Tallahassee, Florida 32304

Dear Governor Askew:

Your Governor's Committee to Study Capital Punishment herewith presents its recommendations relating to the reinstatement of capital punishment and its initial report.

There are many areas of concern left unattended to at this time. Those are referred to in the report and the Resolution of the Committee.

Special tribute and sincere appreciation goes to two groups which assisted the Committee greatly.

The first group consists of members of the Governor's staff assigned to assist the Committee. These men worked long hours, often at night and on weekends, to draft reports, summaries and proposals. Their dedication to the task is highly commendable. They are:

Mr. Edgar M. Dunn, Jr.
Mr. Helge Swanson
Mr. C. L. Fordham, Jr.
Mr. Robert Mounts
Mr. Jim Payne

The second group is made up of advisors to the Committee. These men, all professors, also sacrificed to make a material contribution to the final product of the Committee:

E. HARRIS DREW
JUSTICE
SUPREME COURT
RETIRED

STATE OF FLORIDA
TALLAHASSEE 32304

Dr. Vernon Fox,
Florida State University

Dr. Charles W. Ehrhardt,
Florida State University College of Law

Dr. Phillip A. Hubbart,
University of Miami School of Law

Dr. L. Harold Levinson,
University of Florida College of Law

Dr. William McKinley Smiley, Jr.,
Stetson University College of Law

Dr. Thomas A. Wills,
University of Miami School of Law

Many expert and lay witnesses appeared before the Committee. For their contribution we express our thanks.

Finally, to the members of the Committee I add my personal expression of gratitude.

Many members made continual sacrifice of time and business demands to serve diligently and add materially to the report. Whether they be in the Majority or Minority, the people of Florida owe them a debt of gratitude for the manner in which they undertook the study and the depth of their probe. I am proud to have been associated with them.

Sincerely yours,

E. Harris Drew
Chairman

A FINAL REPORT OF THE GOVERNOR'S COMMITTEE TO STUDY CAPITAL PUNISHMENT

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INTRODUCTION

The Governor's Committee to Study Capital Punishment was created by Executive Order No. 72-37 by Governor Reubin O'D. Askew on July 28, 1972. The intended purpose of the Governor's Committee was articulated in the executive order as follows: "Whereas the United States Supreme Court in Furman vs. Georgia and its companion cases condemned the "system" by which the death penalty has been administered and concluded that the imposition of the death penalty--under that "system"--constituded a deprivation of equal protection and was, therefore, unconstitutional; and whereas, the Attorney General of Florida has rendered authoritative memorandum opinion wherein he concluded that, "anyone prosecuted on a capital felony in Florida as of the date of the decision (Furman vs. Georgia) could not possibly suffer a death penalty", because the "system" by which the death penalty was imposed in Florida, like many other states was unconstitutional; and whereas, the Supreme Court of Florida in the Donaldson vs. Sack, in applying the Furman decision to Florida concluded that the effect of the Furman decision was to abolish the death penalty in Florida until new legislation could be enacted and approved; and whereas, the cases of Furman and Donaldson have had a broad and sweeping effect, not only with regard to the efficacy of sentencing procedures under existing "capital felonies", but also in regard to such relative matters as the size and composition of juries, the rules of court relating to speedy trials, the effect the Florida bifurcated trial law, the powers of the grand jury, the filing of accusatorial instruments; and whereas, in view of the substantial changes in criminal law and procedure brought about by the ruling in Furman, it appears to be necessary and desirable to create a study committee as here and after set forth and charged."

The Governor's Committee to Study Capital Punishment consists of seventeen members appointed by the Governor. Those named to serve on the Committee were:

The Honorable E. Harris Drew
Supreme Court Justice (Retired)
Chairman

The Honorable LeRoy Collins
(Former) Governor, Co-Chairman

The Honorable C. Farris Bryant
(Former) Governor

The Honorable John E. Mathews, Jr.
(Former) Senator

Dr. Harold M. Stahmer
Associate Dean, University of Florida

Richard Earle, Jr.
Attorney-at-Law

The Honorable Ernest E. Mason
Circuit Judge, First Judicial Circuit

The Honorable Jesse J. McCrary, Jr.
Division of Labor

Mrs. Bronson Thayer
Attorney-at-Law

The Honorable John M. McCarty
Attorney-at-Law

The Honorable Beth Johnson
(Former) Senator, Twenty-Ninth District

The Honorable Louis de la Parte
Senator, Twenty-Sixth District

The Honorable Jim Williams
Senator, Thirteenth District

The Honorable C. Welborn Daniel
Senator, Fifteenth District

The Honorable L. E. Brown
Representative, Thirty-Second District

The Honorable Gwen Cherry
Representative, Ninty-Sixth District

The Honorable Robert M. Johnson
Representative, 118th District

The scope of the Committee's charge as outlined in the executive order included the detailed study and recommendations on the following:

a. Whether the death penalty should be retained in some form as criminal punishment in Florida;

b. Assuming that the Legislature of Florida were to determine that the death penalty should not be reinstated in some or all of the existing "capital felonies", study and make recommendations concerning the alternatives in the death penalty such as mandatory life sentences without benefit of parole, etc.;

c. Assuming that the Legislature of Florida were to determine the death penalty should be reinstated in some or all the existing "capital felonies", study and make recommendations concerning: (1) An acceptable procedure under which the death penalty could be reinstated; (2) The revision of substitutive definitions of "capital felonies", in order to delineate more clearly the specific acts which would result in the imposition of the death penalty; (3) The procedure for execution of the death sentence; (4) The procedure to be followed by the Governor and Cabinet in executive clemency matters involving cases where the death penalty has been imposed; (5) The policies and procedures of the Division of Corrections relative to the care, classification and treatment of death row inmates, and (6) Other procedure row substitutive consideration regarding the imposition of the death penalty.

The Committee appointed an Advisory Committee composed of representatives from the Department of Legal Affairs, Department of Health and Rehabilitative Services, Parole and Probation Commission, The Florida Conference of Circuit Judges, The Florida Bar, The Florida Prosecuting Attorneys Association, The Florida Public Defenders Association, The Governor's Council on Criminal Justice, and such other persons including experts or specialists in the field of criminal law, criminology, penology, psychiatry, psychology and similar discipline, as the Committee shall deem appropriate. The Advisory Committee provided testimony relevant to the Committee's study on capital punishment as well as supplemental data required in the Committee's deliberation.

To assist the Committee in its study, a staff was assembled from representatives of the Governor's Office, Governor's Council on Criminal Justice and The Department of Administration. A staff consultant was also employed to assist in the information collection activities, as well as law school representatives from the University of Florida, Florida State University, Stetson University, and the University of Miami. Funding for the Study Committee was provided through a Law Enforcement Assistance Administration grant from the Governor's Council on Criminal Justice.

To accomplish these ends, the Committee adopted a two-phase study design which would address initially the question of reinstatement of capital punishment based on its desirability as a modality of punishment, and secondly, its feasibility and ramifications for reenactment or abolition. To accomplish phase one, two activities were begun by the Committee as shown by the study program (see next page). The first was an assessment to the function of capital punishment by the Committee itself to be derived through a series of public hearings during which time expert testimony and public opinion would be heard by the committee. Following an organizational meeting in Tallahassee on August 17, the Committee conduct four public hearings in Tampa, Pensacola, Jacksonville, and Miami. An additional hearing was held at Florida State Prison in Raiford to receive testimony from prison officials and inmates.

Also as part of the phase one activities, the Committee directed the staff to perform basic information collection activities which included research of the current literature on capital punishment, and the collection of a wide variety of solicited and unsolicited reports from experts and private citizens. Additionally, the Committee directed its legal staff, composed of representatives of the Florida law schools, to perform a detailed evaluation of the implications of the Furman decision.

At the culmination point of phase one activities, the Governor's Committee to Study Capital Punishment met in Tallahassee on October 20 and 21 and reached a preliminary decision to seek reinstatement of capital punishment. A Sub-committee was appointed at that time to prepare specific recommendations on behalf of the Committee.

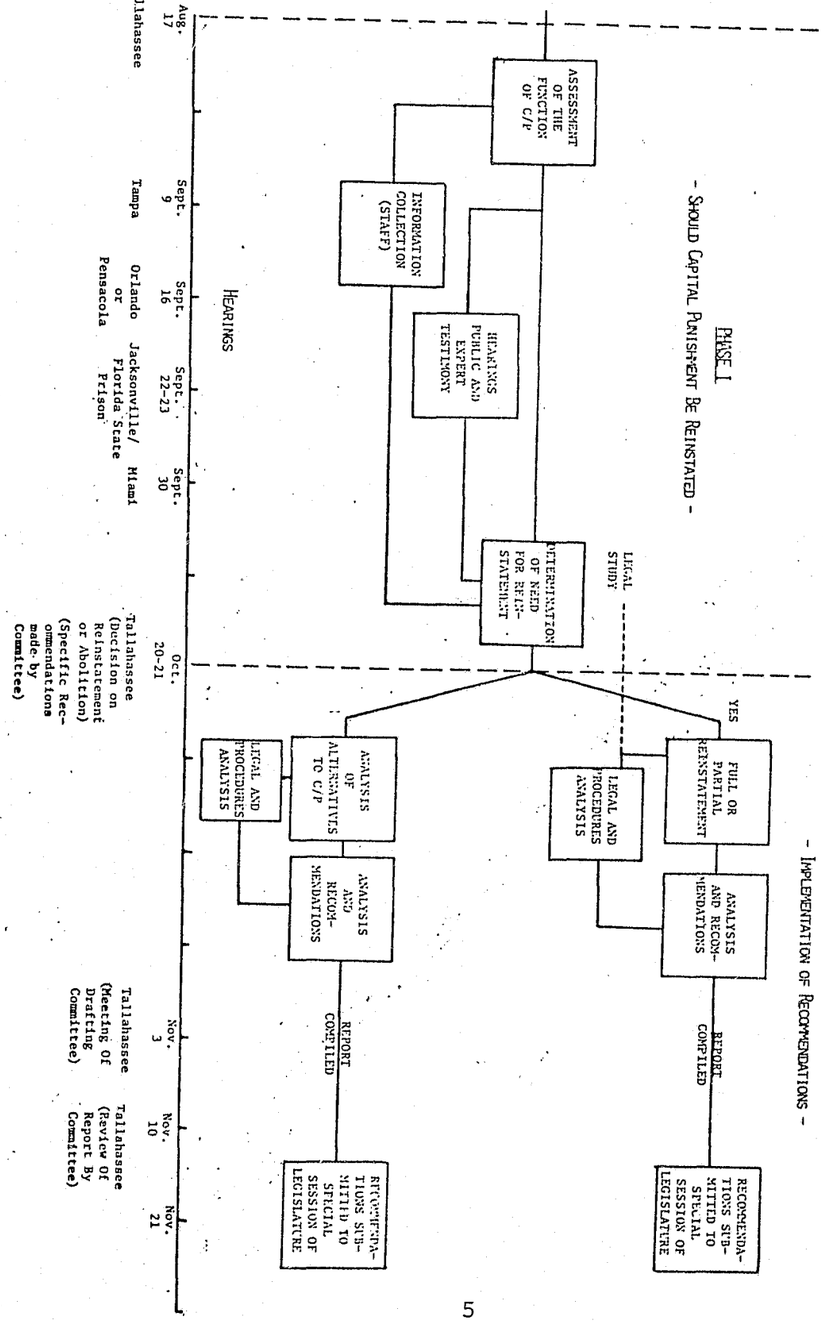
PUBLIC HEARINGS

The Committee conducted a total of four public hearings, one each in Tampa (September 9), Pensacola (September 16), Jacksonville (September 22), and Miami (September 30). An additional hearing was held at the Florida State Prison (September 23) to hear from prison officials and inmates, and an organizational and informational meeting in Tallahassee (August 17).

The major purpose of these hearings was to collect information relevant to the decisions required of the Committee, which included both expert testimony and public opinion. A secondary purpose was to serve as a mechanism for public education on the highly complex issues surrounding the question of capital punishment.

GOVERNOR'S COMMITTEE TO STUDY CAPITAL PUNISHMENT

PROPOSED STUDY PROGRAM



Detailed in this section are the minutes from those hearings, along with solicited and unsolicited position papers and reports submitted to the Committee. They appear in the following order:

Tallahassee - Organizational Meeting
Tampa
Pensacola
Jacksonville
Florida State Prison
Miami

MINUTES
GOVERNOR'S COMMITTEE TO STUDY CAPITAL PUNISHMENT
Governor's Conference Room
Tallahassee
August 17, 1972

Committee Members Present: E. Harris Drew, LeRoy Collins, Farris Bryant, Jim Williams, Judge Ernest Mason, Mrs. Bronson Thayer, Welborn Daniel, Judge Jesse McCrary, Jack Mathews, Robert Johnson, Richard Earle, Jr., Louis de la Parte, and Gene Brown.

Committee Members Absent: Gwen Cherry, Beth Johnson, John McCarty, Harold M. Stahmer.

Edgar Dunn of the Governor's Staff welcomed the group and introduced the following members of the Advisory Committee: Pat Emanuel, Pensacola; Pat Baggett, Assistant to the Chief Justice; James T. Russell, State Attorney for Sixth Judicial Circuit; Virgil Q. Mayo, Public Defenders' Association, Judge Ben Willis, Representing Conference of Circuit Judges; Chief Robert Maige, Tallahassee Police Department; and Carl Staffer, Sheriffs Association.

First order of business was the election of a Vice Chairman. Governor LeRoy Collins was unanimously elected to serve as Vice Chairman.

Standing Rules and Conduct of Public Hearing: Roberts Rules of Order were agreed to as the rules to govern proceedings before the Committee. The following special rules were also adopted:

"It shall be the policy of the Governor's Committee to Study Capital Punishment to conduct all hearings at a time and place and under such conditions so as to encourage participation by individual citizens and organizations, within the guidelines set forth below.

"1. Anyone wishing to appear before the committee must complete and turn in to the committee secretary prior to appearing, the form designated by the committee.

"2. The Chairman shall establish a reasonable length of time for each witness appearing according to the dictates of the agenda and the relevancy of the subject matter.

"3. All expert witnesses and individuals representing organizations are requested to submit before or at the time of testifying, a written statement (and 17 copies) of their presentation along with any relevant supporting materials.

"It shall also be the policy of the Governor's Committee to Study Capital Punishment to request position papers and research materials from recognized experts, private organizations and individual citizens pertaining to the study or use of Capital Punishment. All such materials will be considered by the committee within its study of Capital Punishment."

Solicitation of Expert Testimony: Dr. Vernon Fox reviewed the background and qualifications of the following persons suggested to appear before the Committee at future hearings:

1. Donal E. J. McNamara, Professor of Criminal Justice, John Jay College of Criminal Justice
2. James V. Bennett, Director, U. S. Bureau of Prisons (ret.)
3. Quinn Tamn, Executive Director, International Association of Chiefs of Police
4. E. Preston Sharp, General Secretary, American Correctional Association
5. Russell G. Oswall, Commissioner, Department of Correctional Services, State of New York
6. Bennett Cooper, Director of Corrections, State of Ohio
7. John O. Boone, Director of Corrections, State of Massachusetts
8. Kenneth Hardy, Director of Corrections, Washington, D.C.
9. Hugo Bedau, Department of Philosophy, Tufts University
10. James McCafferty, Administrating Office of the U. S. Court
11. George Beto, Director of Corrections, State of Texas
12. Ray Procunier, Director of Corrections, State of California
13. Ellis MacDougall, Director of Corrections, State of Georgia
14. William Leeke, Director of Corrections, State of South Carolina

15. V. Lee Bounds, Director of Corrections, State of North Carolina
16. Mrs. Hubert Ehrmann, Citizens Against Legalized Murder, New York
17. Patrick V. Murphy, Commissioner of Police, New York City
18. Peter Lejins, Department of Sociology, University of Maryland
19. Maurice Sigler, Chairman, U. S. Board of Parole, President of American Correctional Association

After extended discussion, it was agreed to invite James McCafferty and John Boone to appear before the Committee at its meeting in Tampa, September 9. Action on other experts was deferred until the September 9 meeting. In the event that any one of the experts selected for the Tampa meeting cannot appear, the Chairman is authorized to name a substitute.

The NBC film "Thou Shalt Not Kill" as suggested by Senator Welborn Daniel will be shown at the Tampa meeting as the first order of business.

It was agreed that all Committee members should send any correspondence they receive concerning the capital punishment issue to the staff in Tallahassee.

Helge Swanson, the Staff Coordinator, presented the proposed study design and dates of scheduled hearings and meetings. Justice Drew emphasized that the proposed study design did not restrict the activities of the Committee, but rather was a point of departure for the study of capital punishment.

Dr. Vernon Fox, Professor of Criminology, Florida State University, presented an overview of the Capital Punishment Issue. (Statement attached.)

William L. Reed, Executive Director of the Florida Department of Law Enforcement, presented data on capital crimes in Florida as reported in Crime in Florida, a compilation of Uniform Crime Reports. (Statement attached)

Armond Cross, Chairman of the Florida Parole and Probation Commission, presented statistic on followup of capital offenders released on Parole. (Statement attached.)

Dave Bachman, Deputy Director of the Florida Division of Corrections, presented the Division's position on the Death Penalty. (Statement attached.)

The meeting was adjourned to meet September 9, 1972, at 9:00 a.m. at a place to be hereafter designated in Tampa.

A REVIEW OF THE ARGUMENTS ON CAPITAL PUNISHMENT

Vernon Fox
Florida State University

Capital punishment and banishment were common throughout the world in primitive, ancient, and medieval times. Death and banishment were the penalties for the most serious offenses, while lesser offenses brought enslavement, flogging, branding, mutilation and amputation, or consignment to the public works in mines, quarries, or galleys. The usual result of serious offenses among primitive and ancient peoples was the killing of the offender by the family of the victim which, in turn, became the victim and killed the avenger-offender or a member of his family in return. This blood-feud resulted in some of the best families in the tribe or community being decimated, which is why the court system and a system of law was established in ancient times. The first court was depicted on the shield of Achilles in Homer's Illiad about 2000 B.C. Therefore, the bloodfeud became the matrix of law[1].

After the introduction of courts, the city-state or state assumed the responsibility for enforcement of criminal sanctions. Greece at the time of Solon in the sixth century B.C. developed democracy and the concept of law as currently known. Rome refined it to its greatest significance in the ancient world. Capital punishment was accepted throughout this period without question. The first serious questioning of the death penalty was in the Roman Senate, with Marcus Porcius Cato (234-149 B.C.) engaging in lengthy debate concerning capital punishment. It is interesting to note that the same arguments that emerged in the debates by Cato in the Roman Senate during the second century B.C. also emerged in the most recent debates in the Canadian Parliament prior to Canada's abolition of the death penalty.

The first two famous executions in ancient times were those of Socrates and Jesus Christ. Socrates was executed by drinking hemlock poison because his teachings "corrupted the morals of the youth" in Athens. Jesus was crucified because of the proclamation that he was "King of the Jews", and was therefore politically dangerous. These executions, while outstanding in history because of the personalities involved, were merely examples of common custom at the time.

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1 William Seagle; The History of Law, New York: Tudor, 1946, p. 36.

With the exception of the Law of Moses,[2] all ethical systems have rejected the death penalty. Canon Law in the Christian church, by Islamic Law, by Manu the Law Giver in India, and by the Chinese Book of Five Punishments. It should be noted that while Canon Law rejected the death penalty, it continued throughout the Middle Ages. When the ecclesiastical court thought a person should be put to death, it simply transferred jurisdiction to a secular court that carried through the penalty.

Capital punishment was used extensively until the eighteenth century. During the reign of Queen Elizabeth (1533-1603), there were 72,000 Englishment put to death. Whether a dent was made in the crime rate depends on which account is read. At the least, it was inconclusive. In the eighteenth century, the writings of Voltaire and Montesquieu, the influence of Jeremy Bentham and Samuel Romilly in England, and the significant contribution of Cesare Beccaria's famous Essay on Crimes and Punishments in 1764 reduced the practice of legal executions. All African and Asian nations, as well as Communist states retain the death penalty today. In contrast, most Western European countries, most South American countries, and 16 states and territories of the United States have abolished it.

The Arguments

The historical arguments concerning the death penalty can be divided into (1) traditional sentiments and beliefs and (2) utilitarian or empirical arguments based on fact. From the debates of Cato in the Roman Senate to the recent debates in the Canadian Parliament, the death penalty has never been argued successfully on the utilitarian basis - either way. The most successful arguments have come from the traditional sentiments and beliefs. The primary arguments have been (1) that the death penalty deters others from committing serious crimes, (2) that the death penalty eliminates at least one dangerous criminal, (3) that the revenge motive well espoused in Mosaic Law (Exodus 22:1-9) is sufficient to retain it, and (4) the satisfying of social anger is functional. The first and second arguments are based on traditional sentiments and belief. Historically, the third and fourth arguments have been most effective. There have been many other arguments advanced, of course, but they seem to be peripheral ones and secondary to the four main arguments.

2
See Exodus 22:1-9

Economics has been argued both ways, with those in favor of the death penalty pointing out the years the state has to maintain lifers in prison and those opposing the death penalty pointing out the cost of building electric chairs and gas chambers that are not mass produced because of the limited market, their maintenance, and the space taken by them in already overcrowded prisons. Religious arguments have ranged from the Mosaic Law in the Old Testament to the more human New Testament. Humanitarian arguments have been used, the four fundamental arguments remain (1) deterrence, (2) elimination, (3) revenge, and (4) satisfying social anger.

Deterrence has been used probably more frequently then any other argument. Even so, it has never been successfully defended. States close to each other with similar populations and economic and cultural bases show no significant difference in major crime rates. For example Maine without capital punishment and New Hampshire with the death penalty, Rhode Island without and Connecticut with, Michigan without and Ohio with, Wisconsin without and Indiana with, Minnesota without and Nebraska with, and North Dakota without and South Dakota with the death penalty have similar major crime rates. In fact, there is a slight difference that favors the states without capital punishment, but it is not statistically significant. The support for the deterrent theory has come from isolated cases, such as a serious offense in Delaware occurring soon after the death penalty was abolished in the early 1960's resulted in its reestablishment. Further, prosecutors have interviewed offenders who have told them that they would not have committed that serious offense had there been capital punishment. On the other hand, some offenders, such as Charles Starkweather said, he was a garbage man and the only way he could go down in history was to kill those nine people and be executed for it. He deliberately chose a capital punishment state for his murders. Artie Bremer's shooting of George Wallace in a capital punishment state may have been similar, though he had stalked President Nixon in Canada where capital punishment had been abolished. It is apparent that capital punishment or lack of it had no meaning for Bremer.

All the major violent offenses that have been featured in the news media have occurred in capital punishment states, such as the Loeb and Leopold murder of Bobby Franks; William Heirans' murders of women in Chicago; the St. Valentine's Day Massacre in Chicago in 1929; Charles Starkweather; Howard Uunruh in Camden, New Jersey; Richard Speck killing eight nurses in Chicago; Whitney killing people from the tower at the University of Texas; and other offenses. Organized crime of the type depicted in "The Godfather" occurs predominantly in capital punishment states. Killer Burke, Baby Face Nelson, Legs Diamond, John Dillinger, Pretty Boy Floyd, Al Capone, Bugsy Moran, Ma Barker, Jesse James, and all the other legendary dangerous criminals functioned in capital punishment states.

An Associated Press release dated August 24, 1972, reported the results of their sampling of 25 professional prison officials attending the annual Congress of Corrections in Pittsburgh sponsored by the American Correctional Association.[3] Under the headline, "Prison Officials Say Death Penalty No Deterrent", there were several quotations from outstanding correctional officials, such as, "It won't matter one way or another", "Street crimes are not related to capital punishment in any way", "Usually, when a man thinks of murder, he doesn't think of the consequences", "Hopefully, we can get prisons to the point where we can help criminals without killing them", and "There's no substitute for loss of liberty, since that's what this country is all about." Repeating, the deterrence theory has never been successfully argued or defended by fact. Isolated stories supporting it can be countered by similar isolated stories against it. Historically, deterrence has not been an effective argument either way. It simply does not do anything-either way.

Elimination of the offender has been an argument. If it does not deter anybody else, it certainly deters the person eliminated! The difficulty with that argument, of course, is that it does not eliminate very much. In 1970, there were an estimated 15,810 homicides.[4] There were 8,898 reported to police[5], 15,230 arrests[6], 1,262 with enough evidence to bring to court[7], and 444 guilty as charged[8]. The last man put to death by civil authority in the United States was from the Spanish minority, Loui Jose Monge in Denver, Colorado, on June 2, 1967. It becomes obvious that the elimination impact is slight, almost like emptying the ashtrays from an airplane to lighten the load.

Abolitionists hold that if the purpose of the death penalty is in the direction of a correctional or rehabilitative philosophy, or even the basic protection of society, the present use of capital punishment gets the wrong man. Recidivism among persons released from prison for homicide and forcible rape range around two percent, while the average recidivism rate in America is much higher. Of all the persons who came to prison last year, 68 percent had been there before. Capital offenses tend to be one-time offenses. The few repeaters in this category are professional offenders, "enforcers", or from a violent subculture where fighting and assault is a style of life, and these people can be easily identified.

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[3]Reported in The Tallahassee Democrat, August 24, 1972, p. 15.
[4]Crime in the United States: Uniform Crime Reports--1970, Washington, D.C.: Federal Bureau of Investigation, August 31, 1971, p. 6.
[5]Ibid., p. 108.
[6]Ibid., p. 119.
[7]Ibid., p. 115.
[8]Ibid., p. 114, computed from percentages of convictions.

Table I Percent Repeaters by Type of Crime[9]

Forgery	76%
Auto Theft	75%
Robbery	75%
Burglary	73%
Assault	71%
Fraud	70%
Gambling	69%
All other Offenses	69%
Average for the United States	68%
Weapons	68%
Larceny	66%
Narcotics	63%
Embezzlement	33%

Repeaters of capital offenses are so few that the FBI does not even list them. It becomes obvious, then, that if the state's philosophy is correction and rehabilitation, it is using the death penalty on the wrong offenders. The elimination argument is obviously of little consequence.

The revenge argument is stronger and older than the two previous arguments. While basic Mosaic Law regarding less crimes is incorporated in Exodus 22:1-9 and emphasizes compensation of victims, more serious offenses bring the death penalty. Some sample passages supporting the death penalty in Mosaic Law are as follows:

Exodus 21:12	He that smiteth a man, so that he die, shall be surely put to death.
Exodus 21:16	And he that stealeth a man, and shall selleth him, or if he be found in his hand, he shall surely be put to death.
Exodus 21:17	And he that curseth his father or his mother shall surely be put to death.
Exodus 21:24	Eye for eye, tooth for tooth, hand for hand, foot for foot.
Exodus 21:25	Burning for burning, wound for wound, stripe for stripe.
Exodus 21:29	But if the ox were wont to push with his horn in time past, and it hath been testified to his owner, and he hath not kept him in, but that he hath killed a man or woman; the ox shall be stoned, and his owner also shall be put to death.

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[9]Crime in the United States - 1971, Washington, D.C.: Federal Bureau of Investigation, August 29, 1972, p. 37.

The revenge motive was basic to primitive custom and the ancient codes. This resulted in the blood feud, which formed the matrix of law. This is why the state became interested in inter-personal injuries or crime. Revenge is individualized. Many a person who might be generally against the death penalty would kill the offender, himself, if the victim happened to be his own wife or daughters! In modern America, support for the revenge motive remains in the grassroots strata of society. The argument is that, without the death penalty, lynchings and vendettas would continue.

The easing of social anger is probably the most defensible argument in favor of the death penalty. As frustration generates aggression, well formulated in the well-known frustration-aggression hypothesis, the frustration of aggression generates what might be called aggression-frustration tension. American society has two widely applied taboos - sex and aggression. Each society has to have legitimate outlets built into the culture as safety-valves for each taboo. In America, dancing, adult movies, Playboy and Cosmopolitan, and pornography serve to release one of the taboos. Sports events and athletic contests are among the releases of the aggression taboo. When I am in New York City on fight nights, I am at ringside. I don't want to see any Arthur Murray dancing lessons - I want to see mouthpieces fly and a little blood and gore. I was there when Florentine Fernandex knocked out Marcel Pigou in the second, at Sugar Ray Robinson's last fight with Denny Moyer, at the Jimmy Ellis-Wayne Thornton heavyweight match, and many others. When society represses aggression as part of the social graces, a release has to be had somewhere. This is why Americans are a sports-minded people, why husbands irritate wives because of the time they spend before the television set watching sports events, particularly football, boxing, and wrestling.

A society that represses aggression must find a collective release. It is noteworthy that during wartime when aggression is focused toward an outside foe, like Germany or Japan, the crime rate goes down. Collective aggression or social anger is going to be satisfied somehow. The strongest argument for the death penalty throughout history has been in this direction. News commentators and editors have traditionally called for retention of the death penalty, conceivably without knowing all the dynamics of its, but on a emotional basis. Capital punishment satisfies social anger for society in the same way watching a fight releases repressed aggression for me. Revenge is not a consideration in either case. Rather, the draining off of collective aggression is a legitimate and defensible objective in the argument for retaining the death penalty.

In summary, the death penalty has never been argued successfully either way on a utilitarian basis. It is an emotional issue that emerges from our value system. Emotional satisfaction in the release of repressed aggression and the revenge motive are the strongest arguments for it. The issue defies cold logic.

Opinions Regarding Application of Capital Punishment

Emotional behavior is translated into public policy as well as intellectual behavior, with the balance shifting from legislature to legislature, from time to time, and from political leader to political leader. Authoritarian personalities with strong anti-offender attitudes, punitive approaches to social problems and controlling policies exist everywhere. These authoritarian personalities have intense feelings and prejudices, are power oriented, and become vindictive[10]. These people favor the death penalty almost automatically, while non-authoritarian people are more tolerant and oppose the death penalty. Significant personality differences by a variety of tests show that these two opposite personality groups differ widely on measures of dogmatism, moral judgment, and other tests of personality. Further, they permeate the public and the political leadership. Studies of these authoritarian personalities with regard to jury selection have indicated significant difference between two groups of jurors from 107 candidates who could return a verdict of guilty in a capital offense and those who could not.[11] There is a tendency for lesser educated people, including prison inmates, and some in the professional levels requiring exact decisions to be less tolerant and more authoritarian, while people in the behavioral and social sciences are more tolerant and less authoritarian. The authoritarian personalities in society provide a strong base for capital punishment.

Correctional officers and many directors of corrections in the United States favor capital punishment. The people they deal with every day over a period of years frequently influence long-term correctional personnel who have seen people come back to prison repeatedly and many from the same family to view the correctional process as futile. Consequently, the end result of the death penalty does not appear to them to be unreasonable.

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[10] T. W. Adorno, Else Frenkel-Brunswick, Daniel J. Levinson, and R. Nevitt Sanford in collaboration with Betty Aron, Marcia Hertz Levinson and William Morrow: The Authoritarian Personality, New York: Harper Brothers, 1950.

[11] Robert E. Thayer; "Attitude and Personality Differences Between Potential Jurors Who Could Return a Death Verdict and Those Who Could Not", Proceedings of the Annual Convention of the American Psychological Association, 1970, Washington, D. C., pp. 445-446.

Inmates have differing views. Generally, inmates resent the system in which they serve time. Long-time inmates in non-capital punishment states favor the death penalty for two reasons. First, it is harder to get a conviction in a capital case where the death penalty exists. Secondly, sentences in non-capital punishment states tend to be longer for capital cases. On the other hand, inmates in capital punishment states tend to be against it. In fact, many make the point that in case of capital punishment, there is a tendency to destroy all the witnesses that might identify the offender. Prior to the Lindbergh Law, for example, kidnapped children almost always were returned alive. The experience after the death penalty was provided for kidnapping in the early 1930's, however, was that very few kidnapped persons were ever seen alive again.

Since 1930, there have been 3,859 people executed, of which 2,066 were black and 1,751 were white[12]. The person executed more than any other is the black, indigent male. Forty-eight whites have been executed for rape since 1930, while 405 blacks have been executed for rape. The reasons provided for this imbalance have ranged from cultural deprivation in which a similar number of whites from the same socio-economic status may have been executed to pure prejudice.

Conclusions

In conclusion, the arguments regarding the capital punishment issue have been similar from the debates of Cato in the Roman Senate in the second century B.C. to the recent debates in the Canadian Parliament. The primary issues are divided into two groups, (1) the utilitarian and empirical arguments and the (2) traditional sentiments and beliefs. Capital punishment has never been successfully argued on utilitarian bases and the strongest arguments have been in the area of traditional sentiments and beliefs. The primary arguments have been (1) deterrence, (2) elimination of the dangerous offender, (3) revenge, and (4) satisfying social anger. The arguments for revenge and satisfying social anger have been strongest throughout history. These are the arguments that have kept capital punishment in Africa, Asia, and the United States.

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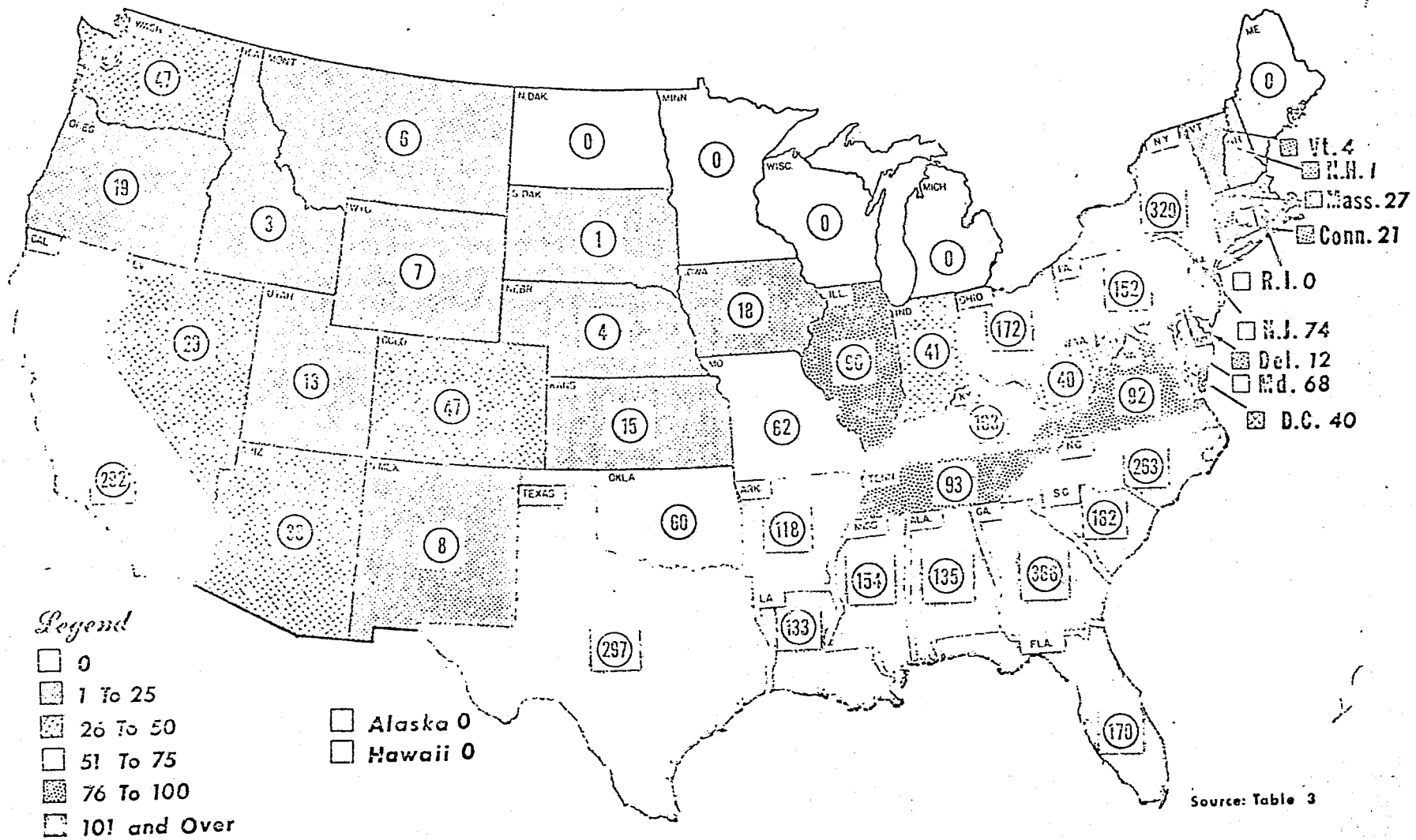
[12] National Prisoner Statistics, No. 46, Washington, D.C. United States Bureau of Prisons, August, 1971, p. 8.

