

The Death Penalty

by Lloyd E. Powell

Movement is again afoot to bring the death penalty to Michigan, and we must do everything that we can to defeat this effort because of the injustice and extravagantly costly consequences that would ensue.

In the forefront of these efforts have been former State Senator and current Oakland County Sheriff Michael Bouchard, who was later joined by State Senators David Jaye, Dan L. Debrow and Willis Bullard. Also there are reportedly 22 state senators currently in favor of the death penalty with 8 opposed and 9 undecided according to a recent Catholic Church Bulletin. The Catholic Church and a majority of law enforcement chiefs and criminologists nationwide are opposed to the death penalty.¹

Historical Perspective

It was the execution of an innocent man that caused Michigan to become the first jurisdiction in the English speaking world to abolish the death penalty in 1847. Restoring it would require amendment of our State Constitution of 1963 to again permit the death penalty for capital cases. To pass will require a two-thirds majority of both houses of the Michigan Legislature. The constitutional amendment would then be placed on the 1999 ballot in the next general election.

From a nationwide perspective it has now been approximately 23 years since the moratorium on executions was lifted as a result of the U.S. Supreme Court's 1976 decision in Gregg v. Georgia. The Court had decided previously in 1972 that the death penalty was cruel and unusual punishment violative of the Eighth Amendment because vague state statutes permitted it to be imposed arbitrarily. However, in 1976 a majority ruled that from among a variety of new statutes which states had passed after the death penalty was struck down nationwide in 1972, those of Florida, Georgia and Texas provided the guidance to juries necessary to prevent the arbitrary application of it.

But the Supreme Court's approval of these new State statutes (and others which would imitate them) was tentative in that it was too soon to learn if these new laws would also be applied in an arbitrary fashion, thereby violating the Eighth Amendment's ban on cruel and unusual punishment.

The Dangers of Executing the Innocent

According to Capital Punishment 1995 (1996), Bureau of Justice Statistics, Appendix Table 1, 5,580 persons were sentenced to death from 1973 through the end of 1995, with an average of 300 new death sentences per year.² Extrapolation takes this number to an estimated 6,480 persons sentenced to death, up to January 1999.

During this same period, over 530 persons have been executed and 77 death row inmates in 19 states have been freed after being wrongfully convicted. Florida alone, with 387 men and women on death row, has released 19 innocent people from death row since 1973. Illinois is second, having released 10 innocent death row inmates since the death penalty was restored there in 1976.³

The arguments made that some people deserve to die because of the crime they commit overlook the fact that our criminal justice system continues to convict innocents with impunity.

A primary reason for this is because the evidence used to convict in criminal cases usually takes the form of “testimony” from other imperfect human beings who are asked to remember what they think they saw or heard. They so often are simply mistaken while others deliberately bear false witness. Also, hubris can understandably prevent even the most competent law enforcement officials from recognizing that they have made a mistake and the crime that they have been commended for solving remains in fact unsolved.

The consequence is that our imperfect criminal justice system continues to convict and place on death row many innocent people where some are executed after being confined for many years. And some who have been freed have come within hours of being executed. Professors Hugo Bedau and Michael Radalet documented 23 cases since 1900 where innocent people were in fact executed. See, “In Spite of Innocence,” Northeastern University Press, 1992.⁴

Professors Peter Neufeld and Barry Scheck have researched how often the police focus on the wrong subject. “Every year since 1989, in about 25 percent of the sexual assault cases referred to the FBI where results could be obtained, the primary suspect has been excluded by forensic DNA testing. . . The fact that these percentages have remained constant for 7 years, and that the National Institute of Justice’s informal survey of private laboratories reveals a strikingly similar 26 percent exclusion rate, strongly suggests . . . underlying systemic problems that generate erroneous accusations and convictions.”⁵

“The fact that 1 out of 4 defendants accused of a serious crime such as sexual assault is innocent or that at least 1 out of 100 of those actually sentenced to death is innocent is disturbing. Certainly such a record would be totally unacceptable for a car company whose cars were so defective that they caused fatal crashes in 1 out of 100 vehicles.”⁶

Financial Facts About the Death Penalty:

The most comprehensive study in the country found that the death penalty costs North Carolina \$2.16 million per execution over the costs of a non-death penalty murder case with a sentence of imprisonment for life. (Duke University, May 1993). On a national basis, these figures translate to an extra cost of over \$900 million spent since 1976 on the death penalty.⁷

The death penalty costs California \$90 million annually beyond the ordinary costs of the justice system -- \$78 million of that total is incurred at the trial level (*Sacramento Bee*, March 18, 1988).⁸

Florida spent an estimated \$57 million on the death penalty from 1973 to 1988 to achieve 18 executions—that is an average of \$3.2 million per execution. (*Miami Herald*, July 10, 1988).⁹

In Texas, a death penalty case costs an average of \$2.3 million, about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years. (*Dallas Morning News*, March 8, 1992).¹⁰

Deterrence and the Death Penalty

Although it has been empirically shown that having the State legally kill people does nothing to deter crimes, proponents still labor under that illusion.

Since the death penalty was reinstated in 1976, the number of executions and the size of death row have substantially increased. Yet during this same period of time, the FBI Uniform Crime Reports show virtually no change in the national murder rate.¹¹

When comparisons are made between states with the death penalty and states without, the majority of death penalty states show murder rates higher than non-death penalty states. The average murder rate per 100,000 population in 1996 among death penalty states was 7.1; the average murder rate among non-death penalty states was on 3.6. Death penalty states usually have a higher murder rate than their neighboring non-death penalty states.¹²

According to a new Bureau of Justice Statistics Report, the South had the highest murder rate in the country in 1996, followed by the West, Midwest, and Northeast. The murder rate in the South was 9.0 per 100,000 people compared to 5.4 per 100,000 in the Northeast. The South executes by far the largest number of people (81% of all the nation's executions) while the Northeast executes the least (less than 1%). The national murder rate was 7.4 per 100,000 population.¹³

Conclusion

“The increased rate of discovery of innocent people on death row is a clear sign that even with the best of intentions, the criminal justice system makes critical errors—errors which cannot be remedied once an execution occurs. The current emphasis on faster executions, less resources for the defense, and an expansion in the number of death cases means that the continued execution of innocent people is inevitable.”¹⁴ Also, as in the past, only sheer luck and heroic efforts, despite the system, will save some innocent death row inmates from execution. To quote the late U.S. Supreme Court Justice William Brennan, Jr. in 1994, “Perhaps the bleakest

fact of all is that the death penalty is imposed not only in a freakish and discriminatory manner, but also in some cases, upon defendants who are actually innocent.”¹⁵

So, my friends, now is the time to enlighten both houses of our legislature of the gross injustices and extravagant costs accrued by the death penalty without any benefit of crime deterrence whatsoever.

¹⁻¹⁵ Death Penalty information Center (DFIC), 1320 18TH St. N.W., 5TH Flr., Washington, D.C. 20036.

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