CHART-1 EXECUTIONS, 1930 - 1970

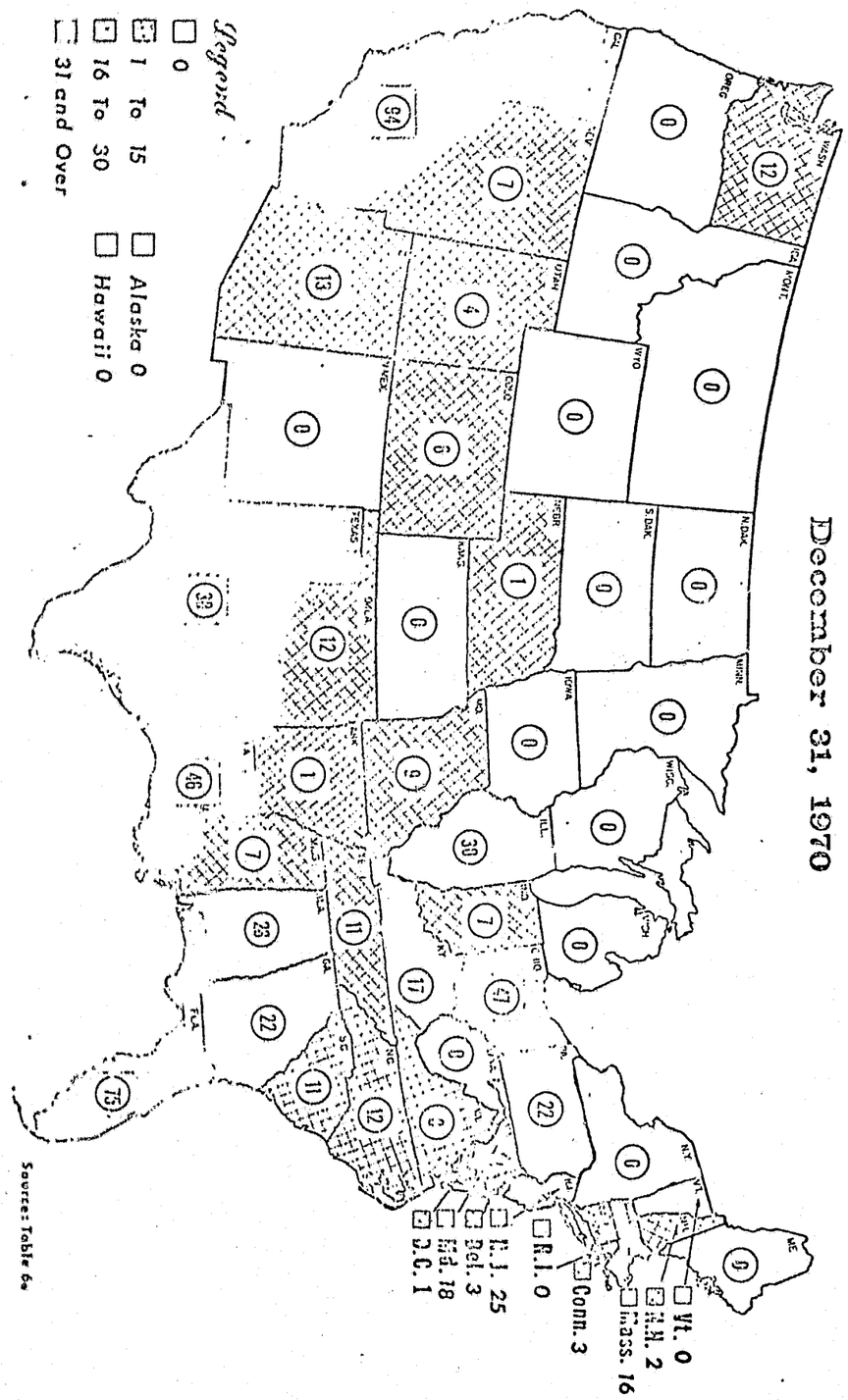
Prisoners Executed Under Civil Authority In The United States, By State



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

CHART-2 Prisoners Under Sentence Of Death, By State

December 31, 1970



Source: Table 6a

Governor's Study Committee on Capital Punishment

A Statement By The
Florida Parole and Probation Commission
Armond R. Cross, Chairman
August 30, 1972

This is a synopsis of my presentation before the study committee on behalf of the Commission on Thursday, August 17, last.

This agency has not made a policy statement either for or against capital punishment nor do we feel that it would be proper to do so for the following reasons: prior to the supreme court decision in effect abolishing capital punishment, it was the duty of this agency to investigate these cases and give a report and recommendation to the pardon board for their consideration of the issue of commutation of sentence. These investigations and reports are based on facts and are unbiased in nature. If the legislature re-enacts capital punishment laws suitable to the courts, the duty of those investigations and reports will continue to rest with this agency. We feel that if we adopt a philosophy for or against capital punishment the objectivity of our reports and recommendations may in the minds of the members of the pardon board be questionable.

We have just completed investigations of 19 such cases on death row and our findings might be of interest to the committee. Of the 19 all were male, 16 were convicted of Murder in the First Degree, three were convicted of Rape, four were white, 15 were black, 10 were convicted more than 10 years ago, three more than three years ago and six in the past three years. The average educational level was slightly under 9th grade with a spread from no education to 12th grade. The average age was 33 with the age spread from 19 to 73. All 19 had previous criminal records with 10 having prior assaultive records. During the investigations, judges, prosecutors, law enforcement officials, and victims or families of victims were contacted, their feelings are as follows: The judges in five of the cases felt that the sentence should be commuted to life in prison and 11 of the cases that the death penalty should be carried out, five were either deceased or inaccessible. Law enforcement officials felt that in two of the cases the sentence should be commuted to life in prison, in 14 of the cases the penalty should be carried out and three were either deceased or inaccessible. The victims or families of the victims felt in five of the cases that the sentence should be commuted to life imprisonment, in four of the cases the death penalty should be carried out, in two of the cases they were indifferent and eight of the cases were either deceased or inaccessible

Since 1924 of all the cases commuted from the death penalty to life imprisonment "total number unknown" we have paroled 45. The status of these 45 cases may be of interest to the committee: 21 are still on parole and are doing well, 11 have received full pardon from the pardon board, eight have died of natural causes while on parole, one is in prison as a result of parole revocation, one committed murder again, drank lye in an attempted suicide and died two weeks following his return to prison. One has absconded and a warrant has been issued authorizing his arrest, two were killed while in an act of violence. One of those shot his wife and child to death and then committed suicide with the same gun. The other was killed by police when they were called to quell a disturbance and he resisted arrest.

There has been much discussion in the news media about life sentences without parole as an alternative to the death penalty; the agency is in every way opposed to such legislation. We would not like to see the state divorce itself from the philosophy that any one may be rehabilitated at a given time during his incarceration. Such legislation would seem to us to do that. There is in fact no such thing as life in prison without the possibility of freedom. Even if such a law were passed. Under a law prohibited parole the release procedure would be transferred from the paroling authority to the pardon board who has the constitutional authority to grant conditional pardon, full pardon, commutation of sentence, or authorize lessening the penalty.

In response to some questions posed by the committee to me on the 17th, I am attaching hereto some statistical information with supporting narrative which hopefully will clarify those questions.

On behalf of the agency, I will be most happy to appear and answer any questions the committee may have at any time.

FLORIDA PAROLE AND PROBATION COMMISSION
PROFILE OF PRISONERS SENTENCED FOR CAPITAL OFFENSES

NATIONWIDE AND FLORIDA STATISTICS COMPARED

From 1965 to 1970, Florida reported 3,661 cases to the Uniform Parole Reports (UPR) of the National Probation and Parole Institutes. Of these cases, Florida reported 480 Murders and 77 Forcible Rapes. These 557 individuals had consistently better performance on Parole during this five year period than almost all other classes of offenders. (The exception is "All Other Sex Offenses" - See TABLE I). The following table compares the Florida figues from TABLE I with the national figures from TABLE II.

	FLORIDA		NATIONWIDE	
	WILLFUL HOMICIDE	FORCIBLE RAPE	WILLFUL HOMICIDE	FORCIBLE RAPE
SUCCESS RATE	98%	97%	98%	94%

Success on Parole as used by UPR is defined as not being returned to prison.

Most other cases reported from Florida to UPR have a lower success rate than the capital offense cases.

SUCCESS RATE

	Florida	Nationwide
Robbery, Armed	92%	92%
Robbery, Unarmed	92%	92%
Burglary	91%	89%
Vehicle Theft	84%	86%

The preceeding figures are extracted from TABLES I and II. They show that Robbery, Armed and Unarmed, have only a 92% success rate for both Florida and Nationwide. The success rate falls to a minimum with those convicted of Burglary and Vehicle Theft. Note that generally the Florida success rate on Parole is higher than the national average success rate on Parole.

An alternative definition for success on Parole is that of No Major Difficulty. This classification considers as unfavorable those cases continued on Parole even though charged with an offense or arrested and released, as well as those returned to prison. The following table shows the nationwide statistics for Parole Performance using this definition ordered by percent favorable.

	PAROLE PERFORMANCE			
TYPE OF OFFENSE	No Difficulty	Major Difficulty	% Favorable	Total
HOMICIDE	539	54	90.89	593
Manslaughter	72	12	85.71	84
Sex Offense Against Juvenile	129	24	84.31	153
Aggravated Assault	309	62	83.29	371
FORCIBLE RAPE	135	33	80.36	168
Alcohol Offense	36	9	80.00	45
Statutory Rape	87	25	77.68	112
Other Sex Offense	50	15	76.92	65
Armed Robbery	813	256	76.05	1069
Other Fraud	48	12	80.00	60
Unarmed Robbery	287	109	72.74	396
Prostitution	8	3	72.73	11
Narcotic Offense	256	105	70.91	361
Theft and Larceny	504	212	70.39	716
Burglary	1576	796	66.44	2372
Forgery and Checks	435	317	57.85	752
Vehicle Theft	219	162	57.48	381
All Other	267	135	66.41	402
TOTAL	5447	2191	71.31	7638

Chi-Square 324.56 Df=17

Even when this more restrictive definition is used it may be seen that Homicide cases still have the highest percent favorable performance and that Forcible Rape still falls within the top five most favorable performance categories.

TABLES III through VIII are the Florida statistics on a year by year basis for 1965-1970. It should be noted that 1965-1968 represent only a 25% sample while the data 1969-1970 represent 100% of the population. The following table is a year by year survey of these tables.

PERCENT SUCCESSFUL

	YEAR					
OFFENSE	1965	1966	1967	1968	1969	1970
Willful Homicide	100	100	100	98	97	99
Forcible Rape	100	100	80	100	100	100
Armed Robbery	100	97	84	94	92	91
Unarmed Robbery	100	92	100	100	93	87
Burglary	83	91	91	94	94	90
Vehicle Theft	88	92	92	100	85	92

With one exceptional year, 1968, (vehicle theft), persons convicted of willful homicide have better performance on parole than all other classes of offenders. Similar performance may be seen for those convicted of forcible rapes (except 1967).

Florida Sub-Samples

A study was made of 128 prisoners sentenced to life imprisonment. The sample contained 57.1% Blacks and 42.9% whites, of which 7.8% were female and 92.2% were male.

The distribution of offenses was as follows:

68.6%	Murder in the First Degree
15.6%	Murder in the Second Degree
13.3%	Rape
2.3%	Armed Robbery

The above information is reflected in the following table:

Distribution of Offenses by Race and Sex

	BLACK		WHITE		
	Male	Female	Male	Female	TOTAL
Percent of Total	37.5	2.3	26.6	2.3	68.7
Murder, I	48	3	34	3	88
Percent of Total	8.5	3.1	3.9		15.6
Murder, II	11	4	5		20
Percent of Total	4.7		8.6		13.3
Rape	6		11		17
Percent of Total	.8		1.6		2.3
Armed Robbery	1		2		3
Percent of Total	51.6	5.5	40.6	2.3	100.0
Total	66	7	52	3	128

The following table shows the average age at the time of sentence and the average sentence served before Parole release by sex, race, and offense.

	Average Age	Average Sentence Served Before Parole	Average Age	Average Sentence Served Before Parole	All Black-Served Average Sentence	Average Age	Average Sentence Served Before Parole	Average Age	Average Sentence Served Before Parole	White-Average Sentence Served
Murder, I	32.4	9.1	38.0	8.5	9.0	37.4	8.9	31.3	7.0	8.7
Rape	30.2	12.3	-	-	12.3	34.2	13.9	-	-	13.9
Murder, II	37.4	10.2	30.5	8.5	9.74	31.0	9.0	-	-	9.0
Robbery	26	8.5	-	-	8.5	-	-	-	-	-
Total	32.9	9.6	33.7	8.5	9.21	35.8	9.9	31.3	7.0	9.76
	Male		Female			Male		Female		
	Black					White				

The average length of time served on sentence before Parole release is granted is 9.55 years. When broken into groups by race, the average length of time served on sentence before Parole release is 9.76 years for Whites and 9.21 years for Blacks.

Sixty-one percent (61%) had at least one previous offense - an average of two-point-two (2.2) offenses per man. The offenses were distributed as follows:

Type	Black	%	White	%	Total	%
Misdemeanor	29	60.3	7	14.5	36	75
Felony	9	18.7	3	6.3	12	25
Total	38	79.0	10	20.8	48	100

A study of 47 cases commuted from death to life in Florida since 1924 was made.

	Number	Percent
Still on Parole-Doing Well	21	45.
Received Pardon	11	23.
Died of Natural Causes	8	17.
Parole Revoked	1	2.
Revoked after Offense	1	2.
Absconded	1	2.
Killed while on Parole	2	4.
Suicide	1	2.
Killed by Police	1	2.
TOTAL	47	99.

89% of these shows success while on Parole release. Only 11% showed serious problems while on Parole.

UNIFORM PAROLE REPORTS

of the National Probation and Parole Institutes

NATIONAL COUNCIL ON CRIME AND DELINQUENCY RESEARCH CENTER

BRINLEY BUILDING DAVIS, CALIFORNIA 95616

FLORIDA
MALE & FEMALE

1965 - 1970

TABLE I

NEW MAJOR CONVICTIONS OR ALLEGATIONS WITH PRISON RETURN IN FIRST YEAR FOR PERSONS PAROLED 1965 - 1970

New Offense	Total Part 1 & 2	Willful Homicide	Negligent Manslaughter	Armed Robbery	Unarmed Robbery	Aggravated Assault	Forcible Rape	All Other Sex Offenses	Commitment Offense: Burglary	Theft or Larceny	Vehicle Theft	Forgery Fraud or Larceny by Check	Other Fraud	Violations of Narcotic Drug Laws	Violations of Alcohol Laws	All Others
None	3661	480	94	452	150	241	77	73	1039	273	110	338	35	135	10	154
	94%	98%	97%	92%	92%	95%	97%	100%	91%	95%	84%	94%	97%	97%	91%	94%
Willful Homicide	6	1			1				3			1				
	½%	½%			1%				½%			½%				
Negligent Manslaughter	3					2			1							
	½%					1%			½%							
Armed Robbery	23			9	2	1			5		2	2		1	1	
	1%			2%	1%	½%			½%		2%	1%		1%	9%	
Unarmed Robbery	14			5	2	1			3	1	1	1				
	½%			1%	1%	½%			½%	½%	1%	½%				
Aggravated Assault	14	4		4	1				3		1					1
	½%	1%		1%	1%				½%		1%					1%
Forcible Rape	1			1												
	½%			½%												
All Other Sex Offenses	1								1							
	½%								½%							
Burglary	73			6	3	3	1		46	2	4	2		1		5
	2%			1%	2%	1%	1%		4%	1%	3%	1%		1%		3%
Theft or Larceny	27			3	4	2	1		10	4	1		1			1
	1%			1%	2%	1%	1%		1%	1%	1%		3%			1%
Vehicle Theft	25			1					14	1	8	1				
	1%			½%					1%	½%	6%	½%				
Forgery Fraud or Larceny by Check	18	2		1					3			12				
	½%	½%		½%					½%			3%				
Other Fraud																
Violations of Narcotic Drug Laws	7			2						2		1		2		
	½%			½%						1%		½%		1%		
Violations of Alcohol Laws	4		1	1					1			1				
	½%		1%	½%					½%			½%				
All Others	34	1	2	4					12	5	4	1				2
	1%	½%	2%	1%					1%	2%	3%	½%				1%
Total	3911	488	97	489	163	253	79	73	1141	288	131	360	36	139	11	163

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NATIONAL MALE & FEMALE

1965 - 1969

TABLE II

NEW MAJOR CONVICTIONS OR ALLEGATIONS WITH PRISON RETURN IN FIRST YEAR FOR PERSONS PAROLED 1965 - 1969

New Offense	Total Part 1 & 2	Willful Homicide	Negligent Manslaughter	Armed Robbery	Unarmed Robbery	Aggravated Assault	Forcible Rape	All Other Sex Offenses	Commitment Offense: Burglary	Theft or Larceny	Vehicle Theft	Forgery Fraud or Larceny by Check	Other Fraud	Violations of Narcotic Drug Laws	Violations of Alcohol Laws	All Others
None	101618	8103	1819	10404	3762	5532	2035	3828	27375	9261	4921	11444	924	4991	441	6778
	92%	98%	98%	92%	92%	96%	94%	96%	89%	92%	86%	90%	94%	93%	97%	94%
Willful Homicide	132	22		21	7	7	5	2	38	7	6	6		1	1	9
	⅛	⅛		⅛	⅛	⅛	⅛	⅛	⅛	⅛	⅛	⅛		⅛	⅛	⅛
Negligent Manslaughter	30			7	2	1			10	3	4	1		1		1
	⅛			⅛	⅛	⅛			⅛	⅛	⅛	⅛		⅛		⅛
Armed Robbery	850	13	2	301	48	26	6	9	233	62	56	41	2	16		35
	1%	⅛	⅛	3%	1%	⅛	⅛	⅛	1%	1%	1%	⅛	⅛	⅛		⅛
Unarmed Robbery	305	1	2	52	57	14	4	3	87	20	14	31	1	10		9
	⅛	⅛	⅛	⅛	1%	⅛	⅛	⅛	⅛	⅛	⅛	⅛	⅛	⅛		⅛
Aggravated Assault	467	32	6	59	22	61	9	12	124	41	28	31		15	1	26
	⅛	⅛	⅛	1%	1%	1%	⅛	⅛	⅛	⅛	⅛	⅛		⅛	⅛	⅛
Forcible Rape	141	2		10	6	4	35	8	37	13	7	4	1	1		5
	⅛	⅛		⅛	⅛	⅛	2%	⅛	⅛	⅛	⅛	⅛	⅛	⅛		⅛
All Other Sex Offenses	178	7	1	11	7	2	8	39	55	9	10	13		2		14
	⅛	⅛	⅛	⅛	⅛	⅛	⅛	1%	⅛	⅛	⅛	⅛		⅛		⅛
Burglary	2597	20	8	195	64	47	19	19	1522	211	180	137	8	69	3	95
	2%	⅛	⅛	2%	2%	1%	1%	⅛	5%	2%	3%	1%	1%	1%	1%	1%
Theft or Larceny	844	8	2	51	36	18	10	13	293	178	73	95	6	33		29
	1%	⅛	⅛	⅛	1%	⅛	⅛	⅛	1%	2%	1%	1%	1%	1%		⅛
Vehicle Theft	829	9	3	47	19	12	3	8	247	87	280	62	7	6	2	37
	1%	⅛	⅛	⅛	⅛	⅛	⅛	⅛	1%	1%	5%	⅛	1%	⅛	⅛	1%
Forgery Fraud or Larceny by Check	1073	5	1	41	20	10	5	6	170	82	50	627	20	10		26
	1%	⅛	⅛	⅛	⅛	⅛	⅛	⅛	1%	1%	1%	5%	2%	⅛		⅛
Other Fraud	62			4	1	1	3	1	22	3	3	14	5	1		4
	⅛			⅛	⅛	⅛	⅛	⅛	⅛	⅛	⅛	⅛	1%	⅛		⅛
Violations of Narcotic Drug Laws	506	10	3	46	15	7	1	7	127	33	15	35	3	189		15
	⅛	⅛	⅛	⅛	⅛	⅛	⅛	⅛	⅛	⅛	⅛	⅛	⅛	4%		⅛
Violations of Alcohol Laws	97	2	3	6	1	3	2	5	36	7	6	15	1		5	5
	⅛	⅛	⅛	⅛	⅛	⅛	⅛	⅛	⅛	⅛	⅛	⅛	⅛		1%	⅛
All Others	921	20	12	89	35	39	16	24	256	96	63	96	5	26		144
	1%	⅛	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	⅛	....	2%
Total	110650	8254	1862	11352	4102	5784	2161	3984	30632	10113	5716	12652	983	5371	453	7231

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FLORIDA
MALE & FEMALE

1965

TABLE III

NEW MAJOR CONVICTIONS OR ALLEGATIONS WITH PRISON RETURN IN FIRST YEAR FOR PERSONS PAROLED IN 1965

New Offense	Total Part 1 & 2	Commitment Offense: Willful Homicide	Negligent Manslaughter	Armed Robbery	Unarmed Robbery	Aggravated Assault	Forcible Rape	All Other Sex Offenses	Burglary	Theft or Larceny	Vehicle Theft	Forgery Fraud or Larceny by Check	Other Fraud	Violations of Narcotic Drug Laws	Violations of Alcohol Laws	All Others
None	250 10%	32 100%	8 100%	39 100%	10 100%	13 89%	8 100%	7 100%	71 83%	20 95%	7 88%	26 93%	2 100%	1 100%	1 100%	5 83%
Willful Homicide																
Negligent Manslaughter																
Armed Robbery	1 ½%								1 1%							
Unarmed Robbery																
Aggravated Assault	1 ½%								1 1%							
Forcible Rape																
All Other Sex Offenses	1 ½%								1 1%							
Burglary	7 3%						1 11%		5 6%							1 17%
Theft or Larceny	1 ½%								1 1%							
Vehicle Theft	2 1%								1 1%		1 13%					
Forgery Fraud or Larceny by Check	4 1%								2			2 7%				
Other Fraud									2							
Violations of Narcotic Drug Laws																
Violations of Alcohol Laws																
All Others	4 1%								3 3%	1 5%						
Total	271	32	8	39	10	13	9	7	86	21	8	28	2	1	1	6

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FLORIDA
MALE & FEMALE

1966

TABLE IV

NEW MAJOR CONVICTIONS OR ALLEGATIONS WITH PRISON RETURN IN FIRST YEAR FOR PERSONS PAROLED IN 1966

New Offense	Commitment Offense															
	Total Part 1 & 2	Willful Homicide	Negligent Manslaughter	Armed Robbery	Unarmed Robbery	Aggravated Assault	Forcible Rape	All Other Sex Offenses	Burglary	Theft or Larceny	Vehicle Theft	Forgery Fraud or Larceny by Check	Other Fraud	Violations of Narcotic Drug Laws	Violations of Alcohol Laws	All Others
None	311 95%	31 100%	8 100%	34 97%	12 92%	19 100%	8 100%	8 100%	102 91%	30 100%	11 92%	29 94%	3 100%	5 83%	1 100%	10 91%
Willful Homicide	1 ½%								1 1%							
Negligent Manslaughter																
Armed Robbery	1 ½%											1 3%				
Unarmed Robbery																
Aggravated Assault																
Forcible Rape																
All Other Sex Offenses																
Burglary	6 2%								6 5%							
Theft or Larceny	4 1%			1 3%	1 8%						1 8%					1 9%
Vehicle Theft	2 1%								2 2%							
Forgery Fraud or Larceny by Check	2 1%								1 1%			1 3%				
Other Fraud																
Violations of Narcotic Drug Laws	1 ½%													1 17%		
Violations of Alcohol Laws																
All Others																
Total	328	31	8	35	13	19	8	8	112	30	12	31	3	6	1	11

UNIFORM PAROLE REPORTS

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FLORIDA
MALE &
FEMALE

1967

TABLE V

NEW MAJOR CONVICTIONS OR ALLEGATIONS WITH PRISON RETURN IN FIRST YEAR FOR PERSONS PAROLED IN 1967

New Offense	Commitment Offense															
	Total Part 1 & 2	Willful Homicide	Negligent Manslaughter	Armed Robbery	Unarmed Robbery	Aggravated Assault	Forcible Rape	All Other Sex Offenses	Burglary	Theft or Larceny	Vehicle Theft	Forgery Fraud or Larceny by Check	Other Fraud	Violations of Narcotic Drug Laws	Violations of Alcohol Laws	All Others
None	263 93%	28 100%	12 100%	21 84%	12 100%	26 96%	4 80%	1 100%	83 91%	12 92%	11 79%	26 90%	1 1[illegible]%	4 100%		22 100%
Willful Homicide																
Negligent Manslaughter	1 ½%								1 1%							
Armed Robbery	2 1%			1 4%					1 1%							
Unarmed Robbery	2 1%			2 8%												
Aggravated Assault																
Forcible Rape																
All Other Sex Offenses																
Burglary	5 2%			1 4%		1 4%			2 2%		1 7%					
Theft or Larceny	2 1%						1 20%		1 1%							
Vehicle Theft	6 2%								3 3%	1 8%	2 14%					
Forgery Fraud or Larceny by Check	2 1%											2 7%				
Other Fraud																
Violations of Narcotic Drug Laws																
Violations of Alcohol Laws																
All Others	1 ½%											1 3%				
Total	284	28	12	25	12	27	5	1	91	13	14	29	1	4		22

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NCCD HEADQUARTERS OFFICE — DAVIS, CALIFORNIA 95616

FLORIDA
MALE & FEMALE

1968

TABLE VI

NEW MAJOR CONVICTIONS OR ALLEGATIONS WITH PRISON RETURN IN FIRST YEAR FOR PERSONS PAROLED IN 1968

New Offense	Commitment Offense															
	Total Part 1 & 2	Willful Homicide	Negligent Manslaughter	Armed Robbery	Unarmed Robbery	Aggravated Assault	Forcible Rape	All Other Sex Offenses	Burglary	Theft or Larceny	Vehicle Theft	Forgery Fraud or Larceny by Check	Other Fraud	Violations of Narcotic Drug Laws	Violations of Alcohol Laws	All Others
None	248 96%	45 98%	4 100%	31 94%	6 100%	17 89%	5 100%	2 100%	67 96%	16 100%	6 86%	29 97%	1 100%	6 100%		13 100%
Willful Homicide	1 1%	1 2%														
Negligent Manslaughter																
Armed Robbery	4 2%			2 6%		1 5%			1 1%							
Unarmed Robbery																
Aggravated Assault																
Forcible Rape																
All Other Sex Offenses																
Burglary	4 2%					1 5%			2 3%			1 3%				
Theft or Larceny																
Vehicle Theft	1 1%										1 14%					
Forgery Fraud or Larceny by Check																
Other Fraud																
Violations of Narcotic Drug Laws																
Violations of Alcohol Laws																
All Others																
Total	258	46	4	33	6	19	5	2	70	16	7	30	1	6		13

UNIFORM PAROLE REPORTS

of the National Probation and Parole Institutes

NATIONAL COUNCIL ON CRIME AND DELINQUENCY RESEARCH CENTER

DAVIS, CALIFORNIA 95616

FLORIDA
MALE & FEMALE

1969

TABLE VII

NEW MAJOR CONVICTIONS OR ALLEGATIONS WITH PRISON RETURN IN FIRST YEAR FOR PERSONS PAROLED IN 1969

New Offense	Total Part 1 & 2	Commitment Offense: Willful Homicide	Negligent Manslaughter	Armed Robbery	Unarmed Robbery	Aggravated Assault	Forcible Rape	All Other Sex Offenses	Burglary	Theft or Larceny	Vehicle Theft	Forgery Fraud or Larceny by Check	Other Fraud	Violations of Narcotic Drug Laws	Violations of Alcohol Laws	All Others
None	1090 95%	145 97%	23 96%	157 92%	55 93%	63 100%	24 100%	26 100%	309 94%	91 96%	34 85%	91 95%	10 91%	26 100%	3 100%	33 94%
Willful Homicide	1 ½%								1 ½%							
Negligent Manslaughter																
Armed Robbery	7 1%			4 2%	1 2%						1 3%	1 1%				
Unarmed Robbery	10 1%			3 2%	2 3%				3 1%	1 1%		1 1%				
Aggravated Assault	6 1%	3 2%		1 1%					1 ½%		1 3%					
Forcible Rape																
All Other Sex Offenses																
Burglary	22 2%			3 2%	1 2%				12 4%	2 2%	2 5%	1 1%				1 3%
Theft or Larceny	2 ½%									1 1%			1 9%			
Vehicle Theft	4 ½%			1 1%					1 ½%		2 5%					
Forgery Fraud or Larceny by Check	2 ½%											2 2%				
Other Fraud																
Violations of Narcotic Drug Laws																
Violations of Alcohol Laws	2 ½%			1 1%					1 ½%							
All Others	6 1%	1 1%	1 4%	1 1%					2 1%							1 3%
Total	1152	149	24	171	59	63	24	26	330	97	40	96	11	26	3	35

UNIFORM PAROLE REPORTS

of the National Probation and Parole Institutes

NATIONAL COUNCIL ON CRIME AND DELINQUENCY RESEARCH CENTER

BRINLEY BUILDING DAVIS, CALIFORNIA 95616

FLORIDA
MALE & FEMALE

1970

TABLE VIII

NEW MAJOR CONVICTIONS OR ALLEGATIONS WITH PRISON RETURN IN FIRST YEAR FOR PERSONS PAROLED IN 1970

New Offense	Total Part 1 & 2	Commitment Offense: Willful Homicide	Negligent Manslaughter	Armed Robbery	Unarmed Robbery	Aggravated Assault	Forcible Rape	All Other Sex Offenses	Burglary	Theft or Larceny	Vehicle Theft	Forgery Fraud or Larceny by Check	Other Fraud	Violations of Narcotic Drug Laws	Violations of Alcohol Laws	All Others
None	1499	199	39	170	55	103	28	29	407	104	41	137	18	93	5	71
	93%	99%	95%	91%	87%	92%	100%	100%	90%	92%	82%	94%	100%	97%	83%	93%
Willful Homicide	3				1				1			1				
	½%				2%				½%			1%				
Negligent Manslaughter	2					2										
	½%					2%										
Armed Robbery	8			2	1				2		1			1	1	
	½%			1%	2%				½%		2%			1%	17%	
Unarmed Robbery	2					1					1					
	½%					1%					2%					
Aggravated Assault	7	1		3	1				1							1
	½%	½%		2%	2%				½%							1%
Forcible Rape	1			1												
	½%			1%												
All Other Sex Offenses																
Burglary	29			2	2	1			19		1			1		3
	2%			1%	3%	1%			4%		2%			1%		4%
Theft or Larceny	16			2	3	2			8	3						
	1%			1%	5%	2%			2%	3%						
Vehicle Theft	10								7		2	1				
	1%								2%		4%	1%				
Forgery Fraud or Larceny by Check	8	2		1								5				
	½%	1%		1%								3%				
Other Fraud																
Violations of Narcotic Drug Laws	6			2						2		1		1		
	½%			1%						2%		1%		1%		
Violations of Alcohol Laws	2		1									1				
	½%		2%									1%				
All Others	23		1	3		3			7	4	4					1
	1%		2%	2%		3%			2%	4%	8%					1%
Total	1618	202	41	186	63	112	28	29	452	113	50	146	18	96	6	76

Governor's Committee To Study Capital Punishment
A Statement By
Louie L. Wainwright, Director
Florida Division of Corrections
August 17, 1972

On June 29, 1972, the U.S. Supreme Court effectively struck down capital punishment throughout the Country in its decision in Furman v. Georgia in a 5-4 decision.

Naturally, many questions arose concerning the practice and procedure that could or should be followed in Florida as a result of this decision.

It is clear that anyone prosecuted on a capital felony in Florida as of the date of the decision could not possibly suffer a penalty of death. In an effort of our lawmakers to enact new legislation regarding the capital felony offenders, certain recommendations have been made within the general interpretation of the decision in the Furman v. Georgia landmark case.

It has been recommended that the Florida Legislature enact legislation making the death penalty mandatory upon conviction for the premeditated killing of:

1. any law enforcement officer;
2. of any penal institution officer;
3. pursuant to a contract for profit;
4. committed or perpetrated during the commission of any felony directed against another person;
5. by an assassin or person taking the life of any state or federal official;
6. committed by a parolee or probationer previously convicted of first degree murder;
7. of a person in connection with the highjacking of an airplane, bus, train, ship or other commerical vehicle.

It has also been recommended that any person convicted of the crime of rape or a homicide under circumstances not specified above be sentenced to life imprisonment without parole. It is regarding the stipulation "Imprisonment Without Parole". I might point out that this group of professional correctional personnel are concerned with the rehabilitation of society's criminal elements, as well as the protection of the law abiding citizens. The opinions and feelings contained herein are all expressed with the desire to accomplsih this two-fold mission.

It has been an increasing effort of our criminal justice system to provide equal justice for all offenders. In this effort there is one fact that is recognized by each and every agent of this system; that is, all the offenders need help in order to develop different values, personalities and attitudes

toward their environment. In view of this fact, it would be wrong, in my opinion, to enact a law that would make self-motivation for lifers impossible, and would exclude them from institutional programs of rehabilitation. To remove the possibility of parole consideration from these offenders would virtually destroy any hope on their part, as well as the Division's, of ever getting the needed help to return to society as a productive citizen. We strenously disagree with a law that would automatically and categorically deny the benefits of parole consideration to the lifer.

The seriousness of their deviation is proof that he needs intensified rehabilitative programs, not a dead end. To group all offenders who commit rape or a homicide in one classification and say that they will never be able to function in society again is simply not realistic. We believe the same as the court, that each individual is innocent until proven guilty, and by the same philosophy, we believe that each lifer has the right to be observed by a professional correctional staff in determining if he or she would, at some point, be a candidate for parole. Each offender is different and responds differently to the rehabilitation programs. Naturally, there will be certain lifers that would never be considered for parole. But this should be determined by the professional evaluation and recommendation of the Florida Parole and Probation Commission and prison staff. The Parole Commission can adequately screen the undesirables with their increasingly professional staff, thereby leaving the unresponsive offender in prison. The major point is that the offenders who are motivated to improve will have the opportunity to do so, and will have not been subjected to wholesale "warehousing" of human beings.

If these recommendations were made law, it would create serious problems for the administration and operations of the institutions. At the present, you could say the number of prisoners that fall under this law are few and could be controlled. It is quite possible that while some juries have been reluctant to impose the "Death Penalty", they would not exhibit the same hesitancy in imposition of the "Life Without Parole" sentence. If you will project your thoughts in the future, it is obvious that this number will increase and is certain to create unruly inmates that will be unresponsive both to traditional disciplinary measures and to treatment programs.

The possibility of escape would increase to a point that our present security system could not control it. If you will mentally place yourself in the place of one of these offenders, I think you can visualize their feelings of despair.

When the law allows a judge to sentence a human being to life imprisonment without parole, he actually loads the gun and cocks it, the discharge will come sooner or later. This discharge or adjustment to their situation and environment could be massive escapes, assaulting or killing personnel or other inmates, taking hostages, or general chaos in our prison system.

An uninformed and inexperienced individual might say, "When their behavior becomes manifested, confine them in cells." The professional correctional worker knows that this only creates problems. However, if the no-parole law is passed, this would be the position we will be forced to take. Can you imagine the mental problems that will be encountered in the future if prisoners are confined in single cells for the remainder of their natural life, with no hope of parole.

It is certain that inmates who would be housed separately in maximum security areas without any hope of parole consideration would create a vicious, ruthless individual. Regardless of the offender's crime, he is still a human being and reacts according to his surroundings. Even a prudent man should realize that inhuman treatment evokes a savage reaction.

The overwhelming majority of the staff support the position against life imprisonment without benefit of parole. They feel it would not only create a threat to staff, but also to the inmates. Other inmates who have expressed themselves on this subject are also almost unanimous in opposition to the no-parole concept from the standpoint of their own safety. We have a responsibility to create an orderly and safe environment for our short term offenders.

Additionally, most of the staff feel that the provision does not take into consideration the possibility that even the most serious offender may change over a period of time. The hope for parole some time in the future may certainly be a motivating factor in this change.

It is my opinion that the State has the opportunity and responsibility to provide adquate treatment programs for all offenders, instead of permanent warehousing for these particular offenders.

We feel that the life offender deserves the opportunity to improve and show us and the Parole Commission that they can re-enter society and be productive. In view of our rehabilitative effort, it is not realistic to blanket these offenders with the no-parole law.

If the no-parole recommendation is made law, it will have a harmful effect on the inmate's behavior, causing serious threat to personal safety, to both inmates and officers. It will cause increased threat to the community due to the higher escape possibilities. The prison system would be adversely affected in its administration and operation.

The ultimate end of the no-parole law would be to see the end of Death Row and the establishment of "LIFE Row".

Governor's Committee to Study Capital Punishment
A Report Submitted By
Commissioner William L. Reed
Florida Department of Law Enforcement

Presentation Outline

Definition of Capital Felony
List of Capital Felonies
National UCR Program
Florida UCR Program
Reporting Procedure
Verification
UCR Statistics and Capital Crimes
    Murder
    Rape
    Assaults on Police Officers
Court Disposition Information

DEFINITION OF CAPITAL FELONY

Chapter 775.082(1), Florida Statutes (Enacted-1971):
A person who has been convicted of a capital felony shall be punished by death unless the verdict includes a recommendation to mercy by a majority of the jury, in which case the punishment shall be life imprisonment. A defendant found guilty by the court of a capital felony on a plea of guilty or when a jury is waived shall be sentenced to death or life imprisonment, in the discretion of the court.

There are five capital felonies in Florida:

The Capital Felonies
1. Chapter 782.04(1), Florida Statutes (Enacted-1921):
The Unlawful killing of a human being, when perpetrated from a premeditated design to effect the death of the person killed or any human being, or when committed in the perpetration of or in the attempt to perpetrate any arson, rape, robbery, burglary, abominable and detestable crime against nature or kidnapping, shall be murder in the first degree and shall constitute a capital felony, punishable as provided in §775.082.

2. Chapter 790.16(1), Florida Statutes (Enacted-1933)
It is unlawful for any person to throw any bomb or to shoot or discharge any machine guns upon, across or along any road, street or highway in the state, or upon or across any public park in the state, or in, upon or across any public place where people are accustomed to assemble in the state. The casting of such bomb or the discharge of such machine gun in, upon or across such public street, or in, upon or across such public park, or in, upon or across such public place, whether indoors or outdoors, including all theatres and athletic stadiums, with intent to do bodily harm to any person or with intent to do damage to the property of any person, shall be a capital felony, punishable as provided in §775.082.

3. Chapter 790.161, Florida Statutes (Enacted-1959):
It is unlawful for any person to thorw, place, discharge, or attempt to discharge any destructive device, as defined herein, with intent to do bodily harm to any person or with intent to do damage to the property of any person, and any person convicted thereof shall be guilty of a felony and punished in the following manner: (1) When such action, or attempt at such action, results in the death of the person intended, or any person, the person so convicted shall be guilty of a capital felony, punishable as provided in §775.082.
[Chapter 790.001(4), Florida Statutes]: (4) "Destructive Device" means any explosive, incendiary, or poison gas bomb, grenade, mine, rocket, missile, or similar device; and includes any type of weapon which will, or is designed to or may readily be converted to, expel a projectile by the action of any explosive and has a barrel with a bore of one half inch or more in diameter and ammunition for such destructive devices, but no including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device. "Destructive device" shall not include: (A) a device which is not designed, re-designed, used, or intended for use as a weapon; (B) Any device, although originally designed as a weapon, which is redesigned so that it may be used solely as a signaling, line-throwing, safety, or similar device; (C) Any shotgun other than a short-barreled shotgun; or (D) Any nonautomatic rifle (other than a short-barreled rifle) generally recognized or particularly suitable for use for the hunting of big game.

4. Chapter 794.01, Florida Statutes (Enacted-1868):
Whoever ravishes and carnally knows a female of the age of ten years or more, by force and against her will, or unlawfully or carnally knows and abuses a female child under the age of ten years, shall be guilty of a capital felony, punishable as provided in §775.082.

5. Chapter 805.02, Florida Statutes (Enacted-1909):
Whoever, without lawful authority, forcibly or secretly confines, imprisons, inveigles or kidnaps any person, with intent to hold such person for a ransom to be paid for the release of such person, or any person who aids, abets or in any manner assists such person in the confining, imprisoning, inveigling or kidnaping of such person, shall be guilty of kidnaping a person, which constitutes a capital felony, punishable as provided in §775.082.

The five capital crimes are: (1) first degree murder - premeditated or felony-murder (2) bombing, machine gunning (3) destructive devices (4) forcible rape (5) kidnaping for ransom.

The following data are derived from the Florida Uniform Crime Reports Program.

Criminal Homicide - Murder

Murder is defined as the unlawful killing of a human being. Any death due to a fight, argument, quarrel, assault or commission of a crime is included. This index offense is scored by police on the basis of their investigation without regard to findings of a court or jury or the decision of a prosecutor. Traffic deaths, caused by the negligence of someone other than the victim, are not included here, but are counted under manslaughter. Attempts to kill and assaults to kill are scored as assaults and not as murder. Suicides, accidental deaths, and justifiable or excusable homicides are also excluded.

1971 - SUMMARY ANALYSIS

* A total of 932 murders were reported by law enforcement agencies in Florida for the months January through December, 1971.

* Murders accounted for 2.4 percent of all violent index crimes and 0.3 percent of all index offenses.

* The murder rate for the reporting period was 13.2 per 100,000 population.

* A total of 840 murders were cleared by arrest or exceptionally cleared, amounting to a 90.1 percent clearance rate statewide.

* The age group accounting for the highest percent of persons arrested for murder, 14.3 percent, occurred in the 25 to 29 age category. Male accounted for 76.9 percent of all persons arrested for murder.

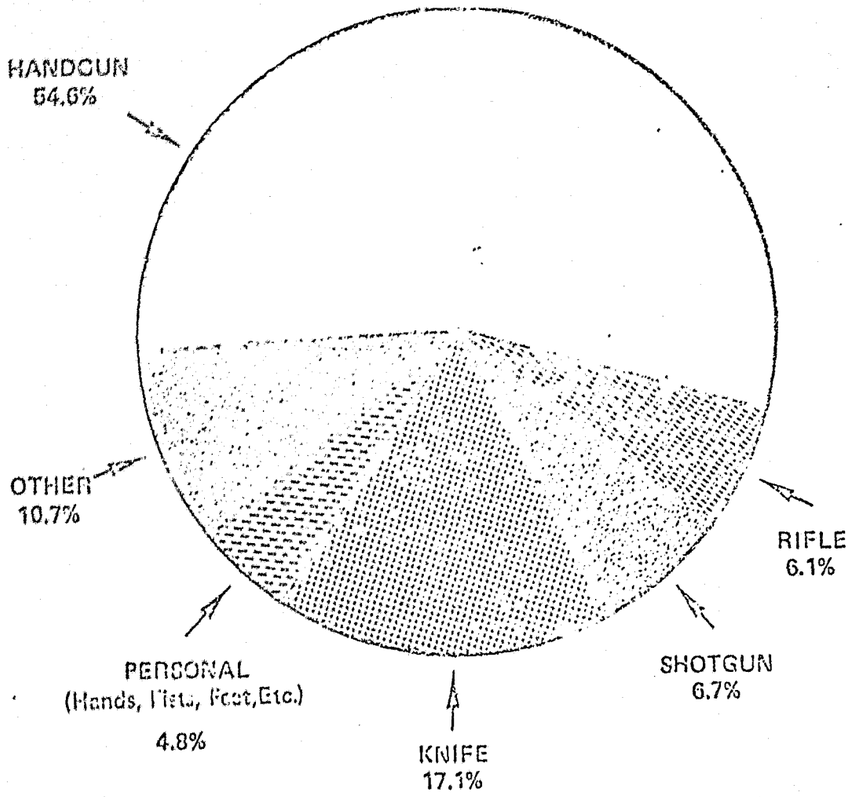
* 30.3 percent of all persons arrested for murder were White, 68.4 percent were Negro and 1.3 percent were of other races.

* 39.2 percent of all murder victims were White, 59.4 percent were Negro and 1.4 percent were of other races. 75.6 percent of all murder victims were male.

* Firearms were employed in 68.1 percent of all reported murders. The use of a knife or other cutting device was involved in 17.1 percent of the murders.

* The murder of one family member by another accounted for 280, or 30.0 percent, of all murders. Of these 280 murders, 63.6 percent resulted from one spouse killing the other.

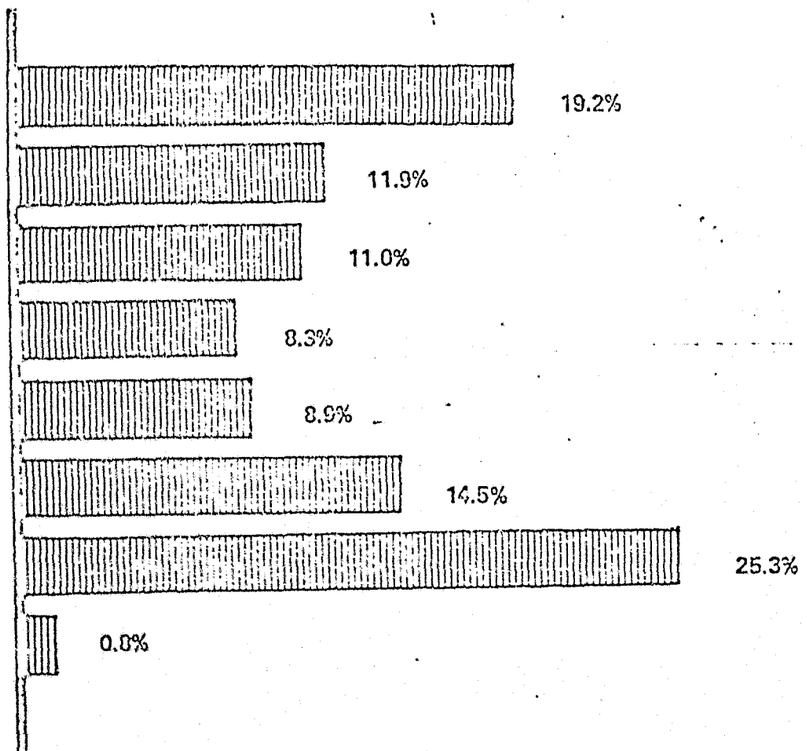
* Lovers quarrels or lovers triangles were involved in 11.6 percent of all murders. Persons killed by felons during the commission of a felony accounted for 6.7 percent of all murders reported.



MURDER

*PERCENT BY DAY OF THE WEEK AND BY TYPE OF WEAPON USED

January - December 1971



*Percent Distribution does not total 100.0 due to rounding.

Of value in the UCR Murder statistics is the breakdown by circumstances. An analysis of this breakdown indicates those murders which are likely to be capital crimes: (1) Murders which were the result of a serious felony (Burglary, Robbery, Rape, etc.) or where the killer was not known to the victim and (2) Murders where the circumstances, motive or murderer is unknown. Other murder categories are typically crimes of passion or seldom involve premeditation (e.g., domestic arguments, bar fights, arguments, etc.).

Percentage of all Murders	Circumstances of Murder
38	Domestic; usually argument; Family, Husband-Wife, Girlfriend, Boyfriend
20	Argument or fight (e.g., over gambling)
11	Victim of felony (B&E, robbery, rape, etc. - where killer probably unknown to victim)
10	Unknown circumstances, motive or killer
8	Felon killed by police or citizen-victim
8	Bar fight or drinking involved
2	Child killing (beating, etc.)
2	Argument about money
1	Prisoner vs. Prisoner

Circumstances likely to be capital felony murders

Number of Murders	Percentage of All Murder	
103	11%	Victim of Felony (Burglary, Robbery, Rape, etc. - where killer is probably unknown to victim)
93	10%	Unknown circumstances Motive or killer
196	21%	

Out of 932 Murders in 1971

4 Resulted from arguments arising out of traffic accidents

1 Resulted from an argument over a parking space

Murder by Circumstance - Percent Distribution - FBI - 1970

Region - Southern States
Spouse killing Spouse - 13.8
Parent Killing Child - 2.2
Other Family Killings - 8.8
Romantic Triangle and Lovers Quarrels - 8.4
Other Arguments - 46.0
Known Felony Type - 46.0
Known Felony Type - 13.9
Suspected Felony Type - 6.9

FORCIBLE RAPE

Forcible rape is the carnal knowledge of a female forcibly and against her will. For the purposes of Uniform Crime Reports, rape is divided into two categories: (1) rape by force; and (2) attempted rapes. Carnal abuse without force (statutory rape) and other sex offenses are not counted.

1971 - SUMMARY ANALYSIS

* A total of 1,708 forcible rapes (including attempts) were reported by law enforcement agencies in Florida for 1971. 1,191 were rapes by force and 517 were attempted rapes.

* Forcible rapes accounted for 4.4 percent of all violent crimes and 0.6 percent of all index offenses reported.

* Approximately 46.9 out of every 100,000 women in Florida were reported as rape victims.

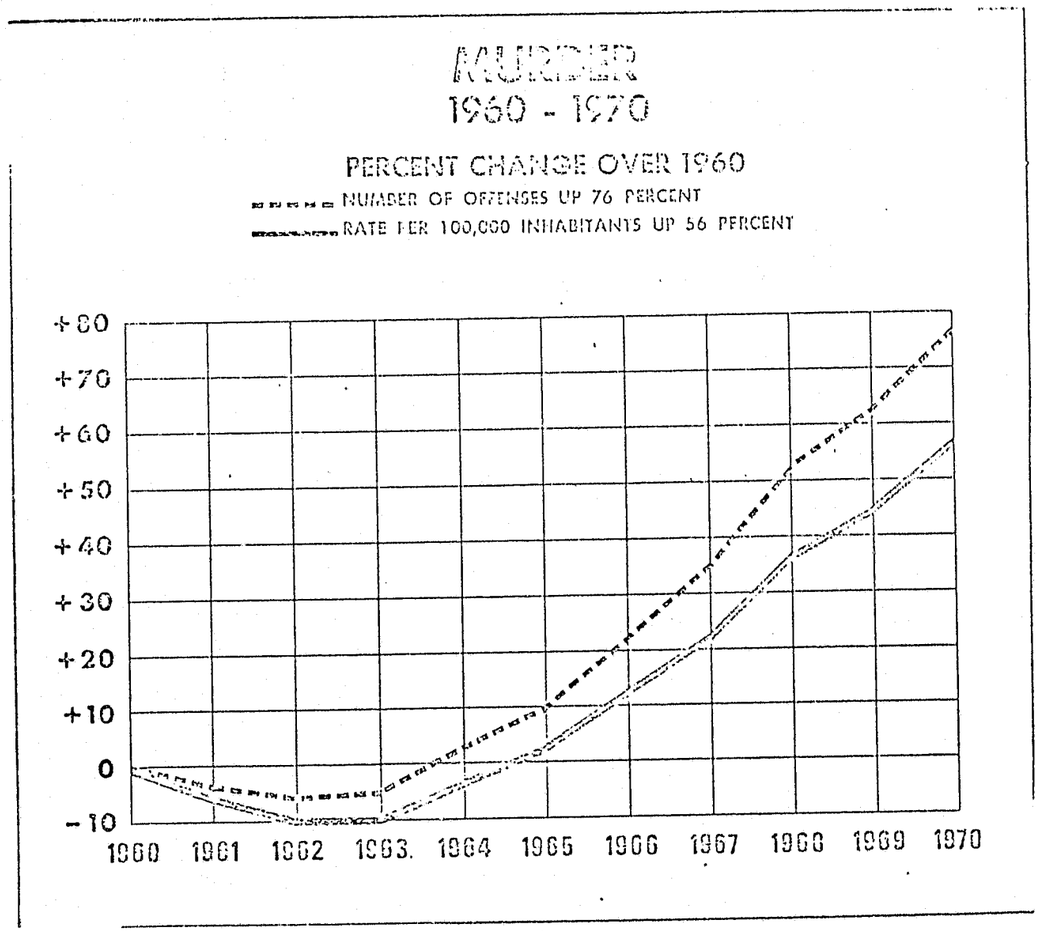
* A total of 1,089 forcible rapes were cleared by arrest or exceptionally cleared, amounting to a 63.8 percent clearance rate statewide.

* 64.1 percent of the reported arrests for forcible rape during 1971 were of persons under the age of 25.

* 44.3 percent of all persons arrested for forcible rape during 1971 were White, 54.3 percent were Negro and 1.4 percent were of other races.

Bombing, Machine Gunning, Destructive Devices
UCR statistics on these crimes are unavailable as UCR categories overlap in this area.

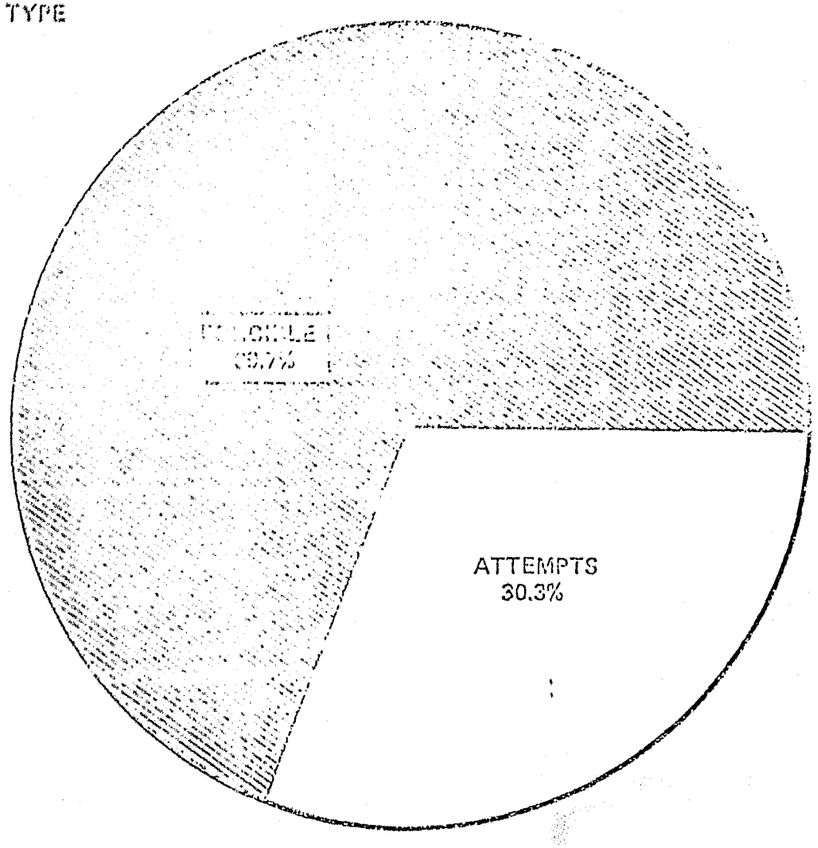
Kidnaping for Ransom
UCR statistics on this crime are unavailable as UCR categories overlap in this area.



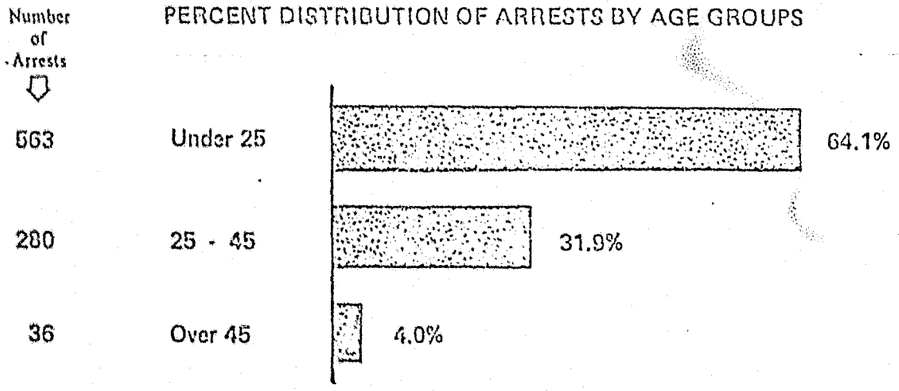
FORCIBLE RAPE

January - December 1971

PERCENT DISTRIBUTION BY TYPE



PERCENT DISTRIBUTION OF ARRESTS BY AGE GROUPS

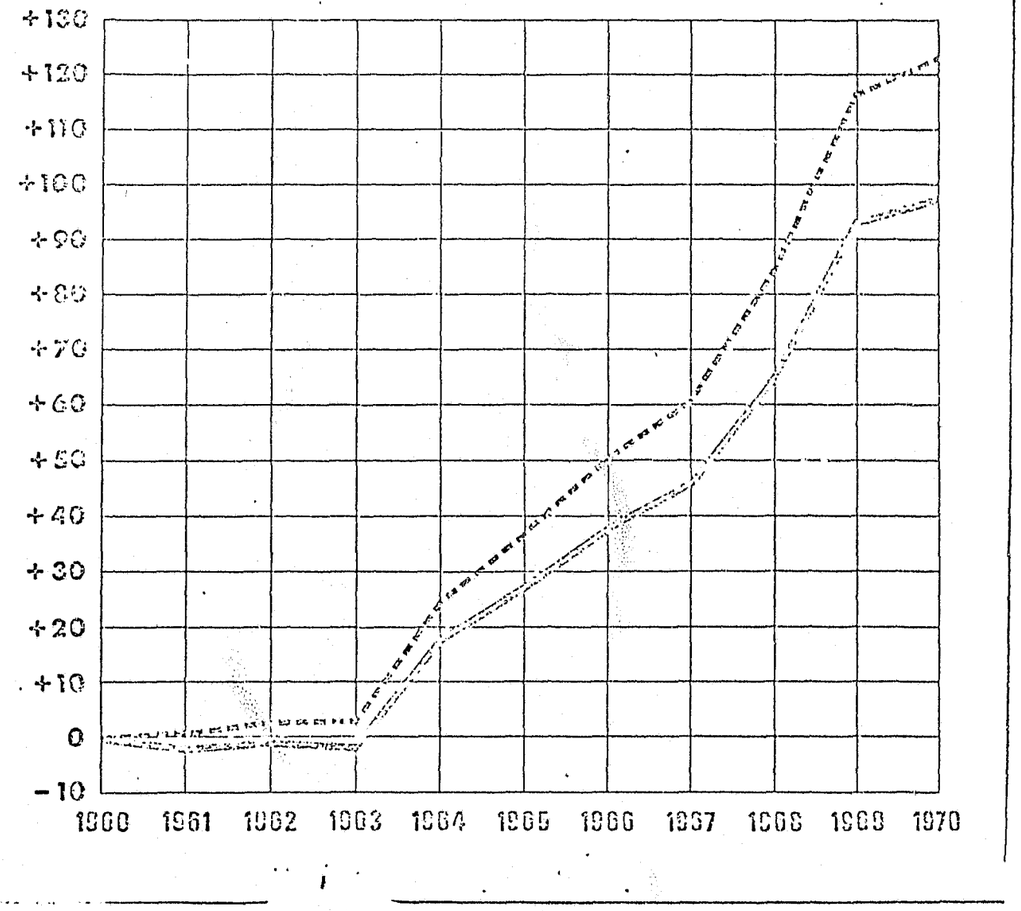


FORCIBLE RAPE
1960 - 1970

PERCENT CHANGE OVER 1960

NUMBER OF OFFENSES UP 121 PERCENT

RATE PER 100,000 INHABITANTS UP 95 PERCENT



BOMBING INCIDENTS - FLORIDA - 1971

Month	Number of Bombings or Bombs Discovered	Injuries or Deaths
January	11	
February	11	
March	14	
April	10	5 injuries
May	3	
June	42	2 injuries
July	3	
August	5	
September	15	
October	6	1 death
November	2	
December	1	
	123	

* 80 Total firebombs or incendiary devices
* one time explosive device used in $600,000 bank robbery
* Majority of firebombs involved businesses and private homes.

ASSAULTS ON POLICE OFFICERS

3 law enforcement officers were killed in the line of duty involving criminal acts in 1971.

2,823 law enforcement officers were reported assaulted in the line of duty. Of this number, 42.1 percent sustained physical injury to some degree.

The rate of assaults on law enforcement officers was 23.8 assaults for every 100 sworn officers.

DISPOSITION OF PERSONS CHARGED - 1971

Offense	Total Persons Charged	ADULTS GUILTY Of Offense Charged	ADULTS GUILTY of Lesser Offense	Acquitted or Otherwise Dismissed	Referred to Juvenile Court Jurisdiction	Other (Pending etc.)
Murder	692	132	97	118	27	383
Forcible Rape	645	103	48	140	59	322

PERCENTAGE ANALYSIS

Of those finally disposed of during 1971 (excluding "Referred to Juvenile Court Jurisdiction" and "Other").

MURDER:
- 38% Guilty as Charged
- 28% Guilty of Lesser Offense
- 34% Acquitted or otherwise dismissed

100%

RAPE:
- 35% Guilty as charged
- 17% Guilty of lesser offense
- 48% Acquitted or otherwise dismissed

100%

CAREERS IN CRIME - FBI STUDY

Charge Arrested For in 1970	Number of Subjects	Average Number of Charges During Career	Frequency of Charges (% of total subjects) One	Two	Three	Four or More
Murder	271	4	22	20	14	44
Rape	186	3	36	21	14	29

Statistics are like alienists---they will testify for either side.
F. H. LaGuardia in LIBERTY, May, 1933.

MINUTES
Governor's Committee to Study Capital Punishment
County Commission Board Room
Hillsborough County Courthouse
Tampa, Florida
September 9, 1972

Committee members present: E. Harris Drew, LeRoy Collins, Robert M. Johnson, Jim Williams, L. E. Brown, Ernest E. Mason, Harold M. Stahmer, Mrs. Bronson Thayer, Richard Earle, Jr., Louis de la Parte, John E. Mathews, Jr., John M. McCarty.

Members absent: C. Farris Bryant, Jesse J. McCrary, Jr., Beth Johnson, Gwen Cherry, Welborn Daniel.

Advisory Committee members present: James T. Russell, Virgil Mayo, Raymond Marky, Charles W. Ehrhardt.

The meeting was called to order and members were welcomed by committee chairman, E. Harris Drew.

The schedule for the remaining meetings was confirmed and it was proposed that arrangements be made by the staff for bus transportation from Jacksonville to Raiford.

The first presentation on this program was offered by Raymond Marky, Assistant Attorney General. Mr. Marky discussed the opinions recently rendered by the Supreme Court regarding capital punishment. Particular emphasis was placed on the current discretion of judges and jurors. It was the position of the Attorney General's office that capital punishment should be reinstituted under certain circumstances. Under the Attorney General's proposal, death would be mandatory on conviction in certain homicides, such as, law enforcement officers, guards, other inmates, etc. (Statement attached)

The NBC movie entitled "Thou Shalt Not Kill" was shown to the committee.

The next presentation was by Dr. E. Preston Sharp. Dr. Sharp favored total abolition of capital punishment, and cited as reasons the following: After abolition of capital punishment in several other countries, the homicide rate decreased significantly. In America there is no consistent variation in the homicide rate between states which have capital punishment and states which have abolished capital punishment. Dr. Sharp also emphasized that imprisonment is adequate protection for society. In one study, 72.2% of all murders committed involved persons who were well acquainted or relatives. Dr. Sharp also reminded the committee that the posture of Florida at this point is not whether to remove capital punishment from our books, but rather whether to reinstate it.

Virgil Mayo next made a presentation representing the Public Defenders Association. Mr. Mayo had polled the public defenders throughout the state and had also met with them in regard to his study of the capital punishment issue. The Public Defenders Association recommended strongly that the death penalty not be reinstated. They also strongly oppose life sentences without the possibility of parole. In regard to life sentences, Mr. Mayo suggested the following alternatives:

1. Those sentenced to life imprisonment should serve a minimum amount of time as established by law before the possibility of parole.
2. Parole could only be granted after public hearings.
3. Parole could only be granted as a matter of executive clemency.

In the event that capital punishment should be reinstated, the public defenders recommend that there be no mandatory death provisions, and that the offense of rape not be classified as a capital crime. (Statement attached)

capital punishment were: W. R. Moorer, Dr. Heinrich Eichhorn-Von-Wurmv, Iran Wishard, and Sergio DeLaPaz. Dr. Vernon Fox presented to the committee groups of expert witnesses who would speak in favor of capital punishment and against capital punishment. The committee voted to allow Dr. Fox to arrange for expert witnesses for the remaining committee meetings, having one proponent and one opponent at each meeting.

The committee voted to invite State Attorney Richard Gerstein to speak at the meeting which will be held in Miami on September 30.

The meeting was adjourned to meet September 16, 1972, at 9:00 a.m. in Pensacola, Florida.

A STATEMENT BY ATTORNEY GENERAL ROBERT SHEVIN

On June 29. 1970, the United States Supreme Court in the case of Furman v. Georgia, 40 LW 4923, reversed the death sentence imposed upon William Furman and Lucious Jackson.

The Court did not do so on the grounds that the death sentence was "cruel or unusual" per se nor did it conclude the death sentence was "cruel and unusual" as applied to the facts and circumstances of the cases then being considered. The Court's action was rather based upon the conclusion that "the system" itself was unconstitutional because it conferred upon the juries and/or judges the power to indiscriminately sentence a person to death or to life imprisonment and that experience demonstrated juries did so whimsically and freakishly. The system according to the majority allowed the fact finder to impermissibly discriminate against certain individuals and thus constituted a deprivation of equal protection implicit in the prohibition of cruel and unusual punishment provision of the Eighth Amendment. The "system" condemned, of course, was Georgia's statutory provision authorizing the jury to recommend mercy, thereby avoiding the sentence to death.

As I stated in my Memorandum of July 7, 1972, because Florida employed the same legal procedures in capital cases, Furman v. Georgia affected everyone sentenced to death in Florida and was applicable to all those on death row at the Florida State Prison to the extent that it removed, as a possible sentence, the sentence of death. The Florida Supreme Court in Donaldson v. Sack, decided on July 17, 1972, and in the more recent case styled Warren v. State, decided on July 28, 1972, so held in ordering the cause remanded for entry of a life sentence in accordance with Furman v. Georgia. Moreover, on August 1, 1972, United States District Judge Charles Scott,

declared the death sentences imposed by the various Circuit Courts of this State illegal and unconstitutional, remanding them to the state circuit courts for imposition of appropriate sentences.

Accordingly, unless the United States Supreme Court grants Georgia's Petition for Rehearing, which is presently pending--an event I consider highly unlikely--there is presently no way by which an individual can be tried on a capital felony or sentenced to death.

In light of the foregoing, the immediate question is whether there are any circumstances under which a death sentence may be imposed and lawfully enforced. Assuming it can, it must then be decided whether Florida ought to restore this form of punishment as the penalty for the commission of crime; and, if so, under what circumstances should it be so prescribed.

After carefully reading the separate opinions of all five justices concurring in the Court's judgment, it is my conclusion that the Legislature may lawfully enact legislation restoring capital punishment as an available state penalty. This conclusion is derived from the fact that only Justices Brennan and Marshall were willing to state unequivocally that the death penalty was unconstitutional per se. Mr. Justice White noted that a mandatory death penalty for first degree murder, for a more narrowly defined category of murder or for rape would present a different issue than the one decided by Furman. Moreover, Mr. Justice Stewart, although finding it unnecessary to answer the question specifically referred to legislative enactments in other states imposing a mandatory death sentence under certain enumerated circumstances. In doing so Mr. Justice Stewart observed that he could not agree that retribution--one of the objectives served by the death penalty--is a constitutionally impermissible ingredient in the imposition of punishment. Indeed, Justice Stewart suggests it may well be necessary to avoid anarchy, self-help, vigilante justice and lynch law.

In light of the position taken by Justice Stewart and Justice White, a statutory scheme that effectively removes the jury's ability to whimsically choose between life and death of the accused, will satisfy the demands of the Eighth Amendment to the Constitution. Obviously a mandatory death sentence upon conviction of a specific crime will remove the impediment condemned by Furman. Arguably, something less may likewise satisfy its requirement, such as conviction of murder in the first degree together with a finding of fact that certain aggravating circumstances were involved in the homicide. The findings of aggravation might well be determined in a bifurcated trial proceeding. Quite obviously, the degree to which any given statute may pass constitutional scrutiny varies

with its degree of narrowness and application. I would, however, like to emphasize that Furman v. Georgia has not impaired and does not prevent the enactment of legislation calling for the death penalty so long as such legislation is framed in such a way that the determination of said penalty is not left to the unbridled and unfettered discretion of the jury or judge.

Not only is it my opinion that the Legislature may lawfully provide for the imposition of the death penalty, it is my considered judgment that it should do so for certain types of homicides. After much consideration and deliberation, it is my recommendation that the Legislature enact legislation making the death penalty mandatory for the premeditated killing:

1. Of any law enforcement officer;
2. Of any penal institution officer;
3. Pursuant to a contract for profit;
4. Committed or perpetrated during the commission of any felony directed against another person;
5. By an assassin or person taking the life of any state or federal official;
6. Committed by a parolee or probationer previously convicted of first degree murder;
7. Of a person in connection with the highjacking of an airplane, bus, train, ship or other commercial vehicle.

While there is evidence which suggests that the death penalty does not deter the commission of homicides generally, I do believe that the death penalty can and does act as a deterrent to certain types of homicides. The death penalty probably has little or no deterrent effect upon the number of homicides committed out of anger, jealousy or hatred because the perpetrator is, at the time of the crime, either in such a state of mind that he is incapable of, or prevented by the circumstances, from considering the consequences. This is not true, however, with regard to the cold blooded homicides such as contract killings or assassinations. If a robber or rapist or kidnapper knows the penalty will be the same regardless of whether he kills his victim is he not encouraged to eliminate a potential witness against him? The answer, of course, is clearly yes. Surely some persons avoid killing their victims because they know the consequences of doing so. It is my view that if one innocent law abiding citizen's life is spared because of the existence of the death penalty then that is sufficient justification for its adoption.

Moreover, I would recommend that any person convicted of the crime of rape or a homicide under circumstances not specified above be sentenced to life imprisonment without parole or at least until the person so convicted has served twenty calendar years of his term in prison.

There are those who suggest that this is unduly harsh and will create a different type of inmate, posing increased security problems and risks to institutional custodians. First, this is why I recommend that the killing of a penal officer by an inmate be punishable by death. Secondly, if it creates additional security problems the solution is not to release dangerous felons to plague society, but to provide the Division of Corrections with additional personnel to cope with this hazard. It is my belief that our first obligation is to protect society at large and that a life sentence should be just that.

In closing, I wish to thank the merbers of the Committee for allowing me the opportunity to appear this morning and to extend the continued support and assistance of my office to the Committee. Thank you.

GOVERNOR'S COMMITTEE TO STUDY CAPITAL PUNISHMENT
A STATEMENT BY VIRGIL D. MAYO, PRESIDENT
FLORIDA PUBLIC DEFENDERS ASSOCIATION REPORT

Upon being notified and requested to serve on the Governor's Committee to Study Capital Punishment, I, as President of the Florida State Public Defender Association, immediately called a special meeting of the elected Public Defenders or their authorized representatives. Although the Florida State Public Defender Association's membership consists of the elected Public Defenders as well as Assistant Public Defenders and Investigators, all of whom have authority to cast votes on matters concerning the Association's policies and positions, it was impossible, in view of the limited amount of time, to have a full meeting and attendance of all the Association membership. The meeting of the Public Defenders was held in Tampa, Florida, on September 7, 1972, and after a full discussion the members present voted to make the following recommendations to the Committee:

1. That the death penalty in any form as a criminal punishment in Florida not be re-instated.

2. Assuming the Legislature of Florida were to determine that the death penalty should not be re-instated in some or all of the existing capital felonies, there should be no mandatory life sentences without benefit of parole. As an alternative to a mandatory life sentence without parole, the Legislature should consider the following:

(a) Life imprisonment with a substantial minimum amount of time served prior to consideration for parole.

(b) Life imprisonment with parole only after public hearings by the Parole Commission.

(c) Life imprisonment without parole but with the opportunity for executive clemency.

3. Assuming that the Legislature of Florida determines that the death penalty should be reinstated in some or all of the existing capital felonies, we recommend as follows:

(a) That there be no mandatory death penalty.

(b) That there be no death penalty for the crime of rape.

(c) The term "pre-meditated" as an element of first degree murder should be re-defined,

(d) The death penalty should not be imposed for kidnapping for ransom except in the event the victim dies at the hand of the perpetrator of the kidnapping.

(e) In the event the death penalty is re-instated as a penalty for felony murder, felony murder should be re-defined to exclude the following:

(1) Accidental deaths occurring during the commission of a felony.
(2) A killing by someone other than the individual perpetrator of the killing.

(f) In the Statute regarding firebombings and machine gunnings, the death penalty should not be imposed except in cases where a death or deaths are involved.

(g) There should be full appellate review of the sentences by the Supreme Court of Florida in all cases where the death penalty has been imposed and the Supreme Court should have the authority to reduce the sentence.

4. If the death penalty is re-instated, the Association recommends the bifurcated trial procedure provided by the statute to become effective October 1, 1972.

5. The questions as to whether or not executions should be carried out within the county in which the crime was committed and witnessed by a local jury was discussed. This was not on the agenda as originally established for our meeting, but a poll will be taken and this committee advised of the results.

MINUTES
Governor's Committee To Study Capital Punishment
Escambia County Health Department
Auditorium
Pensacola, Florida
September 16, 1972

Committee Members Present: E. Harris Drew, LeRoy Collins, Harold Stahmer, Ernest Mason, Jesse McCrary, Stella Thayer, Jim Williams, Robert Johnson.

Committee Members Absent: C. Farris Bryant, John Mathews, Jr., Richard Earle, Jr., John McCarty, Beth Johnson, Louis de la Parte, C. Welborn Daniel, L. E. Brown, Gwen Cherry.

Opening remarks were made by the Chairman, E. Harris Drew, and Judge Ernest Mason. The Chairman read selected parts of the executive order for the benefit of the citizenry present.

Chief D. F. Caldwell of Pensacola addressed the Committee. He felt that the death penalty should be reinstated because: (1) of its deterrence (the fear of which keeps people from committing crimes that they would otherwise commit, and (2) the resulting feeling of security by the citizens.

Chief Caldwell felt that capital crimes should include murder of Police, public officials and prison guards, as well as for taking the life of a victim in a robbery or kidnapping, mass killings through arson or bombing, and rape of a child. He concluded his remarks with the feeling that the state must work out a way to ensure a swift execution.

Sheriff Royal Untreiner presented the position of the Florida Sheriffs Association which strongly favored the reinstatement of the death penalty. A primary concern of the Association was for murder of public officials, police officers and prison officials and staff, but also favored reinstatement for murder, rape, kidnapping, skyjacking, etc.

Austin MacCormick, Executive Director of the Osborne Association (New York) then was called on to present his discussion of capital punishment. Mr. MacCormick discussed the historical application of capital punishment within the armed services as well as generally within the U.S.

His arguments, addressed against the death penalty, revolved around several negative factors:

(1) the moral issue is not relevant, since historically the sanctity of human life has never prevailed in the actions of the individual or the state;

(2) the deterrence argument cannot be supported either way; and,

(3) the death penalty cannot be utilized because of requirements for due process which can postpone execution indefinitely, and the consequential emphasis on civil liberties and legal technicalities as practiced by lawyers.

The committee was then addressed by Dr. Peter Lejins of the University of Maryland who outlined the three possible approaches to the issue of capital punishment.

(1) Religious convictions, moral or humanitarian arguments--Dr. Lejins felt that these arguments were far too individualized and often based solely on bias.

(2) Public sentiment, sociatal consenous arguments--These arguments are too often based on misinterpretation of data and bias of groups.

(3) Social Science argument--Dr. Lejins felt this to be the only valid approach, and presented the following points:

A. Capital punishment is not important from a crime control standpoint due to uncertainty and lack of swiftness in utilization.

B. Social Science argues that punishment can be effective as a deterrent if its application is swift and sure.

C. The statistics on the effectiveness of capital punishment are inconclusive. As a result, the statistical arguments cannot be made either way.

D. The basic argument which can be made for utilization of capital punishment is individual punishment and social protection through elimination of dangerous persons.

Dr. Lejins concluded that under present conditions reinstatement of capital punishment would not have any effect either way. He suggested that the legislature must work out the certainty and swiftness factors if reinstatement is to be effected. (Statement attached)

The Committee then heard statements from members of the public, summarized as follows:

Carl T. Hoffman - reinstatement
Rev. George C. Miller - reinstatement
Emily Wideberg - reinstatement
Jonte Haviland Pryor - abolition
Janice Burnes - reinstatement
Ernest A. Gordon - abolition

Paul M. Bookout - reinstatement
Mrs. Philip C. Schultz - reinstatement
Rev. Bob Tidwell - reinstatement
Fred T. Ratchford, Jr. - abolition
Margaret Woerner - abolition
Charlie T. Taite - abolition
Jerome Carlos Brye - reinstatement
Jim Leath - reinstatement
Carol Ann Marshall - reinstatement
Dr. Ruby Gainer - reinstatement

The committee was adjourned by the Chairman to meet September 22 in Jacksonville.

Governor's Committee to Study Capital Punishment
Statement by Peter P. Lejins

This statement is prepared in response to the question whether capital punishment should be used in the United States or should be abolished. This question is usually amplified by inquiring into the reasons why the one or the other course of action is being recommended.

It is assumed that the current debate on this topic in this country is well known, as well as the present status of capital punishment in the United States: no executions whatsoever have taken place for four consecutive years, with the three preceding years having less than 10 executions per year, (to be exact 2, 1 and 7 respectively). The number of prisoners under sentence of death on December 31, 1970 was 608. The Supreme Court opinion of June 29, 1972, held that in three cases referred to that Court, the death penalty constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. But all nine Justices filed separate opinions, five in support and four dissenting. At the close of 1970, capital punishment was illegal in nine States and had been almost totally abolished in another five.

The reasons advanced for the retention or abolition of capital punishment fall into several categories: first, religious, moral, humanitarian or other principles which cause a person to espouse the cause of abolition of capital punishment; two, the alleged public sentiment; and three, the effectiveness or ineffectiveness of the death penalty in crime control and prevention as ascertained by scientific data and research.

The present statement does not concern itself with the religious, moral, humanitarian and other value judgments. It is assumed that people are entitled to their own beliefs in these areas, and if they hold such beliefs and act on the basis thereof, there is really not much one can do about it. Only

two comments are in order in this connection: 1. the misrepresentation of facts which is often used to convert others to one's beliefs should be unmasked, even if the right to one's beliefs is to be maintained; 2. if there are demonstrable negative factual consequences of policies based on such beliefs, it should be legitimate to point this out.

Somewhat akin to the appeal to the moral etc. principles, is the much less explicit and much more vague reference to the presumable change in the attitudes of the population. This is often expressed in such generalities as "the people now simply demand more severe punishment"; or "the people now are simply opposed to the death penalty because they feel that it is abhorrent, inhuman, etc." Two caveats might be expressed in this connection with regard to this type of argumentation. One, is it sure that popular opinion is accurately reflected? and two, if the popular opinion is based not only on axiomatic value judgments but allegedly also on facts, are these facts correct? Finally - and this is perhaps the most important consideration - to what extent are popular sentiments to be considered in the case of technical knowledge. We would hardly consider polling public attitude regarding the effectiveness of some chemical in the treatment of cancer in order to determine whether the chemical should be used or not. Rather, the opinions of competent medical researchers would be sought. Similarly, then, why should public opinion be a determining factor in the issue of capital punishment within the system of crime control, or should it, rather, be a matter of expertise of professional personnel in terms of our modern social science

And this leads to the third category of reasons for or against capital punishment; namely, the factual evidence of its effectiveness in crime control. This is the only type of consideration with which this statement concerns itself. In view of the circumstances under which this statement is being prepared, all references can be only very brief and general.

1. This writer does not believe that the death penalty is an important issue from the point of view of crime control in this country and at the present time. Either because of emotional involvements or because of faulty assumptions, the problem has been blownup out of all proportions. In punitive crime control in general the main issue is not the severity of punishment, but the certainty of punishment, which is a fact denied by few. In the United States presently, for the thousands of offenses for which capital punishment is threatened, it is actually pronounced in only an infinitesimal fraction of cases. And in a very high percentage of those few cases, the sentence is changed to another form of punishment on appeal, through pardon, etc. And in the final analysis -- at least in

the last four years -- nobody gets executed anyhow. How can anyone claim that in a situation that can be justly described by the fact that regardless of what one does, it is impossible to get executed in the United States, it would make much difference if a pronouncement were made that the death penalty has been completely removed. An additional factor is the length of the total trials in capital cases. Let us not forget that besides the certainty of punishment, it is the celerity or swiftness of punishment that the students of punitive sanctions usually single out as the most important characteristic of punitive crime control. Statistics tell us that the median time in custody for those sentenced to die was three years as of December 31, 1970. Everybody remembers the fairly recent case of a murderer who was finally executed after 12 years of criminal proceedings. The issue of the death penalty has become so confused and is so lacking in clear-cut policy, that it is a maximum of naivete to think that either the continuation of the present situation or the complete abolition of that penalty would have any sizable effect on criminal behavior.

The death penalty could actually gain significance only if it were applied much more frequently, with much greater certainty, and with much greater speed than has been the case in the several last decades in the United States. Only then could it potentially become an important factor in controlling criminal behavior, provided, of course, this has been proven through accurate data and research.

2. This writer considers that most of the alleged evidence that the death penalty does not work is absolutely untenable from the point of view of the principles and methods of modern social science and research. It seems that many social scientists yield to the temptation of promoting their ideologies and forget to apply the criteria of the rigorous scientific method on which they insist in other contexts, when they deal with their pet issue of abolition. To give just one example: If a state that sentences to death something like one tenth of a percent of those who in accordance with its laws deserve the death penalty, and actually executes only a small fraction of those who have been sentenced, abolishes the death penalty altogether without experiencing any increase in capital offenses, how can anyone claim that this is proof that the death penalty does not deter. It was not there before, and it is not there now. So why should there be any change in the behavior that is supposed to be controlled by it. And yet this is one of the star arguments of the abolitionists.

3. There are many arguments that the death penalty does work when it is certain and administered swiftly. Most of this evidence also does not stand the scientific criteria, but the proofs are certainly not less scientifically valid than the proofs that the death penalty is ineffective and the proposition that it could be an important instrument in crime control must be carefully explored rather than emotionally shouted down.

4. The death penalty is not only punishment. For a rational analysis of the effectiveness of the death penalty it is indispensible to clearly distinguish the two functions which it performs: one, general deterrence or general prevention of criminal behavior as the effect of capital punishment on all potential offenders; two the protection of society by the elimination of an offender who cannot be deterred by punishment or who cannot be corrected, or whom we do not know how to correct, and who therefore is a continuing threat to the legitimate rights of other citizens and a continued source of untold suffering imposed on his hapless victims. Society must rationally face-up to this issue: what should be the plan for such offenders? This writer does not necessarily suggest more punishment or less punishment, more correction or less correction, or any specific method of incapacitation, but he does maintain that a rational approach to crime control should be based on data and research and the evaluation of the effectiveness of both punitive sanctions and correctional measures. The evaluation of the effectiveness of punitive sanctions and of the need to protect society from unscrupulous offenders if a necessity. Moreover, the issue of the resources which the society is to devote to its handling of criminals in lieu of spending these resources on other tasks and goals, in other words the cost-benefit analysis of our crime control measures should be the determinant of our use or non-use not only of the death penalty, but of any kind of punitive sanctions, corrective measures, or protective devices. At this moment we seem to be influenced primarily by axiomatic value assertions and by evidence which scientifically is totally inadequate.

MINUTES
Governor's Committee to Study Capital Punishment
Jacksonville, Florida
September 22, 1972

Committee Members Present: E. Harris Drew, Ernest Mason, Gene Brown, Stella Thayer, Jesse McCrary, John McCarty, Harold Stahmer, Louis de la Parte, Jim Williams, and Jack Mathews.

Committee Members Absent: LeRoy Collins, C. Farris Bryant, Richard Earle, Jr., Beth Johnson, C. Welborn Daniel, Gwen Cherry, Robert Johnson.

Opening remarks were made by the Chairman E. Harris Drew, and excerpts read from the executive order for the benefit of the public and press.

There was a brief discussion of plans for the Raiford trip, September 23, and the agenda finalized

A statement was made by Birt C. Byrd, a local attorney and former (1943) legislator. (Statement attached)

Chairman Drew then introduced Professor Donal E. J. MacNamara, of the John Jay College of Criminal Justice. Dr. MacNamara explained that the debates around and on capital punishment have ranged for 200 years, with little new being introduced within the last 20 years. He presented four major trends which have been evident as the result of these long debates.

(1) There has been a gradual but steady reduction in the number of different crimes punishable by death.

(2) More humane means of execution have been introduced.

(3) There has been an increase in the utilization of commutation of sentence powers by chief executives.

(4) There has been a trend toward abolition set by other countries and states.

Dr. MacNamara presented the notion that while Florida utilized the death penalty rather sparingly, as compared with some other states, still other states had not utilized capital punishment at all. The question is whether or not Florida is better off because of its reliance on the death penalty.

Historically, the presence of capital punishment has not prevented capital crimes. While all punishment is some deterrent to some people at some time, its effectiveness is predicated not on the severity of the punishment, but rather its certainty.

Persons who are traditionally caught and executed are not always the most dangerous, but rather the poor, hopeless and helpless.

Dr. MacNamara concluded that capital punishment is morally wrong and criminologically unsound.

Chairman Drew then called for public statements. The following citizens presented their views:

Barney H. Browning - Reinstatement
Rev. James F. Conway - Reinstatement
Bill Parnell - Reinstatement
James Waddell - Reinstatement
Sam Jones - Abolition
Dr. A. E. Girardean - Abolition
Captain R. B. Whittington - Reinstatement
Rev. William H. Compton - Abolition

Chairman Drew then introduced Tobias Simon, an active civil rights attorney from Miami. (Statement attached).

The committee then heard a statement by Patrick V. Murphy, Police Commissioner, New York City Police Department. A copy of Commissioner Murphy's statement is attached.

The Committee then heard additional public statements:

Harry Shorstein - reinstatement
Rev. A. Gene Parks - abolition
Rev. Howard Sweet - abolition
Rev. A. T. Parker, Jr. - abolition

The meeting was concluded with discussion of future committee meetings. It was decided that the Miami meeting could culminate with a decision on reinstatement or abolition, and that attention would be given to explaining the legal parameters imposed by the Supreme Court and the respective alternative available.

It was decided that the committee meeting originally scheduled October 6th in Tallahassee, would be held instead on October 20 and 21. This meeting would be a working session to begin the preparation of the final committee report.

Instructions were given to staff to supply the committee with copies of all correspondence received, as well as a summary of the position of all persons appearing before the committee.

The meeting was adjourned to meet at the Florida State Prison at Raiford at 9:30 a.m., September 23, 1972.

Attorney Birt C. Byrd, Remarks on Capital Punishment
Duval County Courthouse
September 22, 1972

My views on the subject of capital punishment shall be brief. The matter could be argued on and on, and has been for many years. There are valid arguments on both sides. This is no new question only such as relates to the fairly recent decision of the United States Supreme Court outlawing the death penalty as cruel and unusual punishment. It is thought by some that there is a loop hole in the decision, that is to say that the states may make their own laws - until the said Supreme Court decides to again to override the stated, its legislatures and the people, in whatever is ultimately enacted in Tallahassee. The good Book says "THOU SHALT NOT KILL", I know it also states - "An eye for an eye,"etc,, but I believe that this last has to a great extent been discarded over the years. There have been exceptions, of course.

My views; so as not to make this too lengthy and drawn out, is that capital punishment should be outlawed, except for cold premeditated and depraved murder of law enforcement

officers, including members of the fire department. There must be law and order in this great country of the U.S. and the playing of the Star Spangled Banner only thought of as the prelude or commemoration of a sports event. The State has a duty to protect its citizens. We, must be civilized, we don't shoot people for stealing a horse anymore. We don't want vigilantes anymore or anyone else to take the law into their own hands, mob justice, or exacting the supreme penalty by the state in every so-called capital case; picture the condemned prisoner's last moments, days and hours-last meal--and the actual execution itself. I have seen two executions while a member of the Legislature several years ago. It was not a pretty sight.

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SUPREME COURT OF THE UNITED STATE OF AMERICA
1 First Street, N.E.
Washington, D.C. 20543 Re: Capital Punishment

Honorable Chief Justice,
and Assoicate Justices -

Gentlemen:

On July 22nd, 1972, I read in our local newspaper that the murderer of my young brother, Sidney, was removed from 'death row' as a result of an opinion handed down by our Supreme Court challenging the constitutionality of capital punishment.

My brother, twenty-two years old, father of two toddlers aged five and seven years old, was murdered violently and senselessly, by armed robbers in the act of robbing our place of business - when he came to the aid of our Mother, who was being brutally beaten by said robbers. The murderer who fired the bullet which killed my young brother was convicted by 'twelve good men and true' who saw fit not to recommend mercy for his crime.

By removing capital punishment from the penal code, you have accomplished this: you have removed the last restraint left to humanity to prevent crimes by the predatory against their fellow human beings. May I satisfy myself that this was out of honest and compassionate feeling for your fellow man...? Did you search your hearts as men destined to pass on the laws of our land...?

I ask these questions not because the brother I loved died defending the Mother we both loved, or, because I look at all the lives which have to change because of his absence. I ask these questions because I must know <u>why</u> you have deprived us of the Sword of Justice.

My brother's son, Kurt, aged seven, knows that his father is in Heaven..,not how or why or by whom he was killed! His daughter, Hope, aged five, who has to grow up without the love and guidance of a father....Although when I look upon them, I notice the absence of what he would have placed in their minds and hearts, yes, hearts - because he was one of the few who have the magic of greatness! I miss him because I knew him, as his Mother did, and his children miss him for the kind, rough hand that he placed upon their hearts.

This thing is done. You must understand that you, as the chosen ones to pass upon our laws, have done it - and must live with it. Please take a few moments of your time to tell me WHY, so that I may remain an honest man.

Most Respectfully,

BILL R. PARNELL

BRP:rwf

CC: Hon Justices:
William O. Douglas
William J. Brennan, Jr.
Potter Stewart
Byron R. White
Thurgood Marshall
Harry A. Blackmun
Lewis F. Powell
William H. Rehnquist

Hon. Charles E. Bennett, M. C.
Hon. Strom Thurmond,Senate, U.S.

Governor's Committee To Study Capital Punishment
Position Paper By Tobias Simon

<u>AGAINST RE-ENACTMENT OF THE DEATH PENALTY</u>

"If we were possed of legislative power, I would either join with Mr. Justice Brennan and Mr. Justice Marshall or, at the very least, restrict the use of capital punishment to a small category of the most heinous crimes".
Justice Burger dissenting in <u>Furman v. Georgia</u>, 40 LW 4923, 4965.

"Cases such as these provide for me an excruciating agony of the spirit. I yield to no one in the depth of my distaste, antipathy, and, indeed, abhorrence, for the death penalty, with all its aspects of physical distress and fear and of moral judgment exercised by finite minds. That

distaste is buttressed by a belief that capital punishment serves no useful purpose that can be demonstrated. For me, it violates childhood's training and life's experiences, and is not compatible with the philosophical convictions I have been able to develop. It is antagonistic to any sense of "reverence for life". Were I a legislator, I would vote against the death penalty for the policy reasons argued by counsel for the respective petitioners and expressed and adopted in the several opinions filed by the Justices who vote to reverse these convictions".

Mr. Justice Blackmun dissenting in Furman v. Georgia, 40 LW 4923, 4975

Thus have seven of the nine Justices of the Supreme Court of the United States, stated their revulsion to the death penalty. The five Justices of the majority held the death penalty practices of the states void and unconstitutional. Justices Burger and Blackmun in dissent shared their opinions but stated the task of abolition should be left to state legislatures. This is a mandate worth obeying. The Court has not yet prohibited the death penalty for all crimes under all conditions; but it is clear to every student of constitutional law that this is the direction in which it is now moving.

There are today no capital crimes on our statute books. The maximum penalty for murder or rape is life imprisonment. Certainly at this time, we, the citizens, are entitled to be told what reasons exist, if any, for so vital and important a consideration as the re-imposition of the death penalty. The burden is clearly upon those who seek the re-imposition of "this unique penalty" which has in the past been so "wantonly and so freakishly imposed".

The well-known rationale for punishment exists in the triad: retribution, rehabilitation, deterrence. I have heard no one maintain that retribution - an eye for an eye- is a proper basis for the re-imposition of the death penalty. The Supreme Court as early as 1944 stated that:

"Retribution is no longer the dominant objective of the criminal law. Reformation and rehabilitation have become important goals of criminal jurisprudence".

Williams v. New York, 337 U.S. 241

While the Chief Justice indicates that retribution as a basis for punishment has never been declared constitutionally deficient, all must agree that it is an unworthy argument - and indeed you will not hear any civilized advocate demand the reinstitution of capital punishment

purely for revenge (a synonym for retribution).

And, of course, the death penalty is the antithesis of rehabilitation. It is a throwing up of hands, a confession of defeat and failure in the administration of our criminal laws.

You will, however, hear that the death penalty is a deterrent to crime. This argument has a familiar ring and is often suggested by proponents. Unfortunately, these people are toying with the facts and are considerably less than candid when they make these claims. Justice Burger, at 40 LW 4990, stated:

"Statistical studies, based primarily on trends in States that have abolished the penalty, tend to support the view that the death penalty has not been proved to be a superior deterrent. Some dispute the validity of this conclusion, pointing out that the studies do not show that the death penalty has no deterrent effect on any categories of crimes. On the basis of the literature and studies currently available, I find myself in agreement with the conclusions drawn by the Royal Commission following its exhaustive study of this issue:

"The general conclusion which we reach, after careful review of all the evidence we have been able to obtain as to the deterrent effect of capital punishment, may be stated as follows: Prima facie the penalty of death is likely to have a stronger effect as a deterrent to normal human beings than any other form of punishment, and there is some evidence (though no convincing statistical evidence)that this is in fact so. But this effect does not operate universally or uniformly, and there are many offenders on whom it is limited and may often be negligible. It is accordingly important to view this question in a just perspective and not base a penal policy in relation to murder on exaggerated estimates of the uniquely deterrent force of the death penalty".

The fact is that there is no correlation between the murder rate and the presence or absence of the capital sanction as Justice Marshall noted (40 LW at 4952):

Sellin's statistics also indicate that abolition and/or reintroduction of the death penalty had no effect on the homicide rates of the various States involved. This conclusion is borne out by

others who have made similar inquiries and by the experience of other countries. Despite problems with the statistics, Sellin's evidence has been relied upon in international studies of capital punishment.

Statistics also show that the deterrent effect of capital punishment is no greater in those communities where executions take place than in other communities. In fact, there is some evidence that imposition of capital punishment may actually encourage crime, rather than deter it. And, while police and law enforcement officers are the strongest advocates of capital punishment, the evidence is overwhelming that police are no safer in communities which retain the sanction than in those which have abolished it.

There is also a substantial body of data showing that the existence of the death penalty has virtually no effect on the homicide rate in prisons. Most of the persons sentenced to death are murderers, and murderers tend to be model prisoners.

In sum, the only support for the theory that capital punishment is an effective deterrent is found in the hypothesis with which we began and the occasional stories about a specific individual being deterred from doing a contemplated criminal act. These claims of specific deterrence are often spurious, however, and may be more than counterbalanced by the tendency of capital punishment to incite certain crimes.

The United Nation's committee that studied capital punishment found that "it is generally agreed between the retentionists and abolitionists, whatever their opinions about the validity of camparative studies of deterrence, that the data which now exist show no correlation between the existence of capital punishment and lower rates of capital crime".

Marshall J. concurring in Furman v. Georgia, 40 LW 4923 at 4952

What the abolitionists "have succeeded in showing by clear and convincing evidence is that capital punishment is not necessary as a deterrent to crime in our society. This is all that they must do". (Marshall, J.)

.....

Those who continue to insist on the illusion that the death penalty is a deterrent to crime do this state a great disservice. If they achieve the reimposition of the death penalty, they will feel they have solved the crime problem in much the same way as they would feel they solved the poverty problem by dropping a dollar in the beggar's cup. Rather, we should forego the placebo of the death penalty and direct our energies to the real causes of crime and make real efforts to improve our prisons and our prisoners.

To reimpose the death penalty even for the most heinous crime - and this certainly cannot include felony - murder as suggested by the Attorney General - will involve the government of this state in an entirely new experience. The requirements of the law will now insist upon the non-discriminatory and impartial application of the death penalty. It is to be imposed because of the crime committed; not the color or wealth of the accused. Thus, for the death penalty to be reimposed, a vast change in its modus operandi must be introduced. Until now, the capital punishment system was gerry-built with discretionary devices - that exist nowhere else in our system of justice.

We have divided most capital crimes into degrees so that prosecutors have wide control over what is or is not punishable by death.

We have allowed juries complete discretion in whether to use the death penalty or not.

On guilty pleas we have allowed judges discretion to inflict death of life imprisonment, or for the crime of rape, even the term of one year.

And we have created a Board of Pardons to commute death penalties - as a grant of mercy - so that its decisions are not precedents and are beyond appeal.

It is only the existence of these discretions that has made the death penalty acceptable within our society for, despite all of our hollow obeisance to the need for the death penalty as a deterrent, it has always been kept well-hidden; it has never been used openly or forthrightly; but always secretly and surreptitiously. For indeed as a society, we are ashamed of our reliance upon it. Our behaviour as to its use has never kept faith with our claims as to its necessity. It existed on paper because we surrendered our principles to those who claimed we should have it. But the death penalty was never used in practice as to anyone who mattered - persons with money, influence or power were handled with "discretion". Only those without influence were denied the discretions within the system and therefore only the poor, the ignorant, the illiterate and the insane were ever placed on death row. This discrimination walks hand in hand with our deep knowledge that the death penalty is useless and our society's refusal to accept it as an effective tool against crime.

So obvious is the discriminatory application of this penalty, that we cannot find a discernible relationship between the heinousness of the crime and the penalty itself.

The three people who killed a judge in this state did not go to death row. One is free; one was given a life sentence and the sole death sentence for the third was commuted by the Board of Pardons.

It is the prison but not death row that contains the people who kill policemen.

And there is one person in death row, sentenced to death, for rape; but upon his subsequent trial for an unconnected murder, the jury recommended mercy and he was given a life sentence.

There is, in brief, only the inverse correlation between color, wealth and intelligence on the one hand and capital punishment on the other.

Now, Furman prohibits a continuation of discrimination. To reinstitute the death penalty at this time, all of these discretionary devices must be abandoned. It will not be enough to deprive the juries of their discretion. We must also deprive the prosecutors of their ability to decide what is or is not a capital crime; we must deprive judges of the ability to exchange a life sentence for a guilty plea; and we must deprive the Board of Pardons of its power to commute on whimsy and without standards or reason.

Does anyone believe the people of this State will accept the inevitability of the death penalty, irrespective of race or color, wealth or position? Does anyone pretend that a death law, without evasion for persons of influence, will be supported? Justice Burger thinks not:

> "Real change could clearly be brought about if legislatures provided mandatory death sentences in such a way as to deny juries the opportunity to bring in a verdict on a lesser charge; under such a system, the death sentence could only be avoided by a verdict of acquittal. If this is the only alternative that the legislatures can safely pursue under today's ruling, I would have preferred that the Court opt for total abolition".

I, too, suggest we opt for total abolition.

.....

In Summary:

1. No reasons exist for reimposition of the penalty;

2. It cannot be achieved without a vast change in our procedures - from prosecutors to the Governor's office;

3. The people of this State are clearly not aware of - and would not accept - the changes that are needed to impose a mandatory death penalty, free of the discretionary devices that make it a tool for discrimination.

STATEMENT ON CAPITAL PUNISHMENT BY
POLICE COMMISSIONER PATRICK V. MURPHY BEFORE
THE GOVERNOR'S COMMITTEE TO STUDY CAPITAL PUNISHMENT
Jacksonville, Florida
September 22, 1972, at 2:00 p.m.

Before taking a position on capital punishment I would like to discuss the question of punishment in general. As I understand it, society punishes, or has punished, for the following reasons: to retaliate, to rehabilitate, to isolate, to deter.

Retaliation, quite literally, has been ruled out of court. In the eloquent words of Justice Thurgood Marshall,

> "Retaliation, vengeance and retribution have been roundly condemned as intolerable aspirations for a government in a free society. Punishment as retribution has been condemned by scholars for centuries, and the Eighth Amendment itself was adopted to prevent punishment from becoming synonymous with vengeance..At times a cry is heard that morality requires vengeance to evidence society's abhorrence of the act. But the Eighth Amendment is our insulation from our baser selves. The cruel and unusual language limits the avenues through which vengeance can be channeled."

Rehabilitation, on the other hand, is almost universally recommended as the most socially constructive way of influencing the attitudes and behavior of convicted criminals. I don't know whether or not murderers can be rehabilitated. But the continued use of capital punishment would certainly make such speculation irrelevant -- at least with regard to individual cases.

Isolation, too, is almost universally recommended -- not so much as a way of influencing behavior, but rather as a way of protecting society against incorrigibles. Used this way, isolation can be advanced as an alternative to capital punishment.

This leaves deterrence, which, I submit, is the central issue as regards the justification for all forms of punishment, but especially of capital punishment.

The decision in the landmark case of Furman v. Georgia, handed down by the Supreme Court of the United States on June 29, 1972, declared that the discretionary imposition of the death penalty which is so infrequently and randomly imposed that it has lost its deterrent value, constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.

Unfortunately, this decision did not settle the issue. Chief Justice Warren Burger suggested as much when he said in a dissenting opinion that..."the future of capital punishment in this country has been left in an uncertain limbo." What he meant was that although the Court has abolished the death penalty when it is imposed and carried out in a random and unpredictable manner, it has not abolished the death penalty, per se. Legislatures can, if they wish to, retain capital punishment by:

1. Setting clear and fair standards for courts and juries to follow in determining sentences in capital cases.
2. More narrowly defining the crimes for which the penalty is to be imposed.
3. Creating mandatory death sentences in certain cases to prevent juries from finding an accused guilty on a lesser charge.

This last choice would restrict the options of the jury to finding the defendant guilty and thereby automatically sentencing him to death or acquitting him of the charge. Even though Chief Justice Burger dissented in the main opinion, he stated that if the only realistic choice for legislators to pursue was to create mandatory death sentences he "would have preferred that the court opt for total abolition".

Today, proponents of capital punishment argue that the retention of the death penalty will more effectively prevent the commission of capital crimes. Justice William Brennan points out in his concurring opinion in the Furman case that there are actually two arguments here. The first asserts that the death penalty is necessary to prevent the convicted criminal from ever committing further crimes. He rejects this, explaining that convicted criminals who are dangerous to society can be isolated in prison and kept in such isolation for as long as necessary through careful administration of the laws governing pardon and parole. The second argument asserts that the threat of death prevents the commission of capital crimes because it deters potential criminals who would not be deterred by the threat of imprisonment. He rejects this also, explaining that there is much evidence to indicate "although it does not conclusively prove, that the threat of death has no greater deterrent effect than the threat of imprisonment."

Karl F. Schuessler in an article published in the November 1952 edition of the Annals of the American Academy of Political and Social Science reports that research studies conducted in the United States for the thirty five years preceding 1952 have uniformly concluded that the death penalty is not a more effective deterrent than imprisonment, and that the relative frequency of murder in a given population is a function of the cultural conditions under which the group

lives. Schuessler concludes;

> "The fact that men continue to argue in favor of the death penalty on deterrence grounds may only demonstrate man's ability to confuse tradition with proof, and his related ability to justify his established way of behaving."

Many studies made after 1952 have sustained similar conclusions.

I take the position that the death penalty should not be retained. Further, I take the position that state legislatures should not take advantage of the opportunity presented by the limited nature of the Furman decision to retain capital punishment. My position is based on the conviction that the arguments presented above are valid -- that is, that the Supreme Court and social science are right in asserting that the death penalty is not more effective than imprisonment as a deterrent to the commission of capital crimes.

.....

September 6, 1972

State Attorney James J. Russell
Pinellas County Courthouse
Room 416
Clearwater, Florida 33516

Dear Jim:

The inquiry circulated by the Governor's Committee on capital punishment has been referred to me for an answer. It is my opinion that capital punishment should be retained in a form modified from that of its earlier existence in Florida. The United States Supreme Court's opinion in Furman v. Georgia, 92 S.Ct. 2726, (1972), has condemned and forbidden the imposition of capital punishment as it previously existed.

I personally feel that capital punishment is no longer feasible, practicable nor even authorized in rape cases under any circumstances wherein the victim is not killed. Capital punishment should remain an allowable sentence in first degree murder convictions. The often suggested alternative to capital punishment is mandatory life imprisonment without the opportunity for parole. This form of punishment completely lacks deterrent value. Extremely dangerous criminals, as well as recidivists generally, do not fear confinement under any circumstances. In fact, that type of offender often inwardly seeks out the security of prison life and can adjust to no other environment.

It would be improper and unacceptable to distinguish particular types of first degree murder, such as the murder of a law enforcement officer, and provide mandatory death sentences. Even though cases involving the murder of law enforcement officers, firemen and prison guards are generally the types of cases that often warrant the death sentence, I cannot envision any category of murder case providing a mandatory death sentence. It would be improper to legislate away a defendant's right to present extenuating or mitigating evidence.

The general dissatisfaction, surrounding the imposition of previous death sentences, continuously expressed by the various state's chief executives, lower Federal courts and ultimately the United States Supreme Court has not resulted exclusively from the desire to absolutely abolish capital punishment. The ultimate Supreme Court decision resulted, in my opinion, from the arbitrary administration of the various capital statutes.

Statutes authorizing capital punishment in cases of first degree murder should be modified in the following manner. The jury should not have the absolute authority to determine sentences of life imprisonment or death. The present procedure whereby juries recommend or fail to recommend mercy should be merely advisory and not binding on the trial judges. If the jury recommends mercy, the Court would be compelled to setence the defendant to life imprisonment. If there is no recommendation, the Court would consider this fact and decide on the appropriate sentence. On appeal of cases involving the death sentence, the Florida Supreme Court should have the authority to review the appropriateness of the sentence as well as the judgment and, when warranted, set aside a sentence of death without setting aside the actual conviction.

The above two recommendations plus a suggestion of a two-stage bifurcated determination of guilt and punishment were among other suggestions made by former Chief Justice Richard Ervin in his specially concurring opinion in Perkins v. State, Fla., 1969, 228 So.2d 382. These brilliantly far-sighted observations made in October, 1969, were directly in line with the views of some of the United States Supreme Court Justices who voted with the majority to abolish capital punishment as it existed at the time of their decision in Furman. I strongly suggest that any decision made by the Governor's Committee for the Study of Capital Punishment conform with the above recommendations as well as those made by Justice White and Justice Stewart in Furman. A more conservative approach to the reinstatement of capital punishment would be a futile gesture as it apparently would be unacceptable to the United States Supreme Court.

I hope that the above recommendations will be of some help to you and the committee.

Yours very truly,

HARRY L. SHORSTEIN
Chief Assistant State Attorney

JLS/hw
Enclosure:
Chief Justice Ervin's specially concurring opinion in Perkins.

GOVERNOR'S COMMITTEE TO STUDY CAPITAL PUNISHMENT

RE: SHOULD THE FLORIDA LEGISLATURE REINSTATE THE GUIDELINES OF A U. S. SUPREME COURT DECISION OR SHOULD THERE BE TOTAL ABOLITION OF THIS PENALTY?

I attended briefly your meeting on Friday, September 22nd, on above issue, but had to leave due to another engagement. I had sent in a request to speak but was not present when my name was called. Therefore, I am writing to you members my opinion and the opinion of those I represent in order that you may be aware of our views.

I was the founder of a group of women in Jacksonville called the LEGISLATIVE STUDY GROUPS. We study bills and legislature in order to be informed about what is going on in our local, state and national governments. Some of us were formerly members of the LEAGUE OF WOMEN VOTERS but found ourselves incompatible with their beliefs and philosophy.

I am also the Chairman of the Jacksonville Woman's Club Legislative Group. The Jacksonville Woman's Club has around 300 members, as well as a member of the Republican Women's Club of Duval County.

The concensus of the women in all these groups believe in the death penalty as a deterrent to crime. The Bible says "an eye for an eye and a tooth for a tooth" and we are all patriotic Christian American women. We would like to express our view that we believe that the victim of murder deserves some consideration and we see no reason why a murderer can go free to kill another with no fear of retribution. If he is merely sent to prison he can be released without serving a life sentence and since he is usually a psychotic case will no coubt insure that the lives of others will be in jeopardy because he did not receive the death penalty for the murder he originally committed.

The State Chamber of Commerce has recently passed a resolution supporting our beliefs as I am sure you realize.

It was a little discouraging to note the partisan nature of the hearings in that outside speakers brought in at the expense of the taxpayers of Florida, I am sure, all voiced their opposition to the death penalty. It was "passing strange", as they say in Congress, that not one was brought in to speak in Jacksonville who was FOR the death penalty. I was under the impression that these open hearings were to be presented in an impartial manner and that both sides would be heard. Why were not both sides represented by these so-called "experts" from outside of our state, and do we not have one expert in Florida who can speak on either side capable of presenting views? Why must we bring outsiders into our state to present their views when they have nothing to do with our state government? I would appreciate an answer or some clarification of why the learned presentations did not represent both sides and why only those from outside the state were brought in to influence our legislators.

Yours very truly,

S. C. RHEA

MINUTES
Governor's Committee to Study Capital Punishment
Florida State Prison
Raiford, Florida
September 23, 1972

Committee Members Present: E. Harris Drew, Jim Williams, John Mathews, Jesse McCrary, Harold Stahmer, John McCarty, Stella Thayer, and Bob Johnson.

The committee briefly toured the facilities at the Florida State Prison.

Louis Wainwright, Director of the Division of Corrections was introduced to the committee by Senator Jim Williams, who presided over the hearing.

Mr. Wainwright felt that the death penalty deterred many persons from committing crimes. More directly, he felt that capital punishment was a definite deterrent for inmates killing within prison. The Director pointed out that between 1955-59 there had been a rash of deaths at Florida State Prison; the reason he had was that no death sentences had been given in Union County. In 1962, an inmate was executed for killing another inmate, and during the subsequent years no murders accured. Now a crisis state exists in that there have been eight murders in the last eight months.

The main concern of the Director is for maintaining the care and security of inmates--and the availability of capital punishment is a means of realizing that concern.

The Committee then began its interviewing of selected inmates. (See attached).

Case Resume #1
Age 24 years
Sentence: Robbery, Manatee County Court of Record - Life.
Date Sentenced: December 19, 1968.
Circumstances: On December 13, 1968, the subject robbed John Giddens by using a gun. Our records indicate that the subject and another man entered the Hoods Dairy in Pinellas County and pulling their guns demanded the cash register to be opened. Mr. Giddens reported that they removed the money and put him in the back room. The subject admits guilt claiming that he obtainined approximately $75.00 from the robbery.
Prior Record: The subject has no prior conviction, although he was arrested for throwing missiles into a residence, robbery, auto theft and grand larceny. The subject has a consecutive sentence of 6-months to 14-years for robbery and larceny of an automobile. The subject was not arrested as a juvenile.

Case Resume #2
Age 43 years
Sentence: Grand Larceny, Robbery, Robbery, Attempted Escape, Pinellas County - 8-years and LIFE.
Date Sentenced: September 23, 1969; January 30, 1969; February 28, 1969, and March 6, 1969.
Date Arrested: September 28, 1968
CIRCUMSTANCES:
Commitment One: The subject was found guilty of stealing goods and chattel in excess of one hundred dollars from I.H.O.P. 36-17, Inc. of Florida Corporation.
Commitment Two: The subject was found guilty of Robbery in that on August 29, 1968, the subject robbed Roland L. Jaccbs of goods and money which was the property of Wilsey Auto Service, Inc.
Commitment Three: The subject was found guilty of Robbery in that he robbed Herbert Braun by pointing a gun at the victim.
Commitment Four: The subject was found guilty of attempted escape in that he did try to escape by cutting a portion of the wall in the cell block where he was confined in Pinellas County.

FURTHER CIRCUMSTANCES OF OFFENSES INVOLVING THE USE OF A GUN:
Case #1- Grand Larceny - The International House of Pancakes was reported robbed by the manager Larry Gibson who stated that two white males with crome revolvers possibly a .32 caliber took currency, coins and travelers checks totaling $2,287.26. The robbery occurred at the International House of Pancakes. Our records further indicate that the manager of the Pancake House, Larry Gibson, was implicated in the robbery as an accomplice.

Case #2- Robbery - Our records indicate that on August 29, 1968, at approximately 7:00 p.m. Roland L. Jacobs, white male, 14-years of age, answered the door to his residence and found that John Younger, employee of his father was delivering a money box with the daily receipts from the Wilsey Service Station, a business owned by Roland's father. At about 9:00 P.M. the door bell again rang, this time Roland Jacobs saw a man in a crouched position carrying a revolver making the statement, "this is a robbery". The boy was taken to the back side of the house and tied and gagged. The money box containing approximately $394.00 in cash, $540.00 in checks and approximately $100.00 in credit receipts from the Wilsey Service Station were taken.

Case #3- Robbery - Our records indicate that two men entered the house of the victim Herbert Braun, one with a revolver in his hand and the other with a rifle. The two men bound Braun, his wife and daughter, putting them in various rooms and locking the doors. They robbed approximately $550.00 from Braun's billfold, a .32 caliber revolver valued at approximately $22.00.

PRIOR RECORD: The subject has a long prior record dating back to August of 1964, he has eight (8) previous felony convictions, one (1) miscellaneous conviction, one (1) juvenile conviction, one (1) escape. He has a total of 20 arrests on the FBI record. The subject has been arrested on many occasions for Larceny of Automobile, Burglary, Grand Larceny, Sodomy, Escape, Armed Robbery and Intoxication. The subject has a previous conviction and incarceration in Florida State Prison for Breaking and Entering. He served four (4) years on this offense which occurred in May of 1952. The subject also has Federal commitments, including one (1) commitment to Alcatraz and a commitment with the Georgia Division of Corrections. The subject has been in prison during most of his adult life.

Case Resume #3
Age 41 years
Sentenced: DC #D-000517 - Attempted Uttering of Forgery, Duval Criminal Court-5 years. DC #E-000517 - Murder in the First Degree, Nassau County Circuit Court - Life
This sentence runs consecutively with active #D-000517 and PV #66664. DC #66664 - Murder in the First Degree, Dade County Circuit Court - Life.
Date Sentenced: #D-000517 - February 24, 1971. ##-000517 - November 18, 1971, and #66664 - June 2, 1959.

Circumstances: (Murder)
#E-000517 - Our records indicate that the subject killed William Harry Butler in Nassau County, Florida, by striking him in the head with a blunt instrument. The murder occurred on August 25, 1970. Further information regarding the murder is not available. Subject states that he knows nothing about the murder and is innocent of the offense.

#66664 - Our records indicate that the subject shot and killed Vernon Brubaker with a .32 caliber pistol on January 24, 1959, in Ojus, Florida. This offense occurred in a Cocktail Lounge in Ojus, Florida. The subject indicates that the bartender who was killed was intending to fight with him. He further stated that it would be no match and he pulled a gun on the victim. He claims that the gun automatically went off and stated that he then took some money from the cash register and left the state driving to Newport, Rhode Island. The subject stated that he got drunk in Rhode Island, got into a fight and talked about the killing which resulted in his return to Florida, and eventual conviction.

PRIOR RECORD: The subject's prior record according to the FBI Record goes back to 1950, when the subject was approximately 19-years old. He has five (5) felony convictions, seven (7) arrests and two (2) escapes since that time. He was first convicted of Robbery, sentenced to five (5) years in North Carolina. He was convicted of First Degree Murder in Miami in 1959, sentenced to Life in Florida State Prison, was arrested for escape in 1960, in Clearwater, Florida, convicted of Armed Robbery in 1961, escaping in 1963. The subject was also arrested for Forgery, and Vagrancy. He also spent a short period of time in Rhode Island State Hospital in Howard, Rhode Island prior to his conviction for murder in Miami, Florida in 1959. The subject has spent most of his adult life in prison.

Case Resume #4
Age 30 years
Sentence: Murder in the First Degree - Palm Beach County - Life Murder in the First Degree - Dade County - DEATH - Resentenced to Life.
Date Sentenced: May 11, 1960, Palm Beach County. June 30, 1960, Dade County (Death). August 29, 1972, Dade County (Life).
Date Arrested: March 5, 1960.
Circumstances: The subject entered a service station in Dade County operated by the victim Arthur L. Keeler. The subject told the victim, "this is a holdup". Subject stated that the victim offered no resistance, gave him $120.00 in cash. The subject stated that he then shot the victim for no reason. The subject killed the second victim after he had accosted her at gun point in a parking lot and entered her car. Subject was attempting to leave town, and forced the woman, Virginia Shelby, to accompany him while he drove off. He claims that he drove along the highway toward West Palm Beach, pulled the car off the side of the road and told the victim to leave. He claims that the victim refused to leave the car and attacked him with a hammer. Subject then shot her.
PRIOR RECORD: The subject has no prior record indicated on the FBI record but does have Detainers for a series of killing from California to Florida. Our records indicate that the subject killed a James Ryan, a service station attendant in

Victorville, California, Spencer Fraizer a chef in Phoenix, Arizona, Ira Lee Hardison, a vagrant in Phoenix and Kenneth Mezzorino, a Miami service station attendant.

Case Resume #5
Age 21 years
Committed age 16, Rape, Escambia County
Served 5 years - Life
Had juvenile record (B&E) was released two weeks prior to rape offense (from FSB)--Offense accured during B&E attempt.
(Currently in Junior College and works as reading instructor for other inmates.

Subject was aware of the possibility of execution--but at age 16 it did not appear real. Feels that we should not have capital punishment (states that capital punishment is used as a lever to make people plead guilty.)

Case Resume #6
Age 37 Convicted for armed robbery, Palm Beach County.
Served 4 years - Life
Crime occurred in residence (jewelry and credit cards)
Six prior felony convictions (dates to 1958, 21 prior arrests.
Has been in prison off and on since 1955. Was a "Professional" robber, as defined by courts).
Subject states that following Marine Corps he could not settle down. He had no trade, tried school a couple of times, etc.
Never resorted to shooting anyone in all robberies because of "timing".
Would prefer life (without parole) to capital punishment--The "professional"doesn't kill people (usually) but just wants to do the job.

***
October 3, 1972

Mr. Justice Drew, Chairman
Governor's Committee to Study Capital Punishment
2922 North Monroe
Tallahassee, Florida

Re: Requests for Information

Dear Justice Drew:

In response to several requests made by members of the Special Commission at Florida State Prison the other day, I enclose the following information: Attachment #1 Percentage of white/black inmate population as of May 1, 1972; Attachment #2 Percentage of minority group employees by job classification and totals (survey prepared June 30, 1972, for Division of Personnel). Attachment #3 List of employees killed by inmates through the years. Attachment #4 List of Inmates killed by other inmates in prison. Attachment #5 Summaries of inmates who killed other prison inmates (see Attachment #4, number 22 through 36). This attachment was compiled in response

to the Commission's request for additional information on the offenders, weapons used, and location of the offense.

I am hopeful that the attached information will be sufficient to meet your needs. While I wish we could give you accurate information on all assaults on inmates and officers, the information is not readily available in one place. It would take a major research effort for which we do not have staff available and would probably be so time consuming that it could not be completed prior to the Commission's deadlines.

Sincerely,

LOUIE L. WAINWRIGHT
Director

LLW/dbs
Enclosures

Attachment #1

POPULATION WHITE/BLACK as of May 1, 1972

INST. NAME	WHITE	BLACK	WHITE %	BLACK %	TOTAL
ACI	370	501	42.4	57.6	871
APCI	364	349	51.0	49.0	713
FCI-Male	128	126	50.3	49.7	254
FCI-Female	129	215	37.5	62.5	344
FSP	1325	1729	43.3	56.7	3053
GCI	231	356	39.3	60.7	587
SFCI	29	37	43.9	56.1	66
SCI	316	467	40.8	59.2	773
RMC	632	514	55.2	44.8	1146
DCI	282	263	51.7	48.3	545
Sub-Total	3806	4546	45.6	54.4	8352
DCRP #11	25	36	40.9	59.1	61
12	20	31	39.3	60.7	50
13	25	42	37.4	62.6	67
15	45	40	53.0	47.0	85
16	15	32	32.0	68.0	47
17	27	36	42.9	57.1	63
23	33	39	45.9	54.1	72
24	32	38	45.7	54.3	70
25	21	37	36.2	63.8	58
35	30	25	54.5	45.5	55
37	33	36	47.8	52.2	69
38	22	39	36.1	63.9	61
39	20	39	33.8	66.2	59
41	19	30	38.7	61.3	49
42	18	47	27.7	72.3	65
43	19	57	25.0	75.0	76
46	20	40	33.7	66.3	60
53	25	39	39.1	60.9	64

INST. NAME	WHITE	BLACK	WHITE %	BLACK %	TOTAL
DCRP					
59	26	46	36.2	63.8	72
Sub-Total	475	728	39.5	60.5	1203
CCC-Lantana	24	24	50.0	50.0	48
TB-Tampa	30	20	60.0	40.0	50
CCC-Jax	33	30	52.3	47.7	63
Hills Stockade	19	5	79.1	20.9	24
Dade Stockade	4	7	36.4	63.6	11
FSH	8	9	47.1	52.9	17
Sub-Total	118	95	55.3	44.7	213
Grand Total	4399	5369	45.1	54.9	9768

Attachment #3

EMPLOYEES KILLED BY INMATES IN PRISON

1. Captain Steel - Stabbed and cut by Carl Watkins (WM) #19167 on September 3, 1928, at Panama City Road Prison. He died on September 6, 1928. Watkins was tried in Bay County Circuit Court and was acquitted.

2. Road Prison Foreman killed in 1940 near High Springs. Details not available.

3. W. R. Brannon, Guard at Road Prison at Noma, Florida, shot and killed in escape attempt by inmate A.C. Dean (WM) #41687 on August 20, 1948. Dean received a life sentence, was paroled in 1957, violated parole the same year and was paroled again in May of 1960. Edward Morlega (WM) #41766, and Charles Crooke (WM) #38457 who aided and abetted this killing, were also given life sentences. Morlega was paroled on May 24, 1955. Crooke escaped and was returned the same year. He was paroled in September 1958 and violated this parole in October 1959. He remains in prison.

4. Grant Dohner, Guard at Loxahatchee Road Prison, killed by Donald Willis (WM) #51140 in an escape attempt on January 15, 1953. Willis was given a life sentence and has remained in prison to date. Co-defendants in the killing were Thomas Madden (WM) #49823 who received 30 years for second degree murder, and Robert P. Swyers (WM) #49310 who received 20 years for second degree murder. Madden has since escaped twice, violated one parole, and is presently in prison. Swyers has since escaped once, violated one parole, and is also in prison.

Another employee, Mr. John F. Graydon, who was also injured in this escape attempt, recovered but died a few weeks later. It is not known to what degree this incident contributed to his death.

April 30, 1972

STATE OF FLORIDA

DIVISION OF CORRECTIONS 6-30-72

lass Title	All Employees			Minority Group Employees							
				Male				Female			
	Total (Col 2&3) (1)	Male (2)	Female (3)	Negro (4)	Oriental (5)	Amer. Indian (6)	Spanish Surnamed Amer. (7)	Negro (8)	Oriental (9)	Amer. Indian (10)	Spanish Surnamed Amer. (11)
k I	2		2								
k II	4	1	3					1			
k III	3		3								
k IV	3	2	1					1			
k	1	1									
k Typist I	1		1								
k Typist II	40	1	39					2			
k Typist III	10		10					1			
scriber Oper.	15		15					1			
etary I	2		2								
etary II	30		30					1			
etary III	10		10								
et IV	3		3								
. Secretary I	1		1								
. Mach. Oper.	4		4								
ch. Oper. I	4		4								
. Sys. Anal. Supv.	1	1									
ier I	1		1								
OTAL											

April 30, 1972

STATE OF FLORIDA

Class Title	All Employees			Minority Group Employees							
				Male				Female			
	Total (Col 2&3) (1)	Male (2)	Female (3)	Negro (4)	Oriental (5)	Amer. Indian (6)	Spanish Surnamed Amer. (7)	Negro (8)	Oriental (9)	Amer. Indian (10)	Spanish Surnamed Amer. (11)
teen Operator	1	1									
ount Clerk I	1		1								
ount Clerk II	16		16								
ical Asst. I	2	1	1								
c. Asst. II	1	1									
ountant I	6	3	3				1				
ountant II	9	9									
ountant III	1	1									
ountant IV	2	2									
. Manager I	2	1	1								
. anager II	1	1									
in.Srvcs.Dir.	1	1									
s el Aide	3		3								
s. Tech. I	1	1									
s. Tech. II	2	2									
s. Tech. III	1	1									
sonnel Mgr. I	7	7									
sonnel Mgr. II	1	1									
OTAL											

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CONTINUED

1 OF 2

STATE OF FLORIDA

April 30, 1972

Class Title	All Employees			Minority Group Employees							
				Male				Female			
	Total (Col 2&3) (1)	Male (2)	Female (3)	Negro (4)	Oriental (5)	Amer. Indian (6)	Spanish Surnamed Amer. (7)	Negro (8)	Oriental (9)	Amer. Indian (10)	Spanish Surnamed Amer. (11)
t. Pers. Off. I	1	1									
sonnel Off. II	1	1									
n.& Budg. Coord.	1	1									
ch. Agent I	7	5	2								
ch. Agent II	1	1									
ch. Agent III	1	1									
p. Clerk II	1	1									
tistician I	1		1					1			
tistician II	-										
earch Asst.	3	1	2								
earch Assoc.	1	1									
rarian I	9	8	1	2							
. Asst. I	2	2									
. Asst. III	1	1									
s.Ins.& Invest.	5	5									
ies Foreman	1	1									
t.Maint.&Const. Supervisor	3	3									

April 30, 1972

STATE OF FLORIDA

Class Title	All Employees			Minority Group Employees							
				Male				Female			
	Total (Col 2&3) (1)	Male (2)	Female (3)	Negro (4)	Oriental (5)	Amer. Indian (6)	Spanish Surnamed Amer. (7)	Negro (8)	Oriental (9)	Amer. Indian (10)	Spanish Surnamed Amer. (11)
int.&Const.Supv.	9	9									
iler Oper. II	25	25									
ile Oper. More.	1	1									
H.Plant Oper. II	6	6									
ail Truck Driver	10	10									
ch.Eng.Mgr. II	1	1									
b Tech. II	-										
terinarian I	.1	.1									
d. Trans. I	10		10								
d. Trans. II	-										
d. .. Librarian	-										
sp. Administrator	2	2									
d. h.	87	68	19				1	2			
d. Tech. Supv. I	6	6									
d. Tech. Supv. II	1	1									
d. Technologist I	1	1									
d.Technologist II	2	1	1		1				1		
y Tech. I	-										
TOTAL											

April 30, 1972

STATE OF FLORIDA

Class Title	All Employees			Minority Group Employees							
				Male				Female			
	Total (Col 2&3) (1)	Male (2)	Female (3)	Negro (4)	Oriental (5)	Amer. Indian (6)	Spanish Surnamed Amer. (7)	Negro (8)	Oriental (9)	Amer. Indian (10)	Spanish Surnamed Amer. (11)
ometrist	1	1									
rmacist I	-										
rmacist II	2	2		1							
chologist I	2	2									
ch ogist II	7	6	1				1				
nical Psychologist	1	1									
chology Director	-										
. Service Worker	5	5		2							
.Clin.Soc. Serv.	1		1								
ech Therapist	-										
sical Therapist I	-										
itarian I	2	2									
. se I	4		4								
. Nurse II	8		8					1			
. Nurse III	4		4								
se Anesthetist	2		2								
se Director I	-										
sician I	22	22									
TOTAL											

April 30, 1972

STATE OF FLORIDA

Class Title	All Employees			Minority Group Employees							
				Male				Female			
	Total (Col 2&3) (1)	Male (2)	Female (3)	Negro (4)	Oriental (5)	Amer. Indian (6)	Spanish Surnamed Amer. (7)	Negro (8)	Oriental (9)	Amer. Indian (10)	Spanish Surnamed Amer. (11)
ysician II	4	4					3				
ysician III	1	1									
yc. atrist I	3	1	1				1				1
ychiatrist II	1	1									
rg n	5	5			3		2				
d. & Surg. Dir.	1	1					1				
dical Director	-										
ntal Lab. Supv.	1	1									
ntal Intern	4	4									
ntist I	6	6									
ntist II	1	1									
wer Officer	133	133		6			1				
rr Officer I	764	716	48	31	1		3	10			
rr. Officer II	178	174	4	2							
rr. Officer III	62	56	6	1				1			
rr. Off. Chf. I	11	11									
rr. Off. Chf. II	1	1									
.Prison Off. I	169	169		8							
TOTAL											

April 30, 1972

STATE OF FLORIDA

Class Title	All Employees			Minority Group Employees							
				Male				Female			
	Total (Col. 2&3) (1)	Male (2)	Female (3)	Negro (4)	Oriental (5)	Amer. Indian (6)	Spanish Surnamed Amer. (7)	Negro (8)	Oriental (9)	Amer. Indian (10)	Spanish Surnamed Amer. (11)
rison Off. II	39	39		1							
rison Off. III	24	24									
.on Off. Chf.	21	21									
. RP Supv.	-										
Rec.Supv. I	8	4	4								
te Rec.Supv. II	3	2	1								
sif.Off. I	34	32	2	1							
sif. Off. II	4	4									
sif.Supv. I	9	8	1								
sif.Supv. II	2	2									
.Supv. III	1	1									
. Superint. I	6	6									
uperint. II	3	3									
. Superint. III	1	1									
rintendent I	-										
rintendent II	8	7	1								
rintendent III	1	1									
rintendent IV	1	1									
OTAL											

STATE OF FLORIDA

April 30, 1972

ass Title	All Employees	Minorit Group Employees									
		Male						Female			
	Total (Col 2&3) (1)	Male (2)	Female (3)	Negro (4)	Oriental (5)	Amer. Indian (6)	Spanish Surnamed Amer. (7)	Negro (8)	Oriental (9)	Amer. Indian (10)	Spanish Surnamed Amer. (11)
Treat.Cntr.Dir	1	1									
Of Institution		1									
Couns. I	3	3									
Couns. II	7	7									
Couns. III	7	7									
Couns. Chief	5	5									
Inmate Treat.		1									
Serv.Reg.Coord	6										
Serv. Admin.	1										
P & Comm. Fac.	—										
. Coord.											
stries Repres.	2	2									
stries Prod.Sup	2	2									
stries Mgr. I		1									
stries Mgr. II		1									
stries Admin.	1	1									
Serv. Dir. I		1									
Serv. Mgr.	9	9									

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STATE OF FLORIDA

April 30, 1972

Class Title	All Employees			Minority Group Employees							
				Male				Female			
	Total (Col 2&3) (1)	Male (2)	Female (3)	Negro (4)	Oriental (5)	Amer. Indian (6)	Spanish Surnamed Amer. (7)	Negro (8)	Oriental (9)	Amer. Indian (10)	Spanish Surnamed Amer. (11)
l Serv. Coord.	1	1									
ıdry Mgr. I	7	6	1								
ıary Mgr. II	1	1									
efighter II	4	4									
. nief	1	1									
ss. Teacher I	85	69	14	10	-			4			
ss. Teacher II	24	24		2							
d. Principal II	1	1									
A Instructor	6	6									
c. Superv. I	7	7									
c. Superv. II	1	1									
c. Director	1	1									
. Consultant	-										
Ag. Instructor	2	2									
. Train. Coord.	9	9		1							
. Instructor II	35	33	2								
. Instructor III	53	50	2				1				
ric. Spec.	1	1									
TOTAL											

April 30, 1972

STATE OF FLORIDA

lass Title	All Employees			Minority Group Employees							
				Male				Female			
	Total (Col 2&3) (1)	Male (2)	Female (3)	Negro (4)	Oriental (5)	Amer. Indian (6)	Spanish Surnamed Amer. (7)	Negro (8)	Oriental (9)	Amer. Indian (10)	Spanish Surnamed Amer. (11)
:. Couns.	8	7	1								
'lace. Couns. II	3	3									
)..in	10	10									
:gious Coord.	1	1									
i ig Mgr.	-										
n Manager I	6	6									
n Manager II	3	3									
est Consultant	.25	.25									
lsion Director	1	1									
OTAL 2542.55	2342.55	2027.55	315	68	5	-	14	26	1	-	1

5. Mr. J. G. Godwin, Assistant Superintendent, Florida State Prison, Raiford, was killed by inmate George Arthur Heroux (WM) #50256 on April 4, 1955. Heroux also wounded two other officers: Les Dobbs and Louie L. Wainwright (Mr. Wainwright was then Captain of the Guard at Florida State Prison). Heroux shot at and missed officers L. W. Pace and Max Sweat. He received a sentence of Natural Life for this offense on June 28, 1955, in the courts of Union County, Florida. He died on February 13, 1960, of natural causes.

6. L. B. Sumner - Foreman for State Road Dept., killed by three inmates while escaping on 4-26-65 from Fort Myers Road Prison. Robert Earl Williams, B-004928 - Life - 1st Degree Murder - 10-26-65; Horace Wingard, 012584 - Life - 2/15/67; Newell Alligood, B-015889 - Life - 1st Degree Murder - 2/10/66.

INMATES KILLED BY OTHER INMATES IN PRISON

1. Willie Ward (CM) #16427 - Killed by Quincy Adams (CM) #20870 and #17661 on October 19, 1929. Disposition of case unknown.

2. W.H. Brown (WM) #22071 - Killed by inmate Red Anderson (WM) #21471 on March 31, 1933. Disposition of case unknown.

3. Omer Wilson (WM) #25668 - Killed by Chester White (WM) #30342 on October 26, 1934. White received a death sentence from the courts of Union County, Florida. He died of natural causes on March 10, 1940.

4. Charlie Jones (CM) #22812 - Killed by Charlie Hill (CM) #26963 on November 22, 1934. Hill received a life sentence for the offense of first degree murder on December 13, 1934, from the Circuit Court of Union County, Florida. He committed another murder while on parole in 1951. He died at Raiford in 1960 of natural causes.

5. Joseph Wright (CM) #25351 - Killed by Esther Fields (CF) #23290 on November 22, 1938, at Florida State Prison. Coroner's Jury returned the verdict of justifiable homicide in this case.

6. Cordell Harris (WM) #35660 - Killed by Floyd Arnold (WM) #33619 on May 22, 1944, while Harris was on escape from the Road Prison at Live Oak and was making an attempt to kill Arnold. Arnold was not sentenced as this was self-defense.

7. Lawrence Jeffers (WM) #41489 - killed by Jack Smith (WM) #38970 on July 17, 1947, at Florida State Prison. Smith was found "not guilty" by the courts of Union County, Florida.

8. Annie Burdell Russ (CF) #42303 - Killed by Berta Lee Brasey (CF) #43472 on April 5, 1948, at Florida State Prison. Brasey was given one year for manslaughter in Union County Circuit Court.

9. Blair Dilisi (WM) #42325 and #42840 - Stabbed with file and killed on November 26, 1948, by Link Kennedy (WM) #38639 while working on a road crew out of the Arcadia Road Prison. Kennedy was given 20 years running concurrently with other sentences. He was paroled on February 14, 1956, and violated this parole effective June 20, 1961. He is presently in prison.

10. William Brown (CM) #41364 - stabbed and killed by James Henderson (CM) #42400 on November 14, 1949. Apparently Henderson was cleared of this offense. This offense occurred at Florida State Hospital Construction Camp, Chattahoochee, Florida.

11. Ray Sellars (WM) #44069 - Killed by William Hadley (WM) #48350 on April 22, 1951. Hadley received a life sentence for this offense on May 21, 1951. Hadley also killed Otis O'Neil Shirley (WM) #67659 on November 23, 1959. Both offenses occurred at Florida State Prison. Hadley was adjudged insane on July 14, 1960, and was committed to Florida State Prison on May 31, 1962, and committed suicide in the East Unit on June 11, 1962.

12. Milton E. Weeks (WM) #39831 and #45462 - Killed on October 10, 1951, by James Douglas (WM) #49151 (with a butcher knife) at Floral City Road Prison. Douglas was sentenced to 20 years for second degree murder from Sumter County Circuit Court and is still in prison.

13. Frank Stephens (CM) #42934 - Killed by Napoleon C. Mitchell (CM) #45347 at Ft. Pierce Road Prison on February 6, 1952. Mitchell received 30 years for second degree murder. He escaped April 21, 1958, and was recaptured the next day. He remains in prison to date.

14. C.F. Larsen (WM) #52606 - Killed by Joseph Harold Husted (WM) #56155 on August 18, 1955. Husted received a life sentence for this offense in the courts of Union County, Florida. John M. Wilkerson (WM) #54466 was also killed by Joseph Harold Husted on July 10, 1956. Husted was committed to Florida State Hospital as insane on November 28, 1956, and committed suicide there on February 2, 1960. (Both of these offenses occurred at Florida State Prison.)

15. James E. Bell (CM) #51464 - Stabbed and killed by Kelly Brown (CM) #54313 on January 16, 1956, at Cocoa Road Prison. Brown was turned over to Brevard County but was not convicted or sentenced.

16. Ralph Edward Strickland (WM) #54294 - Killed by Raymond Butler (WM) #57545 on May 27, 1956, at Florida State Prison. Butler received a life sentence for this offense on May 29, 1956.

17. Robert C. Pillsbury (WM) #53898 - Killed by Red Stinson (WM) #51896 and Jack Allen (WM) #61657 on September 29, 1956, at Florida State Prison. Stinson received a life sentence for this offense on December 10, 1956. He was later committed to Florida State Hospital as an insane patient, where I understand he committed suicide. Allen was also committed to Florida State Hospital as an insane patient shortly after the offense was committed.

18. Duke Delano Olson, WM, #64389 - Killed by Earl Leach, WM, #64719, and Joe Smith, WM, #64793, on July 16, 1959, at Florida State Prison. These two men received death sentences and were executed on September 24, 1962.

19. J. C. Clinton, CM, #62396 - Stabbed with a homemade knife by Robert King, CM, #58054, at Avon Park on September 30, 1959, and died on October 5, 1959. King was sentenced to 15 years for second degree murder.

20. Calvin A. Cook, WM, #65943 - Killed by James Rankin, WM, #57870; Andrew King, WM, #65323; John Robert Vile, WM, #63854; and Jose R. Zuniga, WM, #65212, on March 28, 1960, at Florida State Prison. Each one of these men received a death sentence. However, they won a new trial and were later sentenced to life imprisonment upon their plea of guilty.

21. Kenneth Albury, WM, #65809 - Killed by John Thomas McLain, WM, #A-003045; Jack Campbell, WM, #A-003046; and William H. Wolf, WM, #66263, on October 2, 1960, at Florida State Prison. McLain and Campbell received life sentences in the Circuit Court of Union County, Florida. Wolf was committed to Florida State Hospital as insane.

22. Henry Hull, WM, #018139 - Killed in Florida State Prison, East Unit, on March 11, 1968, by strangulation by Wayne Fulk, WM, #B-000637, and Elwood Lamar Albright, WM, #A-015526. Fulk was judged mentally incompetent and committed to Florida State Hospital.

23. Lonnie Ray Belcher, WM, #020576 - Stabbed and killed by Joseph A. Troncoso, #018952, at Florida State Prison on January 26, 1969. Troncoso found guilty of Possession of a Weapon or Instrument by State Prisoner and sentenced to ten years to run consecutive to any previous sentence.

24. Earl Prater, CM, #003259 - Killed in fight April 6, 1969, at Florida State Prison by Earl Jerome Jones, #B-007502. Severed jugular vein with sharpened putty knife. Jones sentenced to nine and one-half years consecutive with other sentences for Possession of a Weapon by State Prisoner.

25. Willie Fred Davis, CM, #021949 - Killed in a fight by bush axe April 24, 1969, at Florida Correctional Institution, Male Unit, by Donn Duncan, WM, #013871. Duncan was convicted of Second Degree Murder and given a life sentence on August 14, 1969.

26. Davis Gordon Barwick, Jr., WM, #018858 - Beaten on June 1, 1970, by Jimmie Ray Bonds, WM, #51808, at Florida State Prison, Main Unit. Died at University of Florida Medical Center, Gainesville, on June 3, 1970. Insufficient evidence to charge Bonds.

27. Randy Peacock, WM, #028587 - Stabbed and killed by Robert Lewis Ziegler, #029291, at the Reception and Medical Center on March 22, 1971. Ziegler was convicted of First Degree Murder and given a life sentence on July 19, 1971.

28. James C. Reynolds, WM, #A-016656 - Stabbed and killed by Barry C. Wassen, WM, #015693, at the Community Correctional Center, Jacksonville, on December 24, 1971. Wassen was convicted on a manslaughter charge and given a six months to five year sentence.

29. Jerry Dean Sikes, WM, 025650 - Died February 23, 1972, at W.T. Edwards Hospital as a result of a beating in the East Unit, Florida State Prison, on January 2, 1972. Several inmates were involved in the beating. No one charged.

30. Horace M. Galbreath,WM, C-010766- Stabbed and killed on January 27, 1972, at DC Road Prison 24, Gainesville. Gary R. Herndon, WM, 031419, is being charged. No disposition of case has been made as of this time (9-1-72).

31. Lester Riddle, CM, 024572 - Stabbed and killed on March 9, 1972, by Mailachi Timmons, CM, 025380, in the Tobacco Factory at Florida State Prison. Grand Jury returned First Degree Murder indictment, but has not gone to trial yet.

32. Jimmy Ray Burnette, WM - C018081 - Stabbed and killed on April 3, 1972, by Donald Marcus Brooks, CM, 023669, at Florida State Prison, Main Unit. Grand Jury returned indictment of First Degree Murder, but has not gone to trial yet.

33. Juan Andrade Raymundo, WM, 034288 - Stabbed and killed on May 25, 1972, by Paul P. Cabreca, WM, 034185, at the Reception and Medical Center. No disposition made as of this time (9-1-72).

34. Ike Brooks, CM, 030103 - Stabbed and killed on June 7, 1972, by Johnny Hines, WM, 029336, at Sumter Correctional Institution. Grand Jury returned First Degree Murder Indictment, but has not gone to trial.

35. Waverly McClinton, CM, 032190 - Stabbed and killed on August 28, 1972, by Joey Adams, CM, A-024740, at Union Correctional Institution. No disposition made of case at this time (9-1-72)

36. Gordon Ketchum, WM, 029138 - Stabbed and killed on September 8, 1972, at Union Correctional Institution. Not sufficient evidence to file charges against suspects.

SUMMARIES OF INMATES WHO KILLED OTHER PRISON INMATES

22. Wayne Faulk, 0000637 was convicted for Larceny of Auto and Breaking and Entering on July 20, 1960, and sentenced to six months to five years. Convicted of Larceny of Auto on August 22, 1960, sentenced to nine years. Convicted of Escape and Larceny of Auto and sentenced to five years. Faulk killed Henry Hull, W/M, 018139 in Ward #1 of Florida State Prison Clinic by strangling him with an earphone cord. Judged mentally incompetent and committed to Florida State Hospital.

Elwood Lamar Albright, #66069, was convicted of Breaking and Entering, on April 10, 1959, and sentenced to seven years. Released on expiration July 16, 1965, and was convicted of Armed Robbery December 29, 1965, and sentenced to 30 years which was discharged by court order on November 29, 1971. Recently convicted of Aggravated Assault on July 13, 1972, and sentenced to five years. The First Degree Murder charge is as a result of his part in the death of Henry Hull, 018139, was nolle prosequi on November 14, 1968.

23. Joseph A. Troncoso, 018952, was convicted of Manslaughter (weapon was a knife) on June 15, 1967, and sentenced to six months to seven years. Convicted of Escape and Larceny of Auto on September 30, 1968, and sentenced to three years. Two prior felony convictions.

Troncoso killed Lonnie Ray Belcher, W/M, 020576 on January 26, 1969, by stabbing victim with a knife in the canteen court between A.& D. Floor of the main housing unit of Union Correctional Institution. Sentenced to ten years consecutive for possession of weapon.

24. Earl Jerome Jones, B007502, was convicted of Armed Robbery on February 2, 1967, and sentenced to 40 years. Jones killed Earl Prater, C/M, 003259, by stabbing him with a knife while victim was standing in the doorway of the dayroom to U-Wing, Florida State Prison. Jones struck him in the neck with a putty knife, severing the victim's jugular vein. Sentenced nine and one-half years to run consecutive for Possession of a Weapon by State Prisoner.

25. Donn Duncan, W/M, 013871, was convicted of Breaking and Entering on April 29, 1965, and again on May 16, 1968. Duncan killed Willie Fred Davis, C/M, 021949, by striking him three times with a bush axe while both inmates were in "C" Dorm bathroom of Florida Correctional Institution, Male Unit. Convicted to Life on August 14, 1969.

26. No Charges Filed.

27. Robert Lewis Ziegler, W/M, 029291, was convicted of Robbery on September 17, 1970, and sentenced to 15 years. Two prior felony convictions. Ziegler killed Randy Peacock, W/M, 028587, by stabbing with a #9 galvanized wire, 15-1/2 inches in length. This incident occurred at the Reception and Medical Center, Lake Butler, Florida, on a breezeway connecting the Classification Department and the Education Department.

28. Barry C. Wasson was convicted of Manslaughter on February 22, 1972, and sentenced to six years. Two prior felony convictions. Wasson killed James C. Reynolds, W/M, A016656, on December 24, 1971, in the dayroom of Jacksonville Community Correctional Center by stabbing victim with a knife. Sentenced to six months to five years to run concurrent.

29. No charges.

30. Henderson was convicted of Manslaughter on July 14, 1971, and sentenced to eleven years and three months. Type weapon used unknown. (No additional information other than appears in #30.)

31. Mailachi Timmons, C/M, 025300, was convicted of Robbery on November 5, 1969, and sentenced to six years. Timmons killed Lester Riddle, C/M, 024572, by stabbing with a knife while they were working in the tobacco factory of Florida State Prison on March 9, 1972.

32. Donald M. Brooks, C/M, 023669, was convicted of Rape on April 1, 1969, and sentenced to Life. First felony conviction. Brooks killed Jimmie Ray Burnette, W/M, 0018081, by stabbing him with a knife on April 3, 1972, in cell F-24, main housing unit, Union Correctional Institution.

33. Raul P. Cabreca, W/M, 034185, was convicted of Robbery, Larceny of Auto, and Aggravated Assault (weapon was a knife) on April 17, 1972, and sentenced to five years. Cabreca killed Juan Andrade Raymundo, W/M (Mexican), 034288, May 25, 1972, in Dorm "E", Reception and Medical Center, Lake Butler, by stabbing the victim with a knife.

34. Johnny Hines, W/M, 029336, was convicted of Larceny of Auto, Kidnapping, and sentenced to six years. No prior arrests or felony convictions. Hines killed Ike Brooks, C/M, 030103, by stabbing him with a knife in Dorm "C" at Sumter Correctional Institution on August 28, 1972.

35. Joey Adams, C/M, A024740, was convicted of Breaking and Entering with Intent to Commit a Felony on August 27, 1969, and sentenced to 15 years. Killed on Waverly McClinton, C/M, 032190, on Monday, August 28, 1972, by stabbing him with a knife on "D" Floor of the main housing unit at Union Correctional Institution. Victim was stabbed 14 times.

36. No charges filed.

MINUTES
Governor's Committee To Study Capital Punishment
Dade County Court House
Miami, Florida
September 30, 1972

Committee Members Present: E. Harris Drew, LeRoy Collins, L. E. Brown, Harold Stahmer, Robert Johnson, John Mathews, Jr., Stella Thayer, Gwen Cherry, Ernest Mason, John McCarty, Jim Williams, Jesse McCrary, Louis de la Parte.

Committee Members Absent: C. Farris Bryant, Richard Earle, Jr., E. Welborn Daniel, Beth Johnson.

The meeting was called to order by the Chairman, E. Harris Drew, and the executive order was read in part for the benefit of those present.

The Chairman then introduced the Attorney General for the State of Florida, Robert Shevin. The Attorney General presented his views regarding the utilization of capital punishment in the State of Florida which would be directed primarily at murders occurring as a result of or a part of crimes for profit. More specifically, the death penalty should apply to the killing of law enforcement officers, prison guards, the victim of a rape, robbery or a kidnapping, etc., assassination of a public figure, or murder committed by a parolee previously convicted of murder, and murder for hire. The Attorney General felt that rape should carry a life imprisonment sentence as opposed to the death penalty.

Mr. Shevin felt that the parole procedures must be addressed to the new non-capital crimes, with no hope of parole being his first choice and a second choice, if the first were unacceptable, being a twenty year minimum on a life term. He felt that we should increase security within our correctional facilities as necessary to accommodate tougher correctional clientele.

The Attorney General felt that while it would be difficult to draw up an acceptable statute for capital punishment the question is still wide open. He pointed further that there are no guarantees as to the constitutionality of any statute that might be promulgated.

Additional comments by the Attorney General during the question and answer session included his feelings that we could not have degrees of rape similar to those of murder, that the death penalty was not appropriate for application to hard drug pushers, and that if capital punishment is reinstated we should certainly leave room for the "plea-bargaining" or lesser verdict provisions as a safety valve within the judicial system.

Chairman Drew then made a short statement on behalf of the Florida Bar who had been scheduled to appear at this hearing, but that was unable to and would instead appear before the committee on October 20.

Mr. James V. Bennett, the retired director of the U.S. Bureau of Prisons, was then introduced to the committee as an expert witness.

His discussion addressed primarily the administrative aspects of capital punishment, focusing on a correctional administrators assessment of the effectiveness of capital punishment. Mr. Bennett stated that he had had responsibility for carrying out executions down through the years which had been a traumatic experience for him personally.

Mr. Bennett stated that he felt there was no deterrent value in having a death penalty applied to killing of prison officers. His feelings were based primarily on the Attica riots of last year and his experiences down through the years with desperate offenders. He felt that many of the most vicious offenders are not in institutions for murder but generally for lesser offenses. He stated that these people caused more problems and are more dangerous than most capital crime offenders.

Mr. Bennett characterized his position as that of not being an absolutist on the issue of capital punishment, and while he was opposed to it by principle, this opposition did not extend to all cases. He felt that the killing of a president should be a capital crime, not because of its deterrent effect, but as a form of retributive justice on behalf of the American people. He felt also that atrocious murders of children, etc., or mass killings by bombings, should carry the death penalty. Again, he stated that this would probably not have a deterrent effect, but would represent an aspect of vengeance on behalf of society. Further he felt that killing of policemen and prison officers should be capital crime, not as a deterrent, but to give the officers a "feeling" of security.

The Committee Chairman then introduced Mr. John O. Boone, Commissioner of the Massachusetts Department of Dorrections. Mr. Boone began his presentation by stating that Florida should, through its studies here on capital punishment, shed light on the very complex issue of the death penalty for all other jurisdictions to follow.

The major premise of Mr. Boone's presentation was that if the death penalty could be applied equally in all cases, then perhaps it would constitute a deterrent to the commission of future crimes. However, in the context of the present society, he felt that the death penalty could not function as a deterrent, since such equality and consistency in application had been so flagrantly abused in the past.

Mr. Boone felt that reinstatement of capital punishment at this time would foster a lack of confidence in the judicial process and would further add to the deep down concern of many blacks that there is a break down in the fairness of our courts.

Mr. Boone's argument against the death penalty, as it has historically been applied, is primarily that there are a disproportionate percentage of blacks in prison as well as the entire criminal justice system. He felt that discrimination was especially evident in the historical statistics on executions, and that this discrimination was not just to be found in the south, but was nationwide.

During the question and answer session these further points were made by Mr. Boone. He felt that the death penalty was absolutely not a deterrent, and that within the realm of corrections, approximately 5% of the current clientele could and should be dealt with within mental health.

The committee then heard from Mr. Garth C. Reaves, Editor of the Miami Times. Mr. Reaves' discussion was on the discriminatory aspects of capital punishment as it applied to minority groups. A copy of his statement is attached.

The committee then heard from Mr. Dan Sullivan, the Executive Director of the Crime Commission of Greater Miami. A copy of Mr. Sullivan's remarks and the resolution of the Commission concerning capital punishment is attached.

Mr. Sullivan then introduced Sir John Waldron, retired commissioner of Scotland Yard. Mr. Waldron then proceeded to give a general overview of capital punishment in England.

In summing up the current status of capital punishment in England, Mr. Waldron cited the death penalty as an emotional subject in England, subject to periodic attempts for reinstatement by "little old ladies from Brighton" following particularly "dastardly" crimes and the on-going movement for continued abolition by the liberal press. Currently, capital felons in England receive life sentences which average about ten years. However, recently a man was sentenced to serve his whole life, based on the general discretion given to judges which allows them to set varying minimum lengths of time to be served of a life sentence depending on the type and circumstances of the crime.

The English police would like to see a reinstatement of capital punishment since the street policeman feels there is a deterrent value in that punishment. However, Sir John feels that capital punishment will not be reinstated unless there is some massive crime wave, which is an unlikely possibility.

The Commissioner, in answering some questions of the committee, stated that the English police don't want to carry fire arms primarily because they feel it would only induce criminals to use fire arms more frequently. Further, he stated that no London policemen had been killed since 1966.

Sir John felt that the death penalty deters criminals, but only if the punishment is applied swiftly.

The committee then had further questioning of Mr. Dan Sullivan and Mr. James Bennett. Mr. Bennett felt that a missing factor in crime control studies was the need for gun control legislation. He further stated that according to Gallop Polls for the last twenty years, there had been a rather substantial and steady decrease in public support for capital punishment. He cited a poll in 1953 in which 68% of the public favored the death penalty and in 1966, only 42% favored the death penalty.

Mr. Pat Tornillo then presented a prepared statement to the committee. That statement is attached.

STATEMENT OF GARTH C. REEVES, EDITOR
MIAMI TIMES
MIAMI, FLORIDA

I fully recognize that the question of capital punishment is of significant concern to the legislature of this State and it is of concern to the citizens of this State. Central to any discussion of capital punishment is its purpose and the effect on the population coupled with the orderly administration of the same. There are, as we all recognize, two separate and distinct schools of philosophy regarding capital punishment:

1. That school which believes or advocates that the imposition of capital punishment serves as a deterrent to crime.

2. That school of thought which exposes the theory that capital punishment does not deter crime. It is my honest belief that the statistical data that could be gathered would support either contention, depending on the person or persons collecting the same.

Of significant concern to citizens who feel a sense of justice and who are humane in their thoughts is not capital punishment per se but rather the discriminatory fashion in which the punishment has been imposed. A Florida commission to study capital punishment reported in 1965 that those who received capital punishment in this State have most frequently been the black and the poor. Of course, the cold figures would suggest that only the black and the poor commit capital offenses. Of course, we all know this is not true. It should be pointed out that rarely, if ever in the history of this state, has any white American even received a death sentence for the heinous crime of rape when that rape involved a white male and a non-white female. Conversely when that heinous crime of rape involved a black male and a non-black female, the death penalty has been handed down with some

consistency. To go one step further, it has been rare indeed that the death penalty has been melted out to a black male when accused and convicted of raping a black female. When one looks at the total picture just painted, the inevitable question becomes--Is capital punishment reserved for blacks or is rape a non-capital offense when committed by a white male and a capital crime when committed by a black male upon a white female? It raises serious questions in the mind of citizens as to whether legislative bodies, governmental officials and plain ordinary citizens place a higher sanctity on the virtue of white womanhood than is placed on black womanhood. It does however, under the circumstances previously described, add fuel to an existing fire or discord to that small band of people, both black and white, who would seek to divide not only our state but our country. It further, I believe, aids those persons who will believe or who will advocate that there is no justice for one who is not white, Anglo Saxon, protestant and twenty-one. While this discussion at this point has concerned itself with race, it should not be considered by the readers to suggest that the writer's concern is only one of race. There are a number of persons who advocate that capital punishment be reinstated for the willful and deliberate killing of police officers, firemen, prison guards, and public officials. While I disagree that capital punishment should be reinstated, I rehemently disagree that it should be on those limited basis. If capital punishment is to be reinstated, it should be reinstated to include those persons who would by premeditation and design effect the death of a rich man, poor man, beggar man, thief, doctor, lawyer or Indian chief. Lastly, if capital punishment is to be reinstated in any form for any crime, it can only be reinstated under conditions that will guarantee it will not be exercised as said in the Furman decision, "in a freakish and discriminatory fashion against the poor, the helpless, the downtrodden, the uneducated and the weak;while the rich, the strong, the powerful sometimes laugh at that kind of sentence." I recently read an account of one criminologist who appeared before this committee in a bit humor he said, "It may be difficult for a rich man to enter the kingdom of heaven, but it is a lot more difficult for him to get the death penalty in the United States today".

There is, I believe, a growing feeling that legislative bodies will take the issue of capital punishment and make it a political football by which to perpetuate themselves in an emotional political arena. It is my hope that it will not be reinstated, but rather we seek alternative ways in which to rehabilitate those who are capable of same and find other ways to keep away from society those who have been classified as incorrigible criminals.

REMARKS OF DANIEL P. SULLIVAN
at the Public Hearing of
The Governor's Council on Capital Punishment
Saturday, September 30, 1972

The Crime Commission's Board of Directors by Resolution passed at its regular monthly meeting held on July 12, 1972, expressed its conviction that the Death Penalty does deter hardened criminals from indiscriminate killings in cold blood, and the murder of Police and Guards in correctional institutions.

At that time, the Board of Directors urged Governor Askew to make a study of violations of law involving heinous crimes, and to provide for the Death Penalty in such cases, as a deterrent to crime and for the protection of our society.

The Crime Commission therefore favors retention of the Death Penalty as punishment for certain heinous crimes.

The Crime Commission is a citizens' organization supported by 500 private citizens, business firms and civic organizations. We reflect the feelings and sentiments of a large segment of our community.

Polls which have been taken of voters have shown that a high percentage of citizens favor retention of the death penalty. In an Illinois State constitutional election held in Illinois in December 1970, the voters rejected a proposition abolishing the Death Penalty by 1,218,791 votes against abolishment, to 676,302 for abolishment, a margin of almost 2 to 1.

The threat of capital punishment is a real threat to a potential killer.

The Los Angeles Police Department made a study in 1970 of 99 subjects who were arrested and charged with crimes of violence and later interviewed. Some were armed and others unarmed while committing their crimes.

(a) Over 50% were deterred by the Death Penalty from carrying a weapon or operative weapon.
(b) 10% would kill whether the Death Penalty was enforced or not.
(c) Over 32% were unaffected by the Death Penalty because they would not carry a weapon in any event, primarily out of fear of injuring themselves or somebody else.
(d) 70% were unaffected by the Death Penalty because it was not being enforced.

Thus we see a 5 to 1 ratio of deterrence over non-deterrence by the perpetrators themselves, the best judges of the deterrent influence of the Death Penalty.

As the result of the non-enforcement of the Death Penalty in recent years, there has in actuality been no Death Penalty.

Further evidence of the deterrence quality of the Death Penalty was pointed out by California Supreme Court Justice McComb, the sole dissenter in the Anderson case in which the Court held the Death Penalty to be "cruel" or "unusual" in an earlier case. He gave 14 different examples of violent criminals who did not kill because of the threat of death involved for capital crimes.

In its petition for re-hearing in the Anderson case, the State of California, on Pages 17 and 18 lists facts in 8 separate cases, where persons once convicted of murder, had killed again, either in prison, after escaping, or after being paroled.

Law Enforcement Officers:

We place the responsibility for the prevention of crime and the apprehension of criminals squarely upon the shoulders of the Police Officer.

We require the Policeman to engage in face-to-face confrontations with violent criminals on a day-to-day basis. For that reason, the Policemen are special cases, when we consider the punishment to be accorded to their killers.

During a 5 year period from 1967 through 1971, 261 law enforcement officers were killed while answering disturbance calls, responding to crimes in progress and making arrests.

A total of 451 law enforcement officers were killed in the 5 year period 1967 to 1971.

The Crime Commission feels that the punishment for the murder of a law enforcement officer engaged in his duties should be death, and the death sentence should be non commutable.

Furthermore, Prison Guards and Correction Officers are required to confront violent criminals daily in carrying out their duties. They go unarmed and are vulnerable to attack at any time.

Prison Guards, like law enforcement officers, desire the maximum protection of the law. We favor the Death Penalty for the killing of any Prison Guard or Corrections Officer, while he is on duty.

There are other acts which shock the conscience, such as murder resulting from a contract, hijackings of aircraft, political assassinations, the murder of the kidnapped victim, but we rest our case on the absolute need to give support to our Law Enforcement Officers and our Corrections Officers.

R E S O L U T I O N July 12, 1972

WHEREAS the trend in serious crime has been toward the use of more violence against the victims of crime, and

WHEREAS citizens more frequently are being shot down in cold blood during the perpetration of armed robberies and other crimes and,

WHEREAS the fear of serious punishment has in great measure been removed from cold blooded murderers, rapists, and hijackers, since the Supreme Court's recent decision indicating amnesty to convicted offenders in capital cases,

NOW THEREFORE the Crime Commission of Greater Miami expresses its firm belief that the death penalty does deter hardened criminals from indiscriminate killings in cold blood, of the murder of police and guards in correctional institutions, and from violent rape and hijackings, and it urges the Governor and the State Legislature to make a study of violations of law involving heinous crimes and to provide for imposition of the death penalty in such cases as a deterrent to crime and for the protection of our society.

Adopted this 12th day of July 1972.

OLIVER BRIGHT
President

PRESENTATION DELIVERED BEFORE THE
GOVERNOR'S COMMITTEE ON CAPITAL PUNISHMENT
ON SEPTEMBER 30, 1972, BY PAT TORNILLO

One of the most difficult decisions facing the new Legislature will be whether to reinstate capital punishment in this state. Both the Governor and the House of Representatives have appointed commissions to study the results of recent Supreme Court decisions, and they are to report to the Legislature when it meets on this matter in special session in November.

I have given this matter a great deal of study and thought. Since candidates for the Legislature have not taken a public position on this issue because of its controversial nature, I believe the people of Dade County are entitled to know my position on this subject, and how I will vote on death penalty questions that will come up before the forthcoming Legislature.

My personal views and opinions are identical with those of Justice Blackmun when he said:

"Cases such as these provide for me an excruciating agony of the spirit. I yield to no one in the depth of my dis- taste, antipathy, and, indeed, abhorrence, for the death penalty with all its aspects of physical distress and fear and of moral judgment exercised by finite minds. That distaste is buttressed by a belief that capital punishment serves no useful purpose that can be demonstrated. For me, it violates childhood's training and life's experiences, and is not compatible with the philosophical convictions I have been able to develop. It is antagonistic to any sense of reverence for life."

Despite these deep, personal, and inner feelings, I regard it to be my duty to the people of this state, reluctantly to set them aside. In pursuit of my obligations, I will follow the thinking of Chief Justice Burger, who said: "If we were possessed of legislative power, I would... restrict the use of capital punishment to a small category of the most heinous crimes."

While I am not convinced that capital punishment is a deterrent to crime, I am not convinced, either, that it is not. There are some crimes for which, in our society, the only alternative is the death penalty. These crimes are so heinous, and strike so deeply at the very fabric of our system, that the possibility of capital punishment as a deterrent must be considered.

Therefore, I wish to announce that I will vote to restore the death penalty for the premeditated killing of any law enforcement officer, of any penal institution officer; or in the case of an assassin or person taking the life of any State of Federal official; or for a killing committed by a person previously convicted of first degree murder; or the killing of a person in connection with hijacking of an airplane or other commercial vehicle.

LEGAL ADVISORY STAFF REPORT

The following report was submitted to the Governor's Committee to Study Capital Punishment by the Committee's Legal Advisory Staff, prepared at the request of E. Harris Drew, Chairman. These Staff Members were:

Charles W. Ehrhardt, Florida State University College of Law
Phillip A. Hubbart, University of Miami School of Law
L. Harold Levinson, University of Florida College of Law
William McKinley Smiley, Jr., Stetson University College of Law
Thomas A. Wills, University of Miami School of Law

Introduction

This memorandum has been prepared at the request of the Honorable E. Harris Drew, Chairman of the Governor's Committee to Study Capital Punishment, for submission to a meeting of the Committee at Tallahassee on October 20, 1972.

The undersigned were appointed by Governor Reubin Askew, after consultation with the deans of the four law schools in Florida, to serve as legal advisors to the Committee.[1]

The memorandum reflects our own personal views, and should not be attributed to any of the institutions with which we are affilitated.

The purpose of this memorandum is to advise the Committee regarding the constitutional effects of the decision rendered on June 29, 1972, by the Supreme Court of the United States in Furman v. Georgia.[2]

Our comments inevitably involve prediction of the manner in which the U.S. Supreme Court is likely to decide future cases. In making these predictions, we assume that the nine Justices currently on the Court will continue in office and that each Justice will decide future cases consistently with the views he expressed in Furman.[3]

I. FURMAN v. GEORGIA INVALIDATES CAPITAL PUNISHMENT AS IMPOSED UNDER THE PRESENT SYSTEM IN FLORIDA

Furman was decided by a vote of five to four. The five-man majority agreed on a one-paragraph decision, reversing the judgments of the courts of Georgia and Texas and holding that "the imposition and carrying out of the death penalty in these cases constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments."[4]

In addition to the one-paragraph decision announcing the ruling of the Court, the Furman decision includes nine separate opinions, since each Justice of the majority and minority expressed his own views separately. Later paragraphs of this memorandum will comment further on the multiple opinions rendered in Furman.

Following Furman, the Florida Supreme Court ruled in Donaldson v. Sack[5] that capital punishment no longer exists in Florida, since Furman invalidates Florida's capital punishment laws along with those of Georgia and Texas.

Consequently, capital punishment cannot constitutionally be imposed unless Florida statutes are amended, and then only if the amended statutes satisfy the standards required by Furman. Whether any capital punishment statute could satisfy these standards is, of course, a crucial question for this Committee.

II. SOME OR ALL OF THE FOUR JUSTICES WHO DISSENTED IN FURMAN ARE LIKELY TO CHANGE THEIR VOTES IN FUTURE CASES OUT OF RESPECT FOR THE PRECEDENT ESTABLISHED BY THE FIVE-MAN MAJORITY IN FURMAN

Dissenting opinions in Furman were written by Chief Justice Burger and by Justices Blackmun, Powell and Rehnquist. All four dissenters joined in the opinions written by Chief Justice Burger and by Justices Powell and Rehnquist, but no other justice joined in the "somewhat personal comments" expressed in the separate opinion of Justice Blackmun.

The underlying theme of all four dissenting opinions is that the legislatures, not the courts, should decide whether capital punishment is an acceptable penalty. Not a single Justice stated that he personally favored capital punishment. To the contrary, Justice Blackmun wrote:[6] "Were I a legislator, I would vote against the death penalty." And the Chief Justice, in an opinion joined by all four dissenters, stated:[7] "If we were possessed of legislative power, I would either join with Mr. Justice Brennan and Mr. Justice Marshall [who held capital punishment unconstitutional] or, at the very least, restrict the use of capital punishment to a small category of the most heinous crimes."

The four dissenters based their votes upon their view that the Supreme Court should not interfere with legislative judgments about the acceptability of capital punishment. The dissenting opinions contain numerous references to precedents, cited by the dissenters to support their argument that the Court should refrain from deciding such a question.

The Furman majority, however, considered the question was appropriate for judicial determination. They reached the question, decided it, and thereby established a new precedent.

The full scope of Furman, as precedent, is uncertain in view of the five separate opinions written by the five Justices who constituted the majority. Yet one aspect of the decision is perfectly clear. The five-man majority, in their one-paragraph opinion, invalidated the judgments of the Georgia and Texas courts which had applied their States' respective capital punishment statutes. In so doing, the Supreme Court necessarily decided that it could and could exercise its authority on this topic, despite the contrary arguments of the four dissenters.

Out of respect for this precedent, it is likely that some or all of the four Justices who dissented in Furman will consider themselves bound in future cases to consider the question they refused to reach in Furman. A substantial tradition argues in favor of this approach. The most notable advocate of this position in recent years was the late Justice Harlan, who frequently dissented from "landmark" decisions of the Supreme Court but usually changed his vote when similar issues came to the Court again so as to conform to the precedent established by the majority.[8]

Thus, it is unlikely that the vote of five to four will be repeated in future Supreme Court litigation involving capital punishment. Now that the Court's role in this matter has been established by the Furman precedent, some or all of the four dissenters in Furman are likely to consider the question on its merits, and some or all of these Justices are likely to vote for abolition of capital punishment, or at least to restrict its use to a small category of the most heinous crimes.

III. AN AMENDMENT TO FLORIDA STATUTES REMOVING JURY DISCRETION TO RECOMMEND MERCY FOR CERTAIN CAPITAL OFFENSES (i.e. CREATING "MANDATORY" CAPITAL CRIMES) IS UNLIKELY TO WITHSTAND CONSTITUTIONAL CHALLENGE

Some legal authorities in Florida, notably the Attorney General, assert that capital punishment may be constitutionally reinstated under the Furman decision if the punishment is made "mandatory" upon conviction for certain heinous crimes by removing all jury discretion to recommend mercy.[9]

This position is based primarily on the two crucial concurring opinions of Justices Stewart and White in Furman. These opinions state that quite different questions would be presented by a statute which mandatorily applied the death penalty to certain types of crimes, and that no view is expressed regarding the constitutionality of such a statute.[10]

It is argued with some persuasiveness that a system which eliminated the arbitrary application of capital punishment would in all likelihood be viewed as constitutional by Justices Stewart and White. Therefore, the argument concludes that capital punishment can be constitutionally reinstated for certain heinous offenses so long as jury discretion to recommend mercy is eliminated, and that Justices Stewart and White, together with the dissenting Justices in Furman (Burger, C.J. and Blackmun, Powell, and Rehnquist, JJ.) would vote to uphold the constitutionality of such a system. This legal analysis, while appealing on the surface, is unsound and must be rejected.

First, the position assumes that the four dissenting Justices in Furman would uphold the constitutionality of a system of mandatory death penalties. This is extremely doubtful. Thus, Chief Justice Burger, joined by all the dissenters, makes the following statement in his opinion: "Real change could clearly be brought about if legislatures provided mandatory death sentences in such a way as to deny juries the opportunity to bring in a verdict on a lesser charge; under such a system, the death sentence could only be avoided by a verdict of acquittal. If this is the only alternative that the legislatures can safely pursue under today's ruling, I would have preferred that the Court opt for abolition."[11] And Justice Blackmun, in his separate dissenting opinion, states that if legislatures responded to the Furman decision by enacting mandatory capital punishment without the possibility of imposing

lesser punishments, such legislation would be "regressive and of an antique mold, for it [would] eliminate the element of mercy in the imposition of punishment. I thought we had passed beyond that point in our criminology long ago."[12]

Further, as we have previously indicated, some or all of the dissenting Justices in Furman may change their votes out of respect for the Furman precedent and rule unconstitutional any legislation reinstating capital punishment.

The concurring opinions of Justices Brennan and Marshall make it clear that any statutory scheme to reinstate capital punishment would be unconstitutional under their interpretation of the Eighth Amendment.[13] The views of these Justices along with the four dissenters would therefore seem to invalidate any legislative effort to reinstitute capital punishment on a mandatory basis.

Second, the argument in favor of reinstating capital punishment through a system of mandatory death penalties assumes that eliminating jury discretion to recommend mercy will substantially eliminate the risk of arbitrary application of capital punishment, so as to satisfy the constitutional objections of Justices Stewart and White in Furman. This is extremely doubtful. Other areas of unfettered discretion contribute substantially to the arbitrary application of capital punishment in Florida, to wit: executive clemency by the Governor and pardon board, jury discretion to convict of lesser included offenses, and "plea bargaining" to lesser included offenses. Since these areas of discretion would remain intact under a system which eliminated jury discretion to recommend mercy, it is highly unlikely that such a system would reduce the risk of arbitrariness sufficiently to satisfy the basic constitutional objections of Justices Stewart and White. Furthermore, any effort to eliminate these critical areas of discretion would fortify the position of the four dissenting Justices in Furman who observed that such a system would be so regressive as to be unconstitutional, making total abolition the only alternative.

In short, it is our considered opinion that any effort to reinstitute capital punishment on a mandatory basis for certain heinous offenses by eliminating jury discretion to recommend mercy is unlikely to be upheld under the Furman decision.

IV. AN AMENDMENT TO FLORIDA STATUTES PROVIDING DETAILED GUIDELINES FOR JURY DETERMINATION OF MERCY IS UNLIKELY TO WITHSTAND CONSTITUTIONAL CHALLENGE

In his dissenting opinion, Chief Justice Burger speculates on the impact of the Court's decision in Furman, and suggests that legislatures "may seek to bring their laws into

compliance with the Court's ruling by providing standards for juries and judges to follow in determining the sentence in capital cases or by more narrowly defining the crimes for which the penalty is to be imposed."[14]

A tenable argument can be made, that a statute providing detailed guidelines controlling the imposition of capital punishment would be held valid by a majority of the Court, including some Justices who concurred in Furman as well as some or all of those who dissented.

Advocates of this approach would point out that Justices Douglas,[15] White and Stewart, in their concurring opinions in Furman, do not hold capital punishment unconstitutional per se, but carefully limit their opinions to systems where the decision between life and death of the defendant rests in the complete discretion of the jury.

Vesting complete discretion in the jury without any guidelines for the imposition of the penalty causes Justice White to conclude that there is "no meaningful basis for distinguishing the few cases in which it is imposed from the many cases in which it is not."[16] He is also concerned that the judgment which state legislatures have made regarding the death penalty is lost when the jury is delegated the sentencing authority and can, without violating any trust or statutory policy, refuse to impore the penalty no matter what the circumstances of the crime.

Similarly, Justice Stewart,[17] who finds the death penalty to be impermissible where it is "wantonly and freakishly imposed", implies that the death penalty is not unconstitutional per se when he recognizes that retribution is a constitutionally permissible ingredient in the imposition of punishment. The capricious selection by the jury of those upon whom the sentence of death will be imposed is Stewart's chief objection to the present sentencing procedures. Thus, it is arguable that the Court would uphold capital punishment if imposed in a manner which eliminates capriciousness and uncontrolled discretion in the sentencing process.

Both the Model Penal Code and the Report of the National Commission on Reform of Federal Criminal Laws recommend sentencing procedures which attempt to define when the penalty may be imposed. Each proposal sets forth certain aggravating and mitigating circumstances which serve as guidelines for imposing the death penalty.[18] In order to stand any chance of satisfying constitutional requirements, statutory guidelines must evidently be made obligatory rather than merely advisory, otherwise the sentence can still be imposed in a completely capricious and arbitrary manner.[19] The Model Penal Code meets this argument by requiring, for the imposition of the death penalty, a finding of the presence of one of the enumerated aggravating circumstances and a further finding that there are no mitigating circumstances sufficient to call for leniency.[20]

It can be argued that the requirements of Furman would be satisfied by a statute incorporating the Model Penal Code approach, requiring specific findings regarding aggravating or mitigating circumstances. The sentence would be determined at a penalty trial, separate from the trial for determination of guilt. The penalty trial would, under one view of the matter, be conducted by a judge without a jury.[21] The specific findings made at the penalty trial, as well as the sentence imposed on the basis of these findings, would be subject to complete appellate review.[22]

A statute along these lines would undoubtedly reduce the scope of the jury's discretion, but in our opinion the statute would be unlikely to withstand constitutional challenge.

We base this opinion on the same reasons that led us to conclude, in the preceding section, that a statute imposing mandatory death penalties would be unlikely to withstand constitutional challenge. First, a statute imposing guidelines for jury determination of mercy, coupled with a requirement of specific findings and appellate review, might be rejected by some or all of the Justices who dissented in Furman, as a "regressive" attempt to divest the jury of its flexibility and discretion. Second, such a statute would still leave vast areas of discretion, including executive clemency, jury discretion to convict of lesser included offenses, and "plea bargaining" to lesser included offenses.

Thus a substantial and unacceptable risk of arbitrariness would remain.

V. NO STATUTE IMPOSING CAPITAL PUNISHMENT CAN BE EXPECTED TO WITHSTAND CONSTITUTIONAL CHALLENGE UNLESS ENACTED IN CONTEXT OF FUNDAMENTAL CHANGES IN OUR SYSTEM OF CRIMINAL JUSTICE--AND EVEN IF FUNDAMENTAL CHANGES ARE MADE IN OUR SYSTEM, IT IS UNLIKELY THAT A CONSTITUTIONAL CAPITAL PUNISHMENT STATUTE CAN BE ENACTED

We read Furman as requiring extremely reliable guarantees in capital cases, because of the unique severity and finality of capital punishment. The Court leaves open at least the theoretical possibility of a valid capital punishment statute, but gives no clear blueprint of an improved system which could administer capital punishment with an acceptable degree of reliability.

Our discussion in the previous two sections of this memorandum indicates that, in our view, the Court's requirements would probably not be satisfied, either by a statute providing mandatory capital punishment, or by a statute providing detailed guidelines for jury determination of mercy.

An acceptable system would necessarily include provisions designed to eliminate, as far as humanly possible, the risk of arbitrary, freakish or discriminatory decision in capital cases, not only in the jury function, but at all stages of the process where substantial discretion now exists. (Amongst other stages where discretion is currently exercised, we direct special attention to the clemency power, exercised by the Governor with three members of the Cabinet, pursuant to the Florida Constitution.[23] Any attempt to make changes in this function would evidently require amendment of the Florida Constitution.)

In order to design a system of capital punishment which would have a theoretical chance of withstanding constitutional challenge, the legislative draftsman would need inputs from experienced prosecutors, defense counsel, trial judges, Florida Supreme Court Justices, and officials of the executive department familiar with the exercise of the clemency power. The assistance of these persons would be necessary in order to identify the stages of the process at which substantial discretion currently exists, to discuss the types of abuse most likely to occur, and to suggest methods by which the risk of abuse could be reduced to the stringent requirements of Furman.

This Committee has not received evidence on these matters, except for a few passing references made by some witnesses. We consider it would be premature, on the basis of the present state of the Committee's record, for us to offer any recommendations on these matters. We merely note that no statute imposing capital punishment is likely to have even a theoretical chance of withstanding constitutional challenge unless enacted in context of fundamental changes in our system of criminal justice.

We have described, as "theoretical", the possibility of drafting a capital punishment statute which would satisfy the Furman requirements. This description is based upon a number of considerations which suggest that, while Furman on its face appears to leave the door open to the enactment of valid capital punishment statutes, the decision strongly implies that capital punishment in the United States is a thing of the past.

First, some or all of the four justices who dissented in Furman may change their votes in future cases, out of respect for the precedent established by the Furman majority. We have discussed this matter in a previous section.

Second, the guarantees needed in order to satisfy the Furman requirement may be so expensive and time consuming that no legislature would be willing to provide them.

Third, Justices Douglas, Stewart and White have been motivated to write their separate concurring opinions by the desire to condemn arbitrary, freakish or discriminatory exercises of discretion throughout our system of criminal justice, non-capital as well as capital. These three Justices may be prepared to vote in future cases against capital punishment, regardless of the system under which it may be administered; they refrained from taking such a position in Furman, perhaps in order to focus attention upon the arbitrary, freakish or discriminatory aspects of existing systems of imposing punishment, in non-capital as well as capital cases.

The impact of Furman and other recent decisions on our system of criminal justice and corrections in non-capital cases will be discussed in the following section.

Fourth, it seems unlikely that the United States Supreme Court would permit reinstatement of capital punishment in any form in the United States, with the possible exception of the military, after having taken the drastic measure of ordering the release of over 600 convicts from death rows throughout the country.

VI. FURMAN AND OTHER RECENT DECISIONS SERVE NOTICE THAT THE UNITED STATES SUPREME COURT IS READY TO REQUIRE FUNDAMENTAL CHANGES IN OUR ENTIRE SYSTEM OF CRIMINAL JUSTICE AND CORRECTIONS, WHETHER OR NOT WE ATTEMPT TO REINSTATE CAPITAL PUNISHMENT

We have pointed out, in the previous section, that Furman requires extremely reliable guarantees in capital cases, because of the unique severity and finality of capital punishment. We have also noted that some of the concurring opinions in Furman may be read as condemning the risks of arbitrary, freakish and discriminatory decision-making throughout our system of criminal justice and corrections.

Thus, while capital cases demand the most rigorous guarantees -- perhaps so rigorous as to be impossible of attainment -- non-capital cases also require guarantees, not quite so rigorous as in capital cases, but in many respects more rigorous than are currently available.

We read Furman and some other recent decisions of the United States Supreme Court as strong indications that the Court is ready to require fundamental changes in our entire system of criminal justice and corrections, whether or not we attempt to reinstate capital punishment.

The opinions by Justices Douglas, Stewart and White have already been mentioned, as condemning the risks of arbitrary, freakish and discriminatory decisions, wherever they may exist in our system. Some of the other opinions in Furman support this view.

Thus, Justice Brennan develops a four-point cumulative test for measuring punishments against the Eighth Amendment:[24] (1) If the punishment is unduly severe; (2) if there is a strong probability that it will be inflicted arbitrarily; (3) if it is substantially rejected by contemporary society; and (4) if there is no reason to believe that it serves any penal purpose more effectively than some less severe punishment. Justice Marshall follows a similar approach.[25] Justice White implies that a penalty, in order to satisfy constitutional standards, must demonstrably serve "discernible social or public purposes."[26]

The dissenting Justices express hesitancy about reaching such questions. Thus, Chief Justice Burger observes that the Eighth Amendment "is not addressed to social utility and does not command that enlightened principles of penology always be follows."[27] He points out that "If it were proper to put the states to the test of demonstrating the deterrent value of capital punishment, we could just as well ask them to prove the need for life imprisonment or any other punishment."[28]

However, to the extent that the Furman majority has indeed opened up this avenue, some or all of the dissenters may respect Furman as a precedent for the proposition that the Court should examine the social utility of punishments in general.[29] And, as the Chief Justice puts it,[30] "If anywhere in the whole spectrum of criminal justice fresh ideas deserve sober analysis, the sentencing and correctional area ranks high on the list."

Our view that Furman calls for legislative reconsideration of the entire system of criminal justice and corrections is reinforced by a number of other cases decided by the U.S. Supreme Court during the months preceding Furman.[31]

Also noteworthy are the numerous off-the-bench statements made by Chief Justice Burger advocating drastic reform in many of these areas.[32] The Burger Court is likely to move further in these areas than in the trial procedure area which was a major concern of the Warren Court.

VII. COMPREHENSIVE STUDY OF ENTIRE SYSTEM OF CRIMINAL JUSTICE AND CORRECTIONS IS A VITAL COUNTERPART TO THE WORK OF THIS COMMITTEE

A comprehensive study of our entire system of criminal justice and corrections is vital for a number of reasons.

First, as indicated above, Furman and other recent decisions of the United States Supreme Court indicate that the Court will require fundamental reforms.

Second, this Committee's deliberations about capital punishment necessarily lead to discussion of the alternative types of sanction, to the extent capital punishment is deemed to be either inappropriate or constitutionally impermissible.

For example, concern has repeatedly been raised at Committee meetings, as to whether any other sanction can provide a comparable deterrent effect, tending to prevent the robber from killing his victim, and to prevent the prisoner from killing his guard or fellow-inmate. If a suitable non-capital sanction could be found, the relative utility of capital punishment would be reduced.

Third, this Committee's deliberations about capital punishment necessarily lead to discussion of the corrections system. Special concern has been expressed at Committee meetings, about the need for a reliable system of classifying inmates, so that society is protected against the release of that relatively small percentage of inmates who remain dangerous despite the best efforts of rehabilitation programs. If dangerous inmates could be reliably classified and kept in custody, again the relative utility of capital punishment would be reduced. And, of course, the entire system of rehabilitation programs has caused serious concern.

This Committee has not been charged with responsibility for a comprehensive review of the entire system of criminal justice and corrections, nor could such an undertaking have been accomplished within the time allotted.

However, the need for such a project becomes apparent from this Committee's deliberations about its assigned topic. The question whether to reinstate capital punishment cannot adequately be answered without serious consideration of the alternatives.

As a counterpart to the work of this Committee, a comprehensive study would be highly appropriate, covering our entire system of criminal justice and corrections.

Substantial research projects have been conducted, in Florida and elsewhere, on various aspects of criminal justice and corrections, but we are not aware of any readily available source of the comprehensive information we deem an essential basis for legislative proposals. However, the availability of various research materials will reduce the amount of time which would otherwise be needed to complete the project we suggest. We estimate that our suggested project could be completed within between six and twelve months, if funded so as to employ at least one full-time project director, together with consultants and supporting secretarial and research personnel. Completion of the project within that period would enable legislative proposals, including budgetary recommendations, to be submitted to the Florida Legislature no later than its regular 1974 Session.

VIII. RECOMMENDATION -- NO ATTEMPT TO REINSTATE CAPITAL PUNISHMENT PENDING COMPLETION OF COMPREHENSIVE STUDY

The introductory section of this memorandum mentions that we were asked to advise the Committee regarding the constitutional effects of Furman v. Georgia.

Having commented on the assigned topic, we feel obliged to follow through by submitting a recommendation to the Committee, based upon our overall evaluations of the various matters discussed.

We recommend that a comprehensive study of our entire system of criminal justice and corrections be commissioned and undertaken, as discussed in the preceding section, and that, pending completion of the comprehensive study, no attempt be made to reinstate capital punishment in Florida.

This recommendation is based upon our view that: (1) no constitutional basis can justify any attempt to reinstate capital punishment without an accompanying fundamental change in our system of criminal justice, which can be attempted only after the comprehensive study; (2) no satisfactory policy choice regarding capital punishment can be made without adequate study of alternative types of sanction, which again can be adequately considered only after the comprehensive study; and (3) our entire system of criminal justice and corrections needs reform, whether or not capital punishment is reinstated.

Immediate enactment of a statute imposing capital punishment would offer few benefits to society. The existence of the statute might serve as a deterrent to would-be perpetrators of capital offenses, if they were aware of the statute, if they believed it would survive constitutional challenge, and if they were deterred by the possibility of being themselves subjected to its penalty. However, most people who would be aware of a new statute would also be aware that the United States Supreme Court decided in 1972 that capital punishment was unconstitutional and released over 600 inmates from death row. Nothing short of another decision by that Court is likely to convince the general public that capital punishment has been effectively reinstated. Unless and until such a decision is rendered, the deterrent effect of any capital punishment statute is likely to be minimal.

We have expressed serious doubts whether any capital punishment statute could possibly withstand constitutional challenge, even if drafted after the most careful study and consideration. The risk of unconstitutionality would be greatly increased if the statute were drafted hastily, without benefit of the comprehensive study. The high risk of having the statute declared unconstitutional would produce a corresponding risk of demoralization of law enforcement officers, together with general confusion in the administration of criminal justice.

Further, if a statute reinstating capital punishment were enacted hastily, without benefit of the comprehensive study, the statute might reflect premature decisions on momentous policy choices, and our progress toward sound reform might be delayed.

Respectfully submitted,

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FOOTNOTES

1. In addition to the undersigned, one more faculty member from the University of Miami School of Law was appointed, but did not participate in the preparation of this memorandum.

2. Furman v. Georgia, 408 U.S. ____, 40 LW 4923 (June 29, 1972). Since Committee members have received the full text as published in LW (United States Law Week), citations in the following footnotes will refer to page numbers in the LW edition of the Furman decision.

3. In this respect, our approach is consistent with that of Attorney General Robert Shevin, who stated he would make the same assumption of continuity of Justices and consistency of the views of each Justice. The Attorney General's statement was made during the course of his appearance before the Committee at the public hearing in Miami, September 30, 1972.

4. Furman v. Georgia, 408 U.S. ____, 40 LW 4923 (1972).

5. Donald v. Sack, 265 So.2d 499 (Fla. 1972).

6. Furman v. Georgia, 408 U.S. at ____, 40 LW at 4975 (Blackmun, J., dissenting).

7. 408 U.S. at ____, 40 LW at 4965 (Burger, C.J., dissenting).

8. As examples of the late Justice Harlan's respect for precedent, see: Aguilar v. Texas, 378 U.S. 108, 116 (1964) (Harlan, J., concurring); Griffin v. California, 380 U.S. 609, 615-7 (1965) (Harlan, J., concurring); Orozco v. Texas, 394 U.S. 324, 327-8 (1969) (Harlan, J., concurring).

The tendency of the Burger Court to adhere to the precedents established by the Warren Court is noted in: Kurland, 1970 Term: Notes on the Emergence of the Burger Court, in

Supreme Court Review 265 (1971); Kalven, Foreword, The Supreme Court, 1970 Term, 85 Harvard Law Rev. 3, 5 (1971).

On the general topic of precedent in the Supreme Court, see: Noland, Stare Decisis and the Overruling of Constitutional Decisions in the Warren Years, 4 Valparaiso Law Rev. 101 (1969); Douglas, Stare Decisis, 49 Columbia Law Rev. 735 (1949); Boudin, The Problem of Stare Decisis in our Constitutional Theory, 8 New York Univ. Law Q. 589 (1931).

9. In his official legal memorandum on the Furman decision dated July 7, 1972, the Attorney General of Florida argues strongly that a system of mandatory death penalties for certain types of homicide may be constitutionally reinstituted. Specifically, the Attorney General suggests that death be mandatorilly imposed as a punishment for the murder of a law enforcement officer, the murder of any penal institution officer, any murder pursuant to a contract for profit, any murder committed or perpetrated during the commission of any felony directed against another person, any murder by an assassin or person taking the life of any state or federal official, any murder committed by a parolee or probationer previously convicted of first degree murder, and any murder of a person in connection with a hijacking of an airplane, bus, train, ship or any other commercial vehicle.

It has been argued at some hearings of this Committee, that classifying certain murders as punishable by death and others punishable by life imprisonment may violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Florida Constitution (1968). This objection is unsound. A legitimate governmental purpose is evident in the proposed legislative scheme, namely, to punish more severely those heinous-type murders which, more than other murders, threaten the peace and safety of the community. Statutory classifications of this nature are not condemned by the Equal Protection Clause so long as some legitimate governmental purpose is served by the classification. Watts v. United States, 394 U.S. 705, 707 (1969); Shapiro v. Thompson, 394 U.S. 618, 634 (1969). However, it is our ultimate conclusion that a system of mandatory death penalties cannot be sustained under the Furman decision.

10. Furman v. Georgia, 408 U.S. at ____, 40 LW at 4939 (Stewart, J., concurring); 408 U.S. at ____, 40 LW at 4940 (White, J., concurring).

11. 408 U.S. at ____, 40 LW at 4974 (Burger, C.J., dissenting).

12. 408 U.S. at ____, 40 LW at 4977 (Blackmun, J., dissenting).

13. "When examined by the principles applicable under the Cruel and Unusual Punishments Clause, death stands condemned as fatally offensive to human dignity. The punishment of death is therefore 'cruel and unusual,' and the states may no longer inflict it as a punishment for crimes." 408 U.S. at ____, 40 LW at 4938 (Brennan, J., concurring). "There is but one conclusion

that can be drawn from all of this -- i.e., the death penalty is an excessive and unnecessary punishment which violates the Eighth Amendment." 408 U.S. at ____, 40 LW at 4955 (Marshall, J., concurring).

14. 408 U.S. at ____, 40 LW at 4973 (Burger, C.J., dissenting).

15. Justice Douglas finds the discretionary statutes to be unconstitutional in their application as the death penalty was arbitrarily and selectively applied in a manner inconsistent with "the idea of equal protection of the laws that is implicit in the ban on 'cruel and unusual' punishments." 408 U.S. at ____, 40 LW at 4965 (Douglas, J., concurring).

16. 408 U.S. at ____, 40 LW at 4941 (White, J., concurring).

17. 408 U.S. at ____, 40 LW at 4938 (Stewart, J., concurring).

18. Model Penal Code sec. 210.6 (Proposed Official Draft 1962); Report of the National Commission on Reform of Federal Criminal Laws, pt. I, secs. 3601-04 (1971). In addition to providing guidelines, a legislature following this approach should specifically negate constitutionally impermissible criteria, e.g., race. See McGautha v. California, 402 U.S. 183, 207 (1971).

19. See, e.g., In re Anderson, 69 Cal. App. 2d 613, 447 P.2d 117, 73 Cal. Rptr. 21, 40 (1968) (Tobriner, J., dissenting). [See page 27 for addition to footnote 19, written after submission of memorandum].

20. Model Penal Code sec. 210.6(2) (Proposed Official Draft 1962).

21. The American Bar Association Project on Minimum Standards For Criminal Justice, Standards Relating To Sentencing Alternatives and Procedures (Approved Draft 1968), p. 47, referring to the judge's role in sentencing, states: "Clearly the most telling argument against jury sentencing is that a proper sentencing decision calls on an expertise which a jury cannot possibly be expected to bring with to the trial, nor develop for the one occasion on which it will be used."

22. The Final Report of the National Commission on Reform of the Federal Criminal Laws, p. 367 (1971) recommends amendment of Title 28, U.S. Code, sec. 1291, by providing that the jurisdiction of the courts of appeals "shall in criminal cases include the power to review the sentence and to modify or set it aside for further proceedings."

23. Florida Constitution, Art. IV, Sec. 8 (1968).

24. 408 U.S. at ____, 40 LW at 4931 (Brennan, J., concurring).

25. 408 U.S. at ____, 40 LW at 4946-7 (Marshall, J., concurring).

26. 408 U.S. at ____, 40 LW at 4940 (White, J., concurring).

27. 408 U.S. at ____, 40 LW at 4971 (Burger, C.J., dissenting).

28. 408 U.S. at ____, 40 LW at 4972 (Burger, C.J., dissenting).

29. See note 8, above, on the Court's tradition with regard to following precedent.

30. 408 U.S. at ____, 40 LW at 4974 (Burger, C.J., dissenting).

31. Jackson v. Indiana, 406 U.S. 715 (1972) -- Indiana system of pretrial commitment of mentally incompetent defendants held unconstitutional; McNeil v. Director, Patuxent Institution, 407 U.S. 245 (1972) -- inmate confined indefinitely as defective delinquent, under Maryland Defective Delinquency Law, held entitled to procedural safeguards commensurate with long-term imprisonment; Murel v. Baltimore City Criminal Court, 407 U.S. 355 (1972) -- Court declined to review certain aspects of Maryland Defective Delinquency Law, but only because the statute was undergoing substantial revision; Humphrey v. Cady, 405 U.S. 504 (1972) -- Wisconsin Sex Crimes Act held seriously questionable under equal protection guarantee; Santobello v. New York, 404 U.S. 257 (1971) -- held, plea bargain, once made, must be fulfilled at time of sentencing; United States v. Tucker, 404 U.S. 443 (1972) -- held, prior invalid convictions must not be considered by judge when imposing sentence for subsequent crime; Wilwording v. Swenson, 404 U.S. 249 (1971) -- held, habeas corpus review is available to prisoners seeking federal court review of living conditions and discipline, without need to exhaust state remedies; Cruz v. Beto, 405 U.S. 319 (1972) -- held, prisoners have right to participate in religion of their choice; Morrissey v. Brewer, 408 U.S. ____, 92 S. Ct. 2593 (1972) -- held, proceedings for parole revocation must provide certain minimum due process guarantees.

32. In 1969, Chief Justice Burger told the American Bar Association: "For many years we neglected the entire spectrum of criminal justice. Slowly but with increasing pace we have corrected procedural inequities....In time we must take stock of what we have done and see whether all of it is wise and useful and constructive.

"Meanwhile we must soon turn increased attention and resources to the dispoition of the guilty once the fact-finding process is over. Without effective correctional systems an increasing proportion of our population will become chronic criminals with no other way of life except the revolving door of crime, prison and more crime."

Address by Chief Justice Burger, American Bar Association Convention, Dallas, Texas, Aug. 11, 1969, as quoted in 39 Geo. Wash. L. Rev. 185 (1970) and in 63 J. Crim. L. Crim. & Police Sci. 158 (1972).

And at the National Conference on Corrections, the Chief

Justice called criminal correction the "most neglected" part of the criminal justice system and defined six urgent needs in relation to it. His presentation is thus summarized in 63 J. Crim. L. Crim. & Police Sci. 158-9 (1972), which acknowledges 10 BNA Crim. L. Reptr. 2238 (Dec. 29, 1971):

"The Chief Justice first called attention to the inadequate physical plant of our prisons itself, pointing out that rising crime has created severe overcrowding and that prisons 'are poorly located and inaccessible to the families of the inmates, too far away from facilities for work release programs, and located in areas that do not provide adequate housing for personnel of the institutions.'

"The Chief Justice then emphasized the need to recruit prison staffs of the highest caliber and training and the need to classify and separate clearly different types of offenders to prevent prisons from criminalizing their occupants.

"Chief Justice Burger also pointed out the failure of our prisons to provide their youthful occupants with exercise programs to 'burn off the surplus energies of youth' and with work and educational programs which will motivate inmates to improve themselves. Society has 'a moral obligation to try to change an offender -- to make him a reasonably successful human being.'

'Finally, the Chief Justice stressed the need that every individual has to communicate with others. Every inmate should be given an opportunity to communicate with those who run the institutions and should be given a chance to regulate part of his life."

Addition to footnote 19, written after submission of memorandum

In Donaldson v. Sack, 265 So.2d 499, 504 (Fla. 1972), the Florida Supreme Court did not rule on the constitutionality of the amendment to Fla. Stat. §921.141(2)(a), effective October 1, 1972, providing for bifurcated trials in capital cases and listing certain aggravating and mitigating circumstances, since it was not yet applicable. However, the statute apparently contains constitutional infirmities, since it does not require a finding of the presence of an aggravating circumstance prior to the imposition of the death penalty but rather allows the jury the same discretion in determining when the death penalty should be imposed that was condemned in Furman. The Florida statute also lacks the additional requirements discussed in footnote 21 and 22 and accompanying text, infra.

POSITION STATEMENTS BY COMMITTEE MEMBERS

Each Committee member was asked to prepare a statement of their position on Reinstitution or Abolition of Capital Punishment. The following section contains the position papers submitted to the Committee by: L. E. Brown, E. Harris Drew, Jesse J. McCrary, Ernest E. Mason, LeRoy Collins, Harold M. Stahmer, Richard T. Earle, Jr., Robert M. Johnson, and Gwendolyn S. Cherry.

POSITION STATEMENT OF L. E. BROWN ON THE DEATH PENALTY QUESTION

The philosophical question of whether society should put one convicted of certain crimes to death has long been debated. Lengthy consideration of the question compels me to the conclusion that no rational search for an answer is completely satisfactory; regardless of the reasoning employed, the result is ultimately based on emotion.

Whether the possibility of being put the death deters one from committing certain crimes, cannot be determined from statistics. The recent FBI report compels one conclusion, while comparative statistics from neighboring states (one of which has, and one of which does not have, the death penalty) compels the other. Objectively, of course, there is no count of those who have been deterred by the prospect of the death penalty. When one considers murder and rejects it, one does not announce it to the world; nor does one record the reason for rejection. Experience and reason indicate that, at least in some cases, the prospect deters.

Whatever may be said of the effect of the prospect of death on future crimes by others, it is irrefutable that the effect upon the convicted person is to deter him from any future similar act. Elimination from society of such persons is conceivably a meritorious goal.

A need for an expression of societal or familial revenge may likewise be a necessary psychological phenomenon; but if so, the necessity is not factually demonstrable at this state of the development of that art.

Therefore, whether to utilize death as a device in the administration of our criminal justice system must resolve itself into the personal preference of one who must make the decision. That preference should be governed, in cases where reason cannot be utilized to demonstrate the desirability of a given conclusion. by the personal preferences of those making up the society utilizing the criminal justice system. In the State of Florida there can be no doubt that an overwhelming majority of the citizenry favors retention of the death penalty. This is pointed out in Central Florida by my receipt of specific responses from over 1,000 people, of whom over 90 per cent favor retention of the death penalty.

Accordingly, in my judgment, this Commission should

recommend that death be one of the instruments utilized in the criminal justice system.

The question remains as to the extent the death penalty is to be utilized.

The least desirable suggestion is one which predicates the use of the death penalty on whether a murder is committed on selected classes of people within our society. No convincing reason can be given for such classification. All innocent lives are equally valuable. It can be anticipated that endless debate and litigation will develop concerning the application of such classification to the facts of any given case. Accordingly, suggestions making the death penalty applicable only to cases involving the death of police officers, prison guards, public officials, public persons, or other nebulous classes of people, are unacceptable.

Kidnapping and skyjacking should not be made subject to the death penalty inasmuch as persons committing such crimes may be convinced to desist in the course of the crime if a greater penalty is possible if they kill the victim of their crimes.

Premeditated murder, of the deliberate cold blooded type, is the first crime to which the death penalty should be applicable. In addition, it should be applied to those convicted of the rape of persons under the age of 12 years.

The premeditated murder rule would include murders of the witnesses to crimes such as robbery, rape, kidnapping and skyjacking. The felony-murder rule should be retained inasmuch as persons creating situations bringing about death when involved in serious crimes, should risk application of the penalty equal to the harm to society which they have caused.

The people of Florida demand the retention of the death penalty. With this demand, I concur. Common sense demands that the criminal laws of our State be maintained in a posture that can be understood by the people; opportunity for pointless and unreasonable arguments concerning classes of persons or types of crimes should not be injected. In short, we should retain capital punishment and adopt the penalty for all premeditated murders, felony-murders, and rapes of persons under 12 years of age.

POSITION STATEMENT OF E. HARRIS DREW
ON THE DEATH PENALTY QUESTION

This Committee is charged in the Governor's Executive Order of 28 July 1972 with the duty of studying and making recommendations to the Governor concerning:

1. Whether the death penalty should be retained;

2. If the Legislature should abolish the death penalty, what should be substituted therefor;

3. If the Legislature should determine to reinstate the death penalty:
(a) how such action could be lawfully accomplished;
(b) to clearly re-define the acts the commission of which should be punished by death;
(c) procedure to be followed in executions;
(d) procedure to be followed by the Governor and Cabinet in executive clemency matters;
(e) policies and procedures of the Division of Corrections concerning the care, classification and treatment of death row inmates;
(f) other procedural or substantive recommendation concerning the imposition of the death penalty.

A great amount of time has been devoted by this Committee and its able staff; the Attorney General of Florida and his assistants and an outstanding committee of The Florida Bar to a study and analysis of the decision of the United States Supreme Court in Furman v. Georgia, and the numerous and lenthy opinions of the Chief Justice and Justices of that Court. It seems to be generally the view of our advisers in this area that the States may lawfully exact the death penalty if certain clarifying legislation is adopted and the death penalty is made mandatory upon conviction. This conclusion, I agree, may logically follow from the several opinions standing alone. The decision of the Court, however, is, in my judgment, hardly reconcilable with this view for it simply and clearly says: "The Court holds that the imposition of the death penalty in these cases constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments."

If, in presenting my conclusions here on the subject given in charge to us it was necessary for me to state my views concerning Furman v. Georgia, I would unhesitatingly join the minority. Justice Blackman expresses my views completely. This action of the majority is a flagrant usurpation of the power of the legislative branch of government, and this though is woven through the opinions of each dissenting Justice, with two-at least-expressing their complete aversion to capital punishment and their disposition to abolish it if they were vested with legislative power.

We know that - whatever Furman v. Georgia actually holds - more than 600 people in the several United States faced with the death penalty are now spared that event by virtue of it. In the face of decisions of every jurisdiction in this nation approving - directly or inferentially - a penalty "that our Nation's Legislators have thought necessary since our Nation was founded" [Justice Rehnquist's dissent], the Supreme Court has invalidated the death penalty as a violation of the Eighth and Fourteenth Amendment. Unless

rehearing is granted and the decision receded from or modified [a possible but unliekly event], that decision is now, under modern judicial thought, the law of the land. If, as suggested, the death penalty should be reinstated under conditions that some say will meet the requirements of Furman, we will once more begin the long, tortuous road to the United State Supreme Court to see if it is so. The penal institutions will once again be crowded with people occupying death row and the number will grow from day to day. Once again the Supreme Court will be faced with the question and, perhaps hundreds of humans, awaiting death contingent on their approval. The experience gained by my 30 years as an active practitioner and nearly 19 years as a Justice of Florida's highest Court - four as Chief Justice - convinces me that the solution will be much easier than it was in Furman. Even the dissenters can logically say that in respect to stare decisis, they feel bound by Furman, whatever may be their personal views. Moreover, how can the Court justify the execution of even one person when they have so recently spared the life of more than 600. I think this Nation has witnessed its last penal execution.

But - whether this may or may not be so, is not pertinent to my answer to the charge given us. The testimony before us on the several hearings around the State, particularly the testimony of the penologists, administrators of prisons, professors and others who have spent - collectively - hundreds of years and have written literally volumes on the subject, convince me that while capital punishment is a deterrent, its incorporation in our law as a form of punishment creates more problems than it solves - and I agree with the views of many that, statistically, there is no evidence that its imposition contributes to the prevention of murder or other crimes. The interminable delays in the disposition of capital cases in the courts creates disrespect for all criminal laws and this delay will most likely continue so long as death is the sentence imposed. Judges, who have the final word, know that once such sentence is carried out, there is no way to effectively correct an error.

I would not reimpose the death penalty in Florida. In its stead I would impose life imprisonment and provide that every person so convicted should serve not less than 20 years before becoming eligible to apply for any form of pardon or parole. I would also provide that any proceedings for pardon or parole of such convicted felon should be conducted before a duly constituted official body, public hearings held with the State represented by the prosecuting officers who conducted the trial in which the conviction occurred or his or her successors in office.

To those who would reinstate the death penalty, I would earnestly suggest that in view of the patent ambiguity of Furman - and the manifold problems that will arise in both the prosecution and defense and in the administration of the corrective systems of the State - that no precipitate action be taken. There must be more definite guidelines in this area. We should not engage in a guessing game where the penalty is so final, nor should we try to predict what a future Supreme Court may hold. While we await further developments, the time

could be well spent in further studies of our system of criminal justice, in expediting the final disposition of cases and in securing the return to the States of their traditional and historical right to administer its criminal laws through its own judicial system free from the ever increasing interference of the subordinate federal courts - and the consequent interminable delays in concluding a criminal prosecution.

POSITION STATEMENT OF JESSE J. MCCRARY, JR.
ON THE DEATH PENALTY QUESTION

In keeping with your request that all members submit to you in writing their positions on capital punishment, I respectfully submit the following statement:

I am opposed to the reinstatement of capital punishment in this State. From the many hearings we have had, I have listened attentively to the experts from across the country, and I am persuaded by the testimony of some of the experts that it has not served as a deterrent to crime, and it will not serve as a deterrent to crime in the future. However, I am mindful that the statistical data that has been presented to the Commission could very easily fit into either category, depending on one's philosophical approach to capital punishment.

Throughout the hearings, those persons who have advocated the reinstatement of capital punishment and those who favor it out right have not demonstrated to me that, if capital punishment were reinstated, there would be a safeguard to guard against the punishment being inflicted in a freakish and capricious manner, as noted by the United States Supreme Court.

The statistical data of Florida's Special Commission for the Study of Abolishment of the Death Penalty in Capital Cases of 1965 indicates that the majority of persons executed in Florida were members of a minority race. "The death penalty is applied most unequally, both from the economic and the racial points of view. It has been said that the death penalty, as now applied is nothing but an arbitrary discrimination against an occasional victim. Almost any criminal with wealth or influence can escape the death penalty but the poor and friendless convict, without means or power to fight his case from court to court and exert pressure upon the pardoning power, is singled out as a sacrifice. There is some evidence of racial discrimination: the opponents of capital punishment point to the 51 men executed for rape in Florida since 1924. Forty-nine of the 51 were Negroes."

It is for this compelling reason that I find myself opposed to the reinstatement of capital punishment.

Alternatively, if this Commission recommends to the legislature that capital punishment be reinstated, I want to go on record as opposing capital punishment for crimes that only deal with public officials. If it must be reinstated, then

it is my firm belief that this Commission must recommend that capital punishment be reinstated for the willful and wanton taking of a human life notwithstanding that person's station in life; and I do believe that it would be a clear violation of the equal protection clause of both the United States Constitution and the Constitution of Florida. (I am not unmindful of the letter and memorandum on capital punishment by Assistant Attorney General Raymond L. Markey dated October 11, 1972.)

Lastly, it appears to me, from Commission hearings and discussions with others who have an interest in the capital punishment issue, that the purpose of capital punishment during modern times is to serve as a deterrent to crime. Since there has been no clear and convincing evidence that accords with logic and reason that the imposition of such would deter crime, I respectfully recommend that this Commission refrain from recommending the reinstatement of capital punishment.

POSITION STATEMENT OF ERNEST E. MASON
ON THE DEATH PENALTY QUESTION

Under date of October 6th I wrote you a position paper with reference to the subject matter of capital punishment. At this time, I wish to revise it and substitute the revision in the report that goes to the Governor.

I now make the following observations:

(1) The death penalty should be reinstated in Florida. I am of the opinion that of late too much emphasis has been placed upon the so-called humanitarian rights of the criminal at the expense of the victims of homicides or their families. In spite of all of the so-called expert testimony that we have heard, I am of the opinion that the death penalty is a deterrent to homicides and that it should be restored as such. Also, although punishment should never be in the form of vengeance, it should be coextensive with the nature of the crime committed;

(2) I am not at all impressed with the argument that the Supreme Court of the United States has once and for all eliminated the death penalty. I think the door is still open and if we believe as a matter of principle that capital punishment should be reinstated, then, we should do so, leaving it to future appellate decisions to determine its constitutionality. The principle of stare decisis has long been abandoned in this country, and I do not consider the decisions if Furman v. Georgia, et al., as being permanently conclusive;

(3) In order to avoid the rationale of the Supreme Court decisions, I am of the opinion that in certain homicides the death penalty should be mandatory, or, if not made mandatory by the triers of the facts, then, the discretion as to whether the punishment should be death or life should be removed from the trial jury and reposed in a panel of three judges, one of whom should be the trial judge, who would consider aggravating and

mitigating circumstances and then determine whether the sentence should be death or life imprisonment;

(4) As to the specific crimes for which the defendant would be subject to the death penalty, I would include the following:

(a) Premeditated murder
(b) Felony murder committed in connection with the felonies of arson, rape, robbery, burglary, kidnapping, hijacking and the unlawful throwing, placing or discharging of a destructive device or bomb,
(c) Rape of any child under the age of 16 years;

(5) In the event the bifurcated procedure referred to in Paragraph (3) is adopted and the panel of judges sentences to life imprisonment, the defendant should not be eligible for parole until he has served at least 25 years;

(6) I think life imprisonment should be imposed for second degree murder, with a provision that the defendant should not be eligible for parole within less than 20 years;

(7) I am not in favor of a hard and fast rule which would make all convicted murderers or rapists ineligible for parole. I think each case should be dealt with individually, subject to the 25 year minimum prison service where the punishment inflicted has been life imprisonment for a case of the class enumerated in Paragraph (4), supra.

Please substitute this position paper in lieu of the one forwarded to you under date of October 6, 1972.

POSITION STATEMENT OF LEROY COLLINS
ON THE DEATH PENALTY QUESTION

I have approached my decision on the question of the reinstatement of capital punishment in Florida as an individual, and as a lawyer and officer of our Court. I know, too, that I am influenced to some degree by my experience as Governor over the six-year span beginning in January of 1955.

I am opposed to any reinstatement effort for two basic reasons. First, it is my personal conviction that the death penalty is inhumane and has no proper place in our advancing civilized society. It degrades us all and runs counter to values I have believed in and sought to uphold over my lifetime. In future years, I believe people will look back on the hangman's noose, the electric chair, and the gas chamber, as we now view the barbarous instruments and trappings of torture utilized by our ancestors.

Secondly, I don't believe there is really any way to enforce the death penalty without discrimination, unjust and freakish results, in our democratic and competitive society.

In my term as Governor, following what I considered to be my constitutional duty, I signed death warrants under which the State executed twenty-nine prisoners. It was then my conviction that the penalty was not fairly enforced and by formal message to the Legislature I recommended action to abolish it. The Legislature would not agree and the action was not taken.

The issues before our study commission of course require a more complex analysis, than the right or wrong per se of capital punishment. Some of the questions with which we are confronted as I see them and my reactions thereto, are as follows:

1. Does the penalty of death act as a deterrent to other would be offenders? Most people say it does. They believe this deeply and common sense would lead one to believe that in some cases at least it does deter. But the vast weight of statistical information negates this. The distinguished Attorney General of Florida, among other witnesses before our Commission, expressed strong feeling that capital punishment provides a positive deterrent. He emphasized his position by pointing out that since Florida had discontinued capital punishment (1962), there had been a marked increase in murders and rapes (punishable by capital punishment) and he thought the loss of the deterrent effect of executions had contributed materially to this. However, my later investigation has disclosed that over this same period, the increase in other major felonies in Florida (not punishable by death) was even greater. See table attached and marked "A". There simply is no statistical showing of which I am aware to indicate that the existence or non-existence of capital punishment has any relationship to the rise or fall in the number of incidences for which this penalty is or is not applied.

2. Has capital punishment been applied in Florida "freakishly" (to employ a term used by the U. S. Supreme Court) and in a way to discriminate against the minority of our people who have been characterized as the poor, the helpless, the hopeless and the hated? I believe this has been the result in Florida though I am sure that most all of those forming the judgments bringing it about have not consciously sought this end. Perhaps this makes appropriate the term "freakish".

3. Can the penalty be reinstated in a manner which would likely be approved by the Supreme Court? The goal for an effort to accomplish this would be to provide mandatory use of the death penalty and not leave the judgment to whim, caprice or prejudice. There are two primary approaches to seek such an end.

The first is to define the crimes so that death may be given to all offenders against certain classes of victims, such as those who murder police officers, public officials generally, prison guards, etc. I oppose this approach, sharing the view that the result would thus become purposefully discriminating and perhaps raise other constitutional questions as well as serious questions as to simple fairness.

The second approach is to provide mandatory executions upon judgments of guilt of anyone committing a defined crime regardless of who is the victim. The reasons given for this approach is to avoid discrimination between perpetrators of the same crime, and eliminate this way the "freakishness" in the present system. But, as I see it, if discrimination motivates those making the life or death decisions, malice or favor will be reflected in the selection of the defined crime just as it has occurred in granting or withholding mercy.

Thus it is my opinion that any approach that is made to accommodate a state execution plan to the feelings of the Supreme Court is doomed to ultimate failure.

4. Can it be reasonably concluded then that the execution of people convicted of crime is now a thing of the past in the nation because of the Supreme Court's recent decisions? I think so. A majority of the Court has ruled the death penalty unconstitutional. This includes those who feel this to be the case per se and those who feel that it is constitutionally impermissible as it has been generally applied across the land. Beyond this, Mr. Chief Justice Berger made it clear in his opinion that he would approve the abolishment of the death penalty if he were in a position of exercising legislative power and there was no dissent to this. In other words, the justices spoke out against the death penalty as a matter of government policy, but a minority held that if the states desired to use it, they should be permitted to do so under the Constitution of the United States as it now exists.

It is my opinion that most of the other states of the nation will now fall in life with the 11 states that had abandoned the death penalty before the Supreme Court's recent ruling. I believe this can be a reasonably quiet accession. Even if one or more states insist upon rights to execute prisoners in the future, I seriously doubt that the Supreme Court will allow this, no matter how a state may reframe its laws.

Now, it is certainly true that there is a strong popular feeling in Florida favoring reinstatement. It is my view that this stems more from resentment over continuing rising rates of crime and the ineffectiveness of the government in adequately coping with this, that it does over the issue of capital punishment. The rampant muggings most common in white-black marginal neighborhoods of the country's urban centers not only are taking a heavy toll on the immediate victims themselves, but induce a condition of fear in others that at times assumes serious hurtful and dnagerous proportions. The people want crime stopped and a significant part of the answer--but only a part of it--is greatly to improve our means of detection and our processes of arrest, trial, conviction, punishment, and rehabilitation of the guilty. This we are not doing effectively now as we can and should.

The desire of the public to execute, to mandate uncommutable life sentences, which is strong indeed, is due in large part to frustration over our failures in law enforcement and will go away in my judgment if our methods of dealing with criminals and potential criminals are made more effective and certain.

Justice Blackmun of the U.S. Supreme Court, while agreeing with the minority makes an eloquent and moving plea for the abolishment of the death penalty through the legislative process. He points out that in his state no execution has occurred since 1906 (Minnesota abolished the death penlaty in 1911). Attached to this memorandum and marked "B" is a table showing comparative rates of murder and rape in Minnesota and in Florida for the past ten years. Even though we have had the death penalty on our books, and Minnesota has not, the end result of preventing the crimes for which the penalty could be used in Florida, is not nearly as good as in Minnesota.

Conclusion

We should not get on the defensive. We should accept the fact that the death penalty is out and make no call for reinstatement. We should make no defense of the Supreme Court of condemnation of State executions of the past. We should make a strong plea for more effective enforcement of our criminal laws, and the rights of our people to live free of the plague of crime which hangs heavy over their homes and pathways. This plea should have a special emphasis on the prevention and punishment of muggings. It should contain recommendations of specific measures of law reform and the enlistment of our whole citizenship in a campaign to stamp out this scourge.

TABLE A CRIME STATISTICS, 1960-1971
SOURCE: UNIFORM CRIME REPORTS (FBI)

NATIONAL

	Murder	Forcible Rape	Robbery	Aggravated Assault	Burglary	(Over $50) Auto Larceny	Theft
1971	17,630	41,890	385,910	364,600	2,368,400	1,875,200	941,600
1970	15,810	37,270	348,380	329,940	2,169,300	1,746,100	921,900
1969	14,640	36,840	297,460	307,580	1,956,500	1,527,800	872,400
1968	13,690	31,380	261,620	283,470	1,835,000	1,273,800	778,200
1967	12,130	27,380	201,970	254,260	1,611,100	1,049,300	655,200
1966	10,950	25,590	157,250	232,680	1,391,900	896,500	557,300
1965	9,880	23,200	138,040	212,900	1,266,000	794,000	493,400
1964	9,280	21,230	129,780	200,760	1,197,600	733,500	469,500
1963	8,560	17,490	115,930	172,250	1,072,400	649,900	405,400
1962	8,460	17,390	110,340	162,710	981,500	574,300	364,300
1961	8,660	17,060	106,170	154,990	937,300	529,600	333,700
1960	9,030	17,030	107,340	152,580	900,400	507,300	325,900
% Increase 1960-1971	+95%	+145%	+259%	+138%	+163%	+269%	+183%

	Murder	Rape	Robbery	Aggravated Assault	Burglary	(Over $50) Auto Larceny	Theft
1971	933	1,708	13,422	22,512	118,175	99,999	27,652
1970	860	1,509	12,636	18,819	106,036	77,609	26,930
1969	720	1,347	10,345	16,999	86,308	61,110	24,331
1968	731	1,113	9,849	16,220	81,743	49,374	19,706
1967	630	913	7,850	14,006	73,188	41,260	17,126
1966	612	871	5,933	12,653	62,839	38,094	14,453
1965	518	771	5,146	10,951	55,556	31,728	12,062
1964	486	589	4,958	9,073	54,959	26,692	11,775
1963	463	398	4,017	6,282	46,604	22,569	9,675
1962	420	318	3,457	5,437	40,575	18,236	9,187
1961	477	398	3,746	5,835	37,627	17,879	8,862
1960	520	418	4,018	5,677	41,078	18,126	9,835
% Increase 1960-1971	+79%	+308%	+234%	+296%	+187%	+451%	+181%

Florida Population (1960) 4,951,560
Florida Population (1971) 7,125,300
Percent Increase: 41%

INDEX AND RATES PER 100,000 POPULATION - MURDER AND RAPE- TABLE B

FLORIDA

	Year	Crime Index	Crime By Pop. Rate	Rate Change Fr Prior Year	Executions For Year	RAPE Crime Index	Crime By Pop Rate	Rate Change Fr Prior Year
MURDER	1971	033	13.3	+.6	0	1708	24.3	+2.1
	1970	860	12.7	+1.4	0	1509	22.2	+1.0
	1969	720	11.3	-.6	0	1347	21.2	+3.1
	1968	731	11.9	+1.4	0	1113	18.1	+2.9
	1967	630	10.5	+.2	0	913	14.2	+ .5
	1966	612	10.3	+1.4	0	871	14.7	+1.4
	1965	518	8.9	+.3	0	771	13.3	+3.0
	1964	489	8.6	+.4	2	489	10.3	+3.3
	1963	463	8.2	+.5	1	398	7.0	+1.2
	1962	420	7.7	-1.4	5	318	5.8	-1.3
	1961	477	9.1	-1.4	2	398	7.6	- .8
	1960	520	10.5	+.3	2	418	8.4	- .1
	1959	500	10.2	-1.6	10	416	8.5	+1.0
	1958	524	11.8	x	3	335	7.5	X
	Averages	599.7	10.35	+.10		793.1	13.15	+1.2

MINNESOTA

MURDER	1971	95	2.4	+.4	0	468	12.1	+2.4
	1970	70	2.0	+.1	0	369	9.7	-1.8
	1969	69	1.9	-.3	0	424	11.5	+ .6
	1968	81	2.2	+.6	0	398	10.9	+2.3
	1967	58	1.6	-.6	0	309	8.6	+1.3
	1966	79	2.2	+.8	0	261	7.3	+2.1
	1965	50	1.4	0	0	186	5.2	+ .7
	1964	51	1.4	+.2	0	157	9.5	+1.9
	1963	41	1.2	+.3	0	91	2.6	-1.0
	1962	33	.9	-.1	0	124	3.6	+ .9
	1961	34	1.0	-.3	0	94	2.7	+ .2
	1960	43	1.3	+.3	0	84	2.5	+ .2

	Crime Index	Crime By Rate Change Pop. Rate	For Prior Yr	Executions For Year	Crime Index	Crime By Pop. Rate	Rt. Chg PriorYr
1959	35	1.0	+.1	0	79	2.3	-1.0
1958	31	.9	X	0	113	3.3	X
Averages	55.0	1.52	+.15		225.5	6.2	+.62

POSITION STATEMENT OF HAROLD M. STAHMER
ON THE DEATH PENALTY QUESTION

I suggest that the Commission recommend to the Governor that there be an "indefinite postponement" or "moratorium" on capital punishment for the following reasons:

(1) The Furman decision suggests to me the strong possibility that the U.S. Supreme Court intended in Furman to rule out the possibility of inflicting capital punishment under any circumstances. In view of this and given the likelihood that some states will reinstate capital punishment for specific crimes, I would prefer that Florida not provide the Court with an opportunity to rule on this subject. The people of California, for example, will vote this November on whether or not to reinstate capital punishment. A "postponement" also has the merit of enabling the Governor and legislature to weigh the recommendations of Commissions similar to ours as well as those of other state legislatures. Let us not forget that this topic was debated in Great Britain for many years. Just the British Royal Commission Report alone took four years to complete (1949-1953). Every effort should be made to guarantee that our decision in Florida be the result of careful objective scrutiny conducted in an atmosphere free of emotionalism as well as partisan and personal political and other ideological considerations.

(2) It would seem prudent to determine, for example, during the proposed postponement whether or not there is a noticeable increase in homicides of the kinds specified in the Attorney General's statement. I am not convinced, for example, that the recent increase in killing at Raiford can be attributed to an awareness on the part of prisoners that the death penalty had been banned.

(3) A "moratorium" or "postponement" would provide this State with an excellent opportunity to create a Prison Commission to conduct a complete investigation into our present correctional philosophy and practices as well as our rehabilitative, pre-sentencing, and parole practices. This period would also enable taxpayers to be given some idea about the way their tax dollar is spent and the exact costs of confining an individual as well as the cost to the State of post-sentencing appeal procedures in capital punishment cases.

(4) I also recommend a "postponement" or "moratorium" rather than total abolition because I think it has a chance of obtaining

the support both on our Commission and in the legislature of those who are not necessarily abolitionists, but who are also not convinced, for a variety of reasons, that the death penalty should be reinstated at this time. If it is to be considered by the legislature, I would, naturally, prefer that it be done after the U.S. Supreme Court has had an opportunity to make absolutely clear the implications of Furman.

B. In addition to recommending a postponement, I would like to provide you with an opportunity to consider some of the reasoning behind my abolitionist position:

(1) My reading of Furman convinces me that, practically speaking, it is impossible for society and our practice and administration of justice to undergo the kind of changes that would enable the Court to permit the reinstatement of capital punishment.

(2) Closely related to this is my conviction that even if we were able to devise an absolutely fair and impartial system of justice we still have not taken into account the fact that a heavy majority of those who come before the court were born into impoverished and unhealthy social and economic conditions which guarantee that a greater number of such individuals will run afoul of the law and commit violent crimes than had they been born into circumstances similar to yours and mine. The "sanctity of life" argument is a compelling one to me in view of this fact. I could not on moral and religious grounds condone a situation wherein a life is demanded of an individual who had no control over whether or not he wished to have been born and, then, into what circumstances. The impossibility of leading a normal and law abiding life is so great for so many in our society that it would be cruel and inhuman to inflict the death penalty upon those less fortunate than we.

(3) If, as some claim, the death penalty is a deterrent, then the number for whom this is true is so small that it would be, indeed, "cruel and inhuman" to inflict this punishment upon the majority of those for whom the death penalty is no deterrent.

(4) On the basis of testimony and literature available to us, it has been made clear, repeatedly, that the most effective argument on behalf of retaining the death penalty as a deterrent is based upon the guarantee of "swift and certain punishment". I see no evidence that this is possible given our present constitutional guarantees and appeals options.

(5) On the other hand, we have heard testimony that the existence of the death penalty does, in fact, make homicide attractive to certain types of deviant personalities. Related to this is evidence of an increase in the homicide rate immediately following certain executions.

(6) Consideration should also be given to the effect that the carrying out of an execution has on those responsible for implementing it.

(7) Equal consideration should be given to the effect of an execution upon the general public. In a recent letter, a copy of which I enclose, the Honorable R. A. Butler, former Home Secretary of Great Britain, made the following statement, "I have no doubt myself that it was inevitable to end capital punishment here, partly because of the disproportionate effect that a single execution had on public opinion."

C. I would also like to suggest that our Commission recommend to the Governor and the legislature that we create a Prison Commission which would institute a thorough investigation and examination of our entire sentencing, penal, correctional, parole, and rehabilitative philosophies and practices. This should also include the articulation of a workable definition of the purposes and objectives behind "sentencing" and"confinement".

(1) I know that a number of us conclude these hearings with a feeling that certain individuals convicted and sentenced for the first time for breaking and entry may be potentially more dangerous to society than an individual convicted of first degree murder. Similarily, some murderers, like the two in the NBC film, are probably far more dangerous to society than are, perhaps, individuals whose crime was either rape or a "passion killing". We must devise a better way of determining which individuals who run afoul of the law are likely to do so again and then determine whether, after appropriate confinement and attempts at rehabilitation, such individuals should be permitted to return to society. In theory at least, there are some individuals who probably should be permanently confined whether or not they have convicted a violent or capital crime.

(2) Involved in any such review should be a recognition of the fact that while a disproportionate number of inmates are Black, the number of correctional and rehabilitative personnel allowed to work with them is an embarrassment and a shock to me. For example, although Blacks constitute 15.3% of Florida's population (1970 Census), 5,369 or 54.9% of the total prison population of 9,768 are Black. There are only eleven (11) correctional officers out of a total of 1,402 correctional officers (all ranks), road prison officers (all ranks), and superintendents (all ranks). With the exception of four (4) Black Class. Teacher I, there are no Blacks in some forty-five (45) other supervisory and staff positions which employ 469 individuals. There are but twelve (12) Blacks in ninety-nine (99) other health, clerical and related positions which employ 492 individuals. In summary, there are twenty-seven (27) Blacks out of a total of 2,363 correctional personnel. The situation is even worse with respect to other ethnic minority groups.

(3) There have been a number of suggestions made that might be mentioned. These are:

(a) Increase the salary of all personnel in order that better qualified individuals seek employment in this field.
(b) Recruit heavily in all personnel categories from ethnic minority groups, especially from among Black communities.
(c) Increase drastically all educational, vocational technical, and career counseling programs and opportunities for prison inmates in order that they may find useful and productive employment when re-entering the mainstream of society.
(d) Be innovative and experiment with the value of enabling reformed convicts to help rehabilitate inmates.
(e) Be innovative and rely more upon "half-way in" and similar rehabilitative programs than is presently the case.
(f) Determine that there be no sentencing nor confinement without, at least, the possibility of parole.
(g) Determine that "indeterminant sentencing" be adopted in conjunction with the institution of new classification procedures.
(h) That we not assume for a moment that a reduction in the average time spent in prison for confinement is going to produce a major saving for the taxpayer. To the contrary, we must spend more in this area. The cost of instituting decent pay scales together with the introduction of more sophisticated rehabilitative and vocational programs will certainly absorb whatever savings might accrue as a result of other changes and savings.
(i) That the selection of the membership and the administration of the parole board be placed under a common authority that can also administer the correctional, mental, and other rehabilitative services in the State.

In conclusion, I would suggest that we reflect upon the fact that the design, production, and maintenance costs for our trouble prone F-111 fighter bombers are probably enough to reform the entire penal and correctional system in this nation, and, in so doing, increase job opportunities for a significant segment of our society. I would further like to add that it was New York City Police Commissioner Patrick Murphy who stated that national and international gun control legislation would ease the burdens of law enforcement officials and reduce the possibility of violence in our society. After listening to expert testimony and public opinion and after reading the material provided us, I must conclude that if we are concerned about crime and violence then let us do something about it. But let us not deceive ourselves into believing that reinstating the death penalty is a socially and morally responsible way of coping with these concerns for an enlightened and responsible State in 1972.

THE MASTER'S LODGE,
TRINITY COLLEGE,
CAMBRIDGE, CB2 1TQ.
TELEPHONE 58201.

Our Ref: G/3 6 October 1972

Thank you for your letter. You were quite right to approach the Home Office for material for your researches.

I have no doubt myself that it was inevitable to end capital punishment here, partly because of the disproportionate effect that a single execution had on public opinion.

the Royal Commission 1949-53 to the

Dr. Harold M. Stahmer, Ph.D.

Judge Drew:

Inasmuch as his handwriting is illegible, this is a response to my letter from R. A. Butler, former Home Secretary for Great Britain, and now Master of Trinity College, Cambridge.

H.M.S.

POSITION STATEMENT OF RICHARD T. EARLE, JR.
ON DEATH PENALTY QUESTION

At the meeting in Tampa you suggested that we reduce our thoughts on reinstating capital punishment to one or one and a half pages of paper, and forward the same to you. I am complying with putting my thoughts on paper, but I am sure that I will not comply as to the one or one and a half pages.

It is obvious that capital punishment is not a deterrent to any person unless, before the commission of the homicide he consciously or subconsciously considers the possibility of his ultimate execution. Thus when one's emotions so take control of his actions that he kills without consideration of the possible result, or if one believes that there is no possibility of his apprehension and conviction, capital punishment will not act as a deterrent. However, there are situations which do not fall into either of these catagories -- no uncontrolled emotions are involved, there is a fear of apprehension and conviction, and there is an opportunity and a necessity to consciously or subconsciously consider the possible result and evalute the alternatives. In at least some of these cases capital punishment must be the least desirable alternative and in these cases capital punishment myst be a deterrent. I recognize that this cannot be demonstrated statistically, but this is the fault of the statistics and not of the logic.

It is my sincere belief that society generally demands death as punishment for the types of homicide that, by their very nature are so wanton and brutal as to shock society. It is immaterial whether this demand of society is society's method of retribution for shocking it or is an outlet for its feeling of collective aggression. If society demands capital punishment in certain types of cases, it will achieve it by legal means if possible and illegal means if necessary.

I agree with the view expressed by some members of the Supreme Court of the United States that our system, prior to Furman v. Georgia, conferred on juries and judges the power to indicriminately and without guidelines sentence a person either to death or life imprisonment. However, I violently disagree with the conclusion reached by a majority of the Court that epxerience has demonstrated that this power of the jury has been exercised whimsically or freakishly. Under our system both a grand jury and a petit jury must be so shocked by a homicide as to believe capital punishment is na appropriate penalty. In reaching such a conclusion, these representatives of our society are in most cases expressing the view of society as a whole and carrying out what society demands. The mere fact that the percentage of "disadvantaged persons" on death row is far greater than the percentage of "disadvantaged persons" in our total population is no evidence that juries have meted out the death penalty discriminatorily, whimsically, or freakishly. Because of many factors, the nature and causes of which are here unimportant, proportionately more homicides are commited by certain socio-

economic groups, and these groups are composed largely of the "disadvantaged". Likewise the fact that the percentage of black persons on death row far exceeds the percentage of black persons in the total population is meaningless because of the high percentage of black persons in that socio-economic group which commits most of the homicides.

Because of the foregoing it is my view that capital punishment is not only desirable but that it is necessary and that ou system prior to Furman v. Georgia was well calculated to carry out the mandates of society in a fair and non-discriminatory manner. With these view I necessarily believe that capital punishment should be reinstated. However, this raises the question as to whether or not at this time it can be reinstated in a manner satisfactory to society and meeting the requirements of the majority opinions of the Supreme Court.

The Attorney General of Florida has suggested that it might well be constitutional to make the death penalty mandatory for specific types of homicide. Based upon the opinions in Furman v. Georgia this suggestion may well have theoretical merit. As a practical matter, I do not believe it has real merit. While society is so shocked by some homicides as to require the death penalty, it would be equally shocked by the exaction of the death penalty for other homicides which do not so shock it. Because of the variety and indefinable nature of the factors which cause society to be shocked by some homicides, it would be impossible to define in language all of those homicides which society requires be punished by death and to exclude all of those homicides that society believes should be punished by some lesser punishment. Heretofore juries have been able to carry out the mandates of society by recommending or failing to recommend mercy without the use of definitions or written guidelines, but by their innate reaction to all factors involved in the homicide. This screening process cannot be accomplished by definition or guidelines.

The Attorney General recommends that the death penalty be mandatory for the premeditated killing of members of certain classes of society. This cannot be a solution because it will not satisfy the demands of society which has a vital interest in protecting all of its members and not only members of a few selected classes against homicides. Further, this method of classification gives no consideration whatsoever to those undefinable factors which so outrage society that it demands the death penalty. The premeditated killing of a law enforcement officer under certain circumstances might well not be so shocking as to require the death penalty, while I think more of us would agree that even though the killers in the TV presentation, "Thou Shalt Not Kill" did not kill any persons falling within the classes recommended by the Attorney General, capital punishment is an appropriate penalty to be exacted from them.

For the foregoing reasons, I do not believe that it is possible to define those homicides which should be punished by death in a manner which will in any way satisfy the demands of society.

Of even greater import, so long as there is capital punishment there is no practical way to deprive a jury of its power to act in such a manner as to reflect the feelings of society in general, the exercise of which power will, from a statistical standpoint, appear to be discriminatory, arbitrary, whimsical, or freakish. So long as the charge of a capital crime, no matter how defined, also contains lesser included offenses, the jury has the ability to indiscriminately sentence a person to death or imprisonment by finding him guilty either of the capital crime or the lesser included offense. This is merely a continuation of our system prior to Furman v. Georgia -- the only difference being that instead of recommending mercy the jury can find guilt of the lesser offense. It is true that the jury has a guideline, the instructions given by the court relative to the lesser included offense, but this may be a distinction without a real difference. At the same time if the Supreme Court applied the same fallacious statistical test as it applied in Furman v. Georgia, it would soon be apparent that there was a disproportionate number of "disadvantaged persons" on death row and that the jury again acted whimsically and capriciously.

It is no solution to devise a system where charges of a capital crime do not include lesser offenses. Under such a system the jury would be confronted with only two alternatives -- death or freedom. Such choices could only lead to the execution of persons in borderline situations and freedom for aother persons who should in fact be punished. Further statistically it would be subject to attack as whimsical, freakish, and discriminatory.

In brief I do not believe that there is any way to reinstate capital punishment and at the same time meet the demands of society and the requirements set out in Furman v. Georgia. Further, it must be recognized that the Supreme Court of the United States makes the rules of the game and unless these rules, so made by the Court, are followed, the game itself must of necessity develop into a shambles. At this point in time I do not believe that it is to the best interests of society that any attempt be made to ignore or subvert the holding and philosophy in the majority opinions in Furman v. Georgia.

If society really demands capital punishment for certain types of homicide or other crimes, it would seem possible to enact an amendment to the Constitution of the United States making it constitutional not only to have capital punishment, but to utilize the system which was in effect in most of the states prior to Furman v. Georgia. I suggest that this is a goal and a method of achieving it which comports with our basic philosophies of government.

The great bulk of society is outraged at the ease of parole and pardon in certain types of homicides, and will become even more outraged with the abolition of capital punishment. It is not a satisfactory solution to sentence one to prison without any hope of release. Such a system is undesirable from the standpoint of the prisoner and the prison authorities and is indefensible from the standpoint of society because it completely ignores the possibility, as remote as it may be, of rehabilitation. Further, it will be subject to exactly the same criticism as the present system was subjected to -- a disproportionate number of "disadvantaged persons" will be in for life without hope of parole and juries will have made this determination on the same basis that it made the determination as to the death sentence.

The only solution I can think of is to make life imprisonment the mandatory sentence for all homicides giving all the hope of parole, and restructuring our parole system so as to accord the prisoners some rights to parole and to accord society the right to be heard openly and to advocate or oppose parole. Unfortunately if Furman v. Georgia is carried to its ultimate logical limits, this system likewise would be subject to exactly the same criticisms as our present system, the only difference being that the parole board would be substituted for the jury.

POSITION STATEMENT OF ROBERT M. JOHNSON
ON DEATH PENALTY QUESTION

I favor reinstatement of capital punishment for at least the following crimes:

1. Premeditated murder
2. Homicide committed in perpetration or the attempt to perpetrate any felony.
3. Hijacking or bombing.
4. Kidnapping for ransom whether the gain be financial, political or otherwise.
5. Rape.
6. Importation of heroin or hallugenic drugs.

To my mind capital punishment must be the result of swift and certain justice. This means we must have swift proceedings from the date of indictment to the date of final appeal. In this regard I feel priority should be established for speedy trials and speedy appeals.

POSITION STATEMENT OF GWENDOLYN S. CHERRY
ON DEATH PENALTY QUESTION

Let me state at the outset that I strongly oppose crime and violence in our community, state and nation. No one could object more vehemently that I to the ever rising crime

rate, the unsafe streets and the heinous criminal acts we read about almost daily. My reason for clarifying this point is because so often people confuse opposition to capital punishment with favoring or being soft on crime which is decidedly not the case in point. If for one moment, I sincerely felt that the Death Penalty would deter this horrible situation I would be the first to favor re-instatement of capital punishment. To date, I have not seen evidence, facts or figures to support this deterrent theory.

Permit me to review briefly my past two years in the legislature. Directly proceeding my election to the House of Representatives, I filed House Bills 223 and 2598 (relating to capital punishment) which were overwhelmingly defeated by the Criminal Justice Committee. The following year, 1972, I re-filed these bills, House Bills 1809 (to abolish capital punishment) and 4126 (relating to jury determination of death). These bills met with the same identical consequences..killed in the Criminal Justice Committee. If the bills had passed, they would have abolished capital punishment from the Florida Statutes by commuting death sentences to life imprisonment. Each year, approximately four thousand (4,000) bills are filed in the Legislature; yet, in 1971 and 1972, only four (4) bills dealt with the subject of capital punishment...the above mentioned bills. This is for the records to show my very obvious and deep concern with this issue.

I have repeatedly requested a study commission to be established to review the subject as well as schedule public hearings throughout the State. The Chairman of the Criminal Justice Committee had promised and intended to set up public hearings to hear expressions of the people on the issue. However, the Supreme Court handed down the Furman decision. Presently, I am a member of your committee and the Speaker's Select Committee and I am fully cognizant of the fact that my opinion is decidedly the minority of both committees that capital punishment should be abolished and another type of punishment used in the place thereof.

Manifestly, the taking of a life of a human being is wrong whether it is done under the sanction of the State or by individuals or an individual. It violates one of the Ten Commandments handed down "Thou Shalt Not Kill". Punishing violence with violence is not the solution. The type of punishment that should be substituted for death needs further in-depth study.

The Supreme Court's ruling in the Furman v. Georgia has, at last, brought the subject before the legislature and the people to be resolved. I strongly agree with Furman that "The imposition and carrying out of the death penalty in these cases constitute cruel and unusual punishment and is in violation of the eighth (8th) and fourteenth (14th) Amendments."

I have not been convinced by the evidence heard in public hearings or research that it may be constitutionally reinstated. Nothing concrete, not even the FBI statistics, has ever been produced to demonstrate in any way that capital punishment deters crime. The homicide rates of most states that do not have capital punishment are lower than those that do. Capital Punishment has been imposed ever since the nation was founded. Living under this system, capital crimes have consistently and continually increased to an alarming proportion. This fact along should convey a message.

The Furman decision is the LAW OF THE LAND and should be complied with by the legislature. We are a country governed by law and this is the LAW. Therefore, as a legislator, I feel a firm duty to obey the law and therefore cannot support a statute that cannot withstand the constitutional test. Afortiori, Capital Punishment should not be reinstated.

COMMITTEE RECOMMENDATIONS

The committee met in Tallahassee on October 20 and 21, in order to assess its position on capital punishment and establish a basis for the appropriate recommendations to the Governor.

The minutes from those two meetings are included in this section along with the specific recommendations of the sub-committee and its suggested legislation.

The committee met again on November 10 in Tallahassee to review the recommendations of the subcommittee and finalize its outline for the final report.

MINUTES
Governor's Committee To Study Capital Punishment
Governor's Conference Room
Tallahassee, Florida
October 20, 1972

Committee Members Present: E. Harris Drew, LeRoy Collins, Stella Thayer, Jim Williams, John McCarty, Ernest Mason, Gene Brown, Harold Stahmer, Louis de la Parte, Farris Bryant, Bob Johnson, Jesse McCrary, Gwen Cherry, John Mathews, Jr., and Richard Earle, Jr.

Committee Members Absent: Beth Johnson, C. Welborn Daniel

The Chairman E. Harris Drew opened the meeting with a discussion of the procedure to be followed for the day. It was agreed that the Committee would attempt to develop policy guidelines which would permit articulation of specific recommendations to be formulated by a sub-committee.

Harold Levinson was then introduced to the Committee along with the other law school representatives present at the meeting; Charles Ehrhardt and Phillip Hubbart. Professor Levinson then presented the remarks and recommendations as compiled by the Committee's Legal Advisory Staff, consisting of those members listed above as well as William Smiley, Jr., and Thomas A. Wills. A written report was distributed to all Committee Members. Additional discussion on the Legal Advisory Staff report was presented by Professors Ehrhardt and Hubbart.

Mr. Joe Harrell was then introduced to the Committee as representing as special trials committee of the Florida Bar. Mr. Harrell emphasized that his remarks were those of the Committee and not the Florida Bar. He reported that the Bar had taken no position either way on reinstatement. The focus of his statement was on the steps necessary to "bring our laws into accord with the requirements of the (Furman) decision." Harrell emphasized that the Furman decision had not addressed the bifurcated trial for capital cases, which was instituted in Florida, October 1, 1972. He described this action as the most positive taken to date to improve the Florida System. He concluded that the Florida system was a good one, and that we should not throw out the legal thoughts and procedures which have evolved through the years because of one decision. "If we can remove the frivolousness of the law, then we would have a good chance of reinstatement". A written report was requested of Mr. Harrell by the Committee.

The Chairman then opened discussion on the procedure for the Committee to follow in formulating its recommendations. During the course of discussion, a motion was made by John Mc Carty that the Committee recommend reinstatement of capital punishment. The motion was seconded and the discussion was devoted to hearing the individual views of Committee members concerning reinstatement or abolition of the death penalty. Copies of remarks by Gene Brown, Ernest Mason, Harold M. Stahmer, Jesse J. McCrary, and E. Harris Drew, had been distributed to all Committee members at the beginning of the meeting. The others presented the remarks extemporaneously. Following the presentations of each member, a vote was taken on the position, which passed 9-6. Those members voting for the motion were: Stella Thayer, Jim Williams, John Mathews, John McCarty, Ernest Mason, Gene Brown, Bob Johnson, Louis de la Parte, and Farris Bryant. Those against the motion were: E. Harris Drew, LeRoy Collins, Jesse McCrary, Richard Earle, Gwen Cherry, and Harold Stahmer.

A motion was made by John Mathews that rape should be excluded from any further consideration of reinstatement. An amendment to the motion was made by Louis de la Parte to include such consideration as it pertained to a child under 10 years of age. After much discussion, it was decided that the motion would be pursued in the Saturday morning session. A motion was made and the Committee adjourned until 9:00 a.m., October 21, 1972.

MINUTES
Governor's Committee To Study Capital Punishment
Governor's Conference Room
Tallahassee, Florida
October 21, 1972

Committee Members Present: E. Harris Drew, Jesse J. McCrary, Stella Thayer, Jim Williams, John Mathews, John McCarty, Ernest Mason, Bob Johnson, Harold Stahmer, Farris Bryant, LeRoy Collins, Gene Brown.

Committee Members Absent: Beth Johnson, Richard Earle, Jr., C. Welborn Daniel, Gwen Cherry, Louis de la Parte.

The meeting was called to order by the Chairman, E. Harris Drew. He announced that the meeting would adjourn today at 11:50. He further requested that the tapes of the discussion of October 20, 1972, be transcribed for the record, beginning with the motion by John McCarty and carrying through the statements of the individual members. It was agreed that the final report would be prepared as a majority view by a sub-committee. The opening of business was directed at a continuation of discussion on the motion introduced by John Mathews on October 20, 1972. The amendment to the motion offered by Louis de la Parte was tabled (voice vote).

Motion made (Johnson) to include rape of a child of tender of immature years as an offense punishable by death. (failed - recorded vote #1)

Motion made (Johnson) that the capital offense of murder be retained as described in FS 78204, except omit "abominable" and "detestable" (withdrawn).

Motion made (Johnson) that premeditated murder be included as a capital crime punishable by death (carried - recorded vote #2).

Motion made (Johnson) that murders committed during the perpetration of (1) arson (carried - voice vote); (2) rape (carried - voice vote); (3) robbery (failed - recorded vote #3); (4) burglary (failed - recorded vote #4); and (5) kidnapping (carried - recorded vote #5).

Motion made (Brown) that we not consider classification of capital cases by type of victim (carried - recorded vote #6).

Resolution introduced as a motion (Stahmer) which required that the Governor, Attorney General, a majority of the jury members, and the Judge be present to witness the execution (failed - voice vote).

Motion made (Brown) that we classify capital crimes according to the motivation of the perpetrator (motion died - no second).

Motion made (Johnson) that homicides in connection with hijacking and bombings be included as capital punishment crimes (carried - voice vote).

Motion made (Johnson) that importation of Heroin or hallucinagenics be included as a capital crime (failed - voice vote).

The Committee then began consideration of procedures for carrying out death sentences as outlined in the executive order. After lengthy discussion it was agreed that the Committee would request recommendations from the Governor on these matters as well as additional clarification of the issues.

Discussion was given to the need to consider all aspects of the Criminal Justice process in light of the needed reforms within the system, and the indications that the Furman decision implied problems within the whole system. It was concluded that neither time nor resources permitted such an undertaking by this Committee.

Motion made (Collins) that the Committee recommend to the Governor the establishment of a commission for the study of the Criminal Justice System made up of all three branches of government. This commission would also address the technical questions outlined in the executive order of this committee (withdrawn).

The Chairman requested and received authorization to appoint sub-committee members, who would be responsible for preparing the recommendations of the Committee and presenting them for discussion at the November 3rd meeting. It was decided that the final meeting of the committee would be held November 20.

Motion made (Mathews) that the Committee request the Supreme Court give utmost consideration to any cases resulting from the reinactment of capital punishment (carried - voice vote).

The Committee agreed that any member of the Committee may attach their views to the final report.

The meeting was adjourned to meet again November 3, 1972, at 9:30 a.m.

GOVERNOR'S COMMITTEE TO STUDY CAPITAL PUNISHMENT
Recorded Votes
October 21, 1972

Drew	Motion To Reinstate N	1 Y	2 Y	3 N	4 N	5 0	6 0
McCrary	N	N	N	N	N	N	0
Thayer	Y	N	Y	N	N	Y	Y
Williams	Y	N	Y	N	N	Y	Y
Mathews	Y	N	Y	Y	Y	Y	Y
McCarty	Y	Y	Y	Y	Y	Y	Y
Mason	Y	Y	Y	Y	Y	Y	N
Johnson	Y	Y	Y	Y	Y	Y	Y
Stahmer	N	N	N	N	N	N	N
Bryant	Y	Y	Y	Y	Y	Y	Y
Collins	N	N	N	N	N	0	0
Brown	Y	Y	Y	Y	Y	Y	Y
Earle	N	0	0	0	0	0	0
Cherry	N	0	0	0	0	0	0
De La Parte	Y	0	0	0	0	0	0

A subcommittee was appointed by the Chairman E. Harris Drew to draft the proposed legislation according to the broad guidelines set forth by the Committee. The subcommittee members were Bob Johnson, Chairman, John Mathews, Co-Chairman, Stella Thayer, Jim Williams, and Jesse McCrary. The subcommittee met on November 3, 1972, and again on November 10, 1972.

The full committee met November 20, 1972, in Tallahassee to review the work of the subcommittee and prepare its report to the Governor. Those present at that meeting were: E. Harris Drew, LeRoy Collins, Stella Thayer, Harold Stahmer, Bob Johnson, Jim Williams, John McCarty, Ernest Mason, Gene Brown, Jesse McCrary, and John Mathews.

The meeting was called to order by the Chairman E. Harris Drew, and the first order of business was consideration of the resolution calling for a detail study of the criminal justice process as presented by LeRoy Collins. The resolution was adopted by voice vote.

The subcommittee bill was discussed at great lengths, and finally moved and adopted by the committee that the form of legislation drafted by the subcommittee be approved and included as a part of the committee's report. Those voting for the motion were Thayer, Johnson, Williams, McCarty, Mason and Brown. Those voting against the motion were Stahmer, Collins, Drew, and McCrary.

The cover letter for the Committee's report to Governor Askew was read to the membership and approved. It was also agreed that the chairman would sign the report on behalf of the committee as its majority view.

It was further noted that all supporting documents and correspondence not included in the committee's report would be filed with the Supreme Court Library. The Committee agreed to make itself available to the Governor for any other services required.

The meeting concluded with recognition of the "services and leadership of an extraordinary chairman", E. Harris Drew.

A bill to be entitled

An act relating to capital punishment, amending section 782.04, Florida Statutes, to specify and redefine the crimes constituting murder; providing for reclassification as certain degrees of felony; amending chapter 782, Florida Statutes, by adding section 782.011; providing definitions; amending subsection (1) of section 775.081, Florida Statutes, providing for a life felony; amending section 775.082, Florida Statutes, to provide punishment for capital and life felonies; amending section 921.141, Florida Statutes, as amended by chapter 72-72, Laws of Florida, providing procedures for a separate proceeding to determine sentence in capital cases; providing for sentence of life imprisonment if capital punishment is ruled unconstitutional; amending section 790.16, Florida Statutes, providing for new penalties for throwing or discharging bombs or discharging machine guns in public places; repealing subsections (3) and (4) of section 790.16, Florida Statutes, relating to recommendation of mercy and judicial discretion in sentencing; amending section 790.161, Florida Statutes; providing new penalties for throwing, placing, or discharging any destructive device, depending on degree of harm inflicted; amending section 794.01, Florida Statutes; providing new penalties for crimes of rape; amending section 805.02, Florida Statutes; providing that kidnapping for ransom shall be a life felony; providing a severability clause; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 782.04, Florida Statutes, is amended to read:

782.04 Murder.--

(1) The unlawful killing of a human being, when perpetrated from a premeditated design to effect the death of the person killed or any human being, ~~or when committed in the perpetration of or in the attempt to perpetrate any arson, rape, robbery, burglary, abominable and detestable crime against nature, or kidnapping,~~ shall be murder in the first degree and shall constitute a capital felony, punishable as provided in section 775.082.

(a) When the unlawful killing occurs while the accused is engaged in, or is an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit any arson, rape, robbery, burglary, kidnapping, or the unlawful throwing, placing or discharging of a destructive device or bomb, and where such killing is effected in

the furtherance of such act or acts, it shall be presumed, subject to rebuttal by the accused, that the unlawful killing was perpetrated from a premeditated design to effect the death of the person killed or any human being.

(b) In all cases under this section the procedure set forth in section 921.141 shall be followed in order to determine sentence of death or life imprisonment.

(2) The unlawful killing of a human being, ~~When~~ when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual, such acts to include but not be limited to the commission of, or an attempt to commit, or flight after committing or attempting to commit any arson, rape, robbery, burglary, kidnapping, or the unlawful throwing, placing or discharging of a destructive device or bomb, ~~it~~ shall be murder in the second degree and shall constitute a life felony ~~of the first degree~~, punishable as provided in section 775.082, ~~section 775.083, or section 775.084~~.

(3) The unlawful killing of a human being, ~~When~~ when perpetrated without any design to effect death, by a person engaged in, or an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit any felony, other than arson, rape, robbery, burglary, ~~or~~ kidnapping or the unlawful throwing, placing or discharging of a destructive device or bomb ~~it~~ shall be

murder in the third degree and shall constitute a felony of the second degree, punishable as provided in section 775.082, section 775.083, or section 775.084.

COMMENT: Murder in the first degree has been redefined to reserve as a capital felony only those killings committed with premeditated design. The felony murder rule is used as a rule of evidence to give prosecutors an additional tool to aid in proof of premeditation. Murder in the second degree is essentially the same, except that original felony murder language is added as equating acts "imminently dangerous to another and evincing a depraved mind regardless of human life." Accordingly, where proof of premeditated design by proof of the named felony is successfully rebutted under subsection (1)(a), murder in the second degree becomes a clear lesser included offense as no premeditated design is required. In addition, the section deletes reference to the "abominable and detestable crime against nature" which is not presently a crime in Florida until a new sodomy statute is enacted. The bombing situation has been added. Therefore, a clear intention is manifest to include only serious common law or statutory felonies which are presently made criminal. Should a sodomy statute later be enacted, it could be included.

Section 2. Chapter 782, Florida Statutes, is amended by adding section 782.011 to read:

782.011 Definitions.--In this chapter, unless a different meaning plainly is required:

(1) "Sudden and sufficient provocation" is something which would naturally and instantly produce in the mind of an ordinary person the highest degree of anger, rage, resentment, or exasperation.

(2) "Heat of passion" is anger, rage, resentment, or exasperation so intense as to overcome or suspend the use of ordinary judgment and to render the

mind of an ordinary person incapable of calm reflection.

(3) "Dangerous weapon" is any weapon which, in the manner it is used, is likely to produce death or great bodily harm.

(4) "Premeditated design" as it applies to the crime of murder means a fully-formed conscious purpose to take human life, formed upon reflection and present in the mind of the accused at the time of the killing.

(5) "Destructive device or bomb" shall have the meaning set forth in section 790.001(4).

(6) An "act imminently dangerous to another, and evincing a depraved mind regardless of human life" is an act or series of acts which a person of ordinary judgment would know to be reasonably certain to kill or do great bodily injury to another and is done from malice, hatred, spite or an evil intent, and is of such a nature that the act or series of acts indicates an indifference to human life.

COMMENT: These definitions are set forth in the interest of clarity and do not change existing law as applied. The primary source is the Florida Standard Jury Instructions (1970 Ed.), except for the statutory reference in subsection (5). The definitions set forth in subsections (1), (2) and (3) apply primarily to section 782.03, Florida Statutes, Excusable homicide, and explain terms used therein.

Section 3. Subsection (1) of section 775.081, Florida Statutes, is amended to read:

775.081 Classifications of felonies and misdemeanors.--

(1) Felonies are classified, for the purpose

of sentence and for any other purpose specifically provided by statute, into the following categories:

(a) Capital felony;

(b) Life felony;

~~(b)~~ (c) Felony of the first degree;

~~(c)~~ (d) Felony of the second degree; and

~~(d)~~ (e) Felony of the third degree.

A capital felony and a life felony must be so designated by statute. ~~A non-capital felony~~ Other felonies are of the particular degree designated by statute. Any crime declared by statute to be a felony without specification of degree is of the third degree, except that this provision shall not affect felonies punishable by life imprisonment for the first offense.

COMMENT: Provides a new category of felony to serve as an additional deterrent to those crimes, while not classified capital, are especially serious in nature.

Section 4. Section 775.082, Florida Statutes, is amended to read:

(1) A person who has been convicted of a capital felony shall be punished by ~~death unless the verdict includes a recommendation to mercy by a majority of the jury, in which case the punishment shall be life imprisonment. A defendant found guilty by the court of a capital felony on a plea of guilty or when a jury is waived shall be sentenced to death or life imprisonment in the discretion of the court;~~ life imprisonment and shall be required to serve no less than thirty (30) calendar years before becoming eligible for parole unless the proceeding held to

determine sentence according to the procedure set forth in section 921.141 results in findings by the court which mandate a sentence of death, in which case such person shall be punished by death.

(2) A person who has been convicted of any other designated felony may be punished as follows:

(a) For a life felony, by a term of imprisonment in the state penitentiary not exceeding life imprisonment but in every case by a term of imprisonment in the state penitentiary for a minimum of thirty (30) years;

~~(a)~~(b) For a felony of the first degree, by a term of imprisonment in the state penitentiary not exceeding thirty (30) years or, when specifically provided by statute, by imprisonment in the state penitentiary for a term of years not exceeding life imprisonment;

~~(b)~~(c) For a felony of the second degree, by a term of imprisonment in the state penitentiary not exceeding fifteen (15) years;

~~(c)~~(d) For a felony of the third degree, by a term of imprisonment in the state penitentiary not exceeding five (5) years.

(3) A person who has been convicted of a designated misdemeanor may be sentenced as follows:

(a) For a misdemeanor of the first degree, by a definite term of imprisonment in the county jail not exceeding one (1) year;

(b) For a misdemeanor of the second degree, by a definite term of imprisonment in the county jail not exceeding sixty (60) days.

(4) Nothing in this section shall be construed to alter the operation of any statute of this state authorizing a trial court, in its discretion, to impose a sentence of imprisonment for an indeterminate period within minimum and maximum limits as provided by law, except as provided in subsections (1) and (2)(a) above.

COMMENT: Subsection (1) provides two alternate sentences for capital crimes which will be mandatory according to the findings of fact made in a separate sentencing proceeding. A distinction between life imprisonment under subsection (1) and that contemplated under subsection (2)(a), relating to life felonies should be noted. In the former case, there is a minimum period to be served on a life sentence before eligibility for parole. In the latter, there is no such minimum but only a minimum term of years which must be imposed if life imprisonment is not the sentence. There is no minimum sentence for felonies of the first degree. Thus, each category contemplates a descending degree of severity according to the classification of the crime.

Section 5. Section 921.141, Florida Statutes, as amended by chapter 72-72, Laws of Florida, is amended to read:

(Substantial rewording of section. See section 921.141, F.S., as amended by chapter 72-72, Laws of Florida, for present text.)

921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.--

(1) Upon conviction or adjudication of guilt of a defendant of a capital felony the court shall conduct a separate sentencing proceeding to determine

whether the defendant should be sentenced to death or life imprisonment as authorized by section 775.082. The proceeding shall be conducted by the trial judge presiding and two additional judges from another circuit or circuits to be appointed by the Chief Justice of the Supreme Court of Florida as soon as practicable after certification of conviction or adjudication of guilt by the trial judge and shall commence within fifteen (15) days thereafter unless time is extended by the Chief Justice for good cause shown. The jury, if any, shall be discharged after returning its verdict on the issue of guilt or innocence. In the proceeding, evidence may be presented as to any matter that the sentencing court deems relevant to sentence, relating to any of the aggravating or mitigating circumstances enumerated in subsections (3) and (4) of this section. Any such evidence which the court deems to have probative force may be received, regardless of its admissibility under the exclusionary rules of evidence, provided that the defendant's counsel is accorded a fair opportunity to rebut any hearsay statements; and further provided that this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the State of Florida. The prosecuting attorney and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

(2) The sentencing court, after conducting such a separate proceeding as set forth in subsection (1) above, shall impose a sentence of death if it

determines and sets forth by majority vote as findings of fact:

(a) that an aggravating circumstance exists as enumerated in subsection (3), and

(b) that no substantial mitigating circumstance exists as enumerated in subsection (4) which would warrant leniency.

In each case, the determination of the court shall be supported by specific written findings of fact and shall be based on the record of the sentencing proceeding. Otherwise, the court shall impose sentence of life imprisonment in accordance with section 775.082. Each such judgment and sentence of death shall be subject to automatic review by the Supreme Court of Florida within thirty (30) days after certification by the sentencing court of the entire record unless time is extended an additional period not to exceed thirty (30) days by the Supreme Court for good cause shown. Such review by the Supreme Court shall have priority over all other cases, and shall be heard on briefs and oral argument only in accordance with rules promulgated by the Supreme Court.

(3) Aggravating circumstances.--Aggravating circumstances shall be limited to the following:

(a) The capital felony was committed by a convict under sentence of imprisonment;

(b) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person;

(c) At the time the capital felony was com-

mitted the defendant also committed another capital felony;

(d) The defendant knowingly created a great risk of death to many persons;

(e) The capital felony was committed while the defendant was engaged or was an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit any robbery, rape, arson, burglary, kidnapping, or the unlawful throwing, placing or discharging of a destructive device or bomb;

(f) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody;

(g) The capital felony was committed for pecuniary gain;

(h) The capital felony was especially heinous, atrocious or cruel, manifesting exceptional depravity.

(4) Mitigating circumstances.--Mitigating circumstances shall be limited to the following:

(a) The defendant has no significant history of prior criminal activity;

(b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance;

(c) The victim was a participant in the defendant's conduct or consented to the act;

(d) The defendant was an accomplice in the capital felony committed by another person and his participation was relatively minor;

(e) The defendant acted under extreme duress

or under the substantial domination of another person;

(f) At the time of the capital felony, the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired as a result of mental disease, intoxication, or influence of drugs;

(g) The youth of the defendant at the time of the crime.

COMMENT: This section provides procedures for a separate proceeding to determine sentence in capital cases. Only two sentences are possible - death or life imprisonment, with a minimum time to be served before eligibility for parole. A sentence of death is mandatory upon the finding of facts set forth in subsection (2). Otherwise, in the event the court finds no aggravating circumstance, or if it finds that one exists but also that there is a substantial mitigating circumstance which warrants leniency, the sentence must be life imprisonment with the conditions before stated. It should be noted that while the exclusionary rules of evidence are relaxed in this proceeding before three circuit judges, on the basis that they are well qualified to distinguish between that evidence which has probative force and that which does not, that there is no intent to authorize introduction of evidence excluded because of a constitutional infirmity. Also, matters to be considered are limited only to those aggravating and mitigating circumstances enumerated in subsections (3) and (4). In addition, it should be noted that Chapter 72-72, Laws of Florida, listed an additional ground for mitigation relating to belief of "moral justification or extenuation" that has been deleted. Further, the language of subsection (4)(e) and (f) has been strengthened by a requirement of "substantial" duress, domination, or impairment.

Section 6. If a person is convicted of a capital felony and sentenced to death in accordance

with the procedure set forth in section 921.141 and, subsequent thereto, capital punishment is declared to be unconstitutional, a person so convicted and sentenced shall be resentenced to life imprisonment in the state prison and shall not be eligible for parole under such sentence until he has served thirty (30) calendar years of imprisonment, as provided by section 775.082.

Section 7. Section 790.16, Florida Statutes, is amended to read:

790.16 Throwing bombs; discharging machine guns; penalty.--

(1) It is unlawful for any person to throw any bomb or to shoot or discharge any machine guns upon, across or along any road, street or highway in the state, or upon or across any public park in the state, or in, upon or across any public place where people are accustomed to assemble in the state. The casting of such bomb or the discharge of such machine gun in, upon or across such public street, or in, upon or across such public park, or in, upon or across such public place, whether indoors or outdoors, including all theatres and athletic stadiums, with intent to do bodily harm to any person or with intent to do damage to the property of any person, not resulting in the death of another person, shall be a ~~capital~~ felony of the first degree, punishable as provided in section 775.082. A sentence not exceeding life imprisonment is specifically authorized where

great bodily harm to another or serious disruption of governmental operations results.

(2) This section shall not apply to the use of such bombs or machine guns by any United States or state militia, or by any ~~sheriffs, deputy sheriffs, marshals, constables, chief of police or police~~ law enforcement officer while in the discharge of their lawful duty in suppressing riots and disorderly conduct, and in preserving and protecting the public peace or in the preservation of public property, or where said use shall be authorized by law.

~~(3)--A majority of the jurors trying said cause may in their discretion recommend the defendant to the mercy of the court in which event the penalty shall be changed from death to life imprisonment.~~

~~(4)--The circuit judge before whom said cause shall be tried, should he deem the circumstances under which said offense was committed of such nature and character as to justify clemency, may, in his discretion, change the penalty from death to imprisonment in the penitentiary for life.~~

COMMENT: This provision provides rational alternatives in sentencing compatible with existing law, depending on the degree of harm done. It is intended that where a homicide results that such offense be prosecuted under section 782.04, F.S. Deletion of subsections (3) and (4) is required to remove jury discretion to recommend mercy and judicial discretion to lower the sentence. These provisions are unnecessary as the most serious offense under this section is now classified as a felony of the first degree, with specific authorization of a term of imprisonment not exceeding life imprisonment in certain cases.

Section 8. Section 790.161, Florida Statutes, is amended to read:

790.161 Throwing, placing or discharging any destructive device or attempt so to do, felony; penalties.--It is unlawful for any person to throw, place, discharge or attempt to discharge any destructive device, as defined herein, with intent to do bodily harm to any person or with intent to do damage to the property of any person, and any person convicted thereof shall be guilty of a felony and punished in the following manner:

(1) When such action, or attempt at such action, results in the death of ~~any~~ another person, the person so convicted shall be guilty of a ~~capital~~ life felony, punishable as provided in section 775.082.

(2) When such action, or attempt at such action, results not in the death of any person, but does result in personal injury to a person or in damage to the property of any person, the person so convicted shall be guilty of a felony of the first degree, punishable as provided in sections 775.082, 775.083 or 775.084. A sentence not exceeding life imprisonment is specifically authorized where great bodily harm to another or serious disruption of governmental operations results.

COMMENT: The intent of the change in subsection (1) is to make this penalty consistent with that imposed for murder in the second degree or a life felony. Where evidence of premeditation exists,

the offender could be prosecuted for murder in the first degree, as the throwing of a destructive device or bomb gives rise to a rebuttable presumption of premeditation under this act. The distinction here is that the perpetrator intends only to "do bodily harm" or "damage to property", not necessarily to kill another human being from a "premeditated design." Similar sentencing alternatives appear in subsection (2) as appear in section 7 of this act.

Section 9. Section 794.01, Florida Statutes, is amended to read:

(Substantial rewording of section. See section 794.01, F.S., for present text.)

794.01 Rape and forcible carnal knowledge; penalty.--

(1) Whoever unlawfully or carnally knows a female human being under the age of ten (10) years shall be guilty of a life felony, punishable as provided in section 775.082.

(2) Whoever ravishes and carnally knows a female human being of the age of ten (10) years or more, by force and against her will shall be guilty of a felony of the first degree, punishable by imprisonment in the state prison for life or for such term of years as may be determined by the court.

(3) It shall not be necessary to prove the actual emission of seed, but the crime shall be deemed complete upon proof of penetration only.

COMMENT: This provision separates the crime of rape as worded into its component parts and makes rape of a female under ten (10) a life felony. Other forcible rape is a felony of the first

degree, with specific authorization of life imprisonment. The principle expressed here is that the state should only be authorized to take a life where a life is taken. It is believed that prior classification of rape as a capital felony under these circumstances has resulted in disparities in sentencing which are unjustified and too often reflect racial bias. The creation of a life felony adds a significant and heavy deterrent to the offense in subsection (1) as there would be a minimum sentence of years imposed in accordance with section 775.082, F.S. In addition, where a death results, prosecution may be had for murder in the first degree, with a rebuttable presumption of premeditation. The penalty for rape of a child under ten (10) years is therefore equal to that contemplated for murder in the second degree.

Section 10. Section 805.02, Florida Statutes, is amended to read:

805.02 Kidnapping for ransom.--Whoever, without lawful authority, forcibly or secretly confines, imprisons, inveigles or kidnaps any person, with intent to hold such person for a ransom to be paid for the release of such person, or any person who aids, abets or in any manner assists such person in the confining, imprisoning, inveigling or kidnapping of such person, shall be guilty of kidnapping a person, which constitutes a ~~capital~~ life felony, punishable as provided in section 775.082.

COMMENT: This section reduces kidnapping for ransom to a life felony, in accordance with the express general policy of taking a life only when a life is taken.

Section 11. It is declared to be the legislative intent that if any section, subsection, paragraph, sentence, clause, provision or word of this act is held to be invalid, the remainder of the act shall not be affected.

Section 12. This act shall take effect on December 15, 1972.

RESOLUTION

OF

GOVERNOR'S COMMITTEE TO STUDY CAPITAL PUNISHMENT

WHEREAS, Furman v. Georgia and other decisions suggest the need for a comprehensive review of the entire system of criminal justice, in addition to the administration of capital punishment, and

WHEREAS, this committee's study has reinforced the view that such a comprehensive review is justified and required in order to identify and meet fundamental problems, and

WHEREAS, we believe it is in the best interest of the people of the State of Florida that new solutions and recommendations be found to improve the fair and effective administration of criminal justice in the State.

NOW, THEREFORE, BE IT RESOLVED that this Committee recommends to the Governor of Florida:

1. That a special citizens commission be created by executive order to identify needs, to coordinate efforts to find solutions for each problem, and to conduct a comprehensive study of the system of criminal justice (including the courts trial and appellate system, the prosecution and defense function and the needs of modern law enforcement, corrections, parole and probation); and

2. That said commission report its findings and recommendations of specific changes, modifications, or other measures which can lead to the establishment in Florida of the best possible system of criminal justice; and

3. That said commission be representative of every segment of the criminal justice system, as well as informed representatives of the citizens at large, and be appointed by the Governor.

4. That said commission fully utilize and draw upon the resources and expertise of personnel within agencies or institutions of the Executive branch, and those of the Judicial and Legislative branches of Government, and

5. That said commission be fully staffed and adequately funded in order that it may carry forward its objectives.

RESOLVED by the committee on this date at Tallahassee, Florida.

E. HARRIS DREW
Chairman

Comment:

1. That in Section 4, page 6, it is intended that a substantial period of years be served, although no magic figure is recommended. The bill sets it at (30) calendar years before becoming eligible for parole (Line 30).

2. That consideration of Treason is left out of committee bill.

3. That Legislature should additionally consider changes to §932.465, Florida Statutes, relating to Statute of Limitations.

